



सत्यमेव जयते

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Friday the 12th day of November 2021)

APPEAL No.338/2019

Old No. ATA 1329 (7) 2015

Appellant : M/s. Sree Narayana Guru Memorial
Educational and Cultural Trust
Thirumalabhagam.P.O,
Thuravoor,
Alappuzha – 688 540

By Adv. R Sankarankutty Nair

Respondent : The Assistant PF Commissioner
EPFO, Su b Regional Office
Kaloor,
Kochi – 682 017

By Adv. Sajeev Kumar K. Gopal

This case coming up for final hearing on 27.08.2021 and this Tribunal-cum-Labour Court on 12.11.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/KC/21344/ENF 2(1)/2015/8339 dated 26.08.2015 assessing dues under Section 7C of EPF and MP Act 1952 (hereinafter referred to as

‘the Act’) for non-enrolled employees for the period from 06/2006 – 04/2011. Total dues assessed is Rs.24,49,123/- (Twenty four lakh forty nine thousand one hundred and twenty three only)

2. The appellant is an unaided educational institution covered under the provisions of the Act. The appellant used to avail services of casual and temporary staff to fill the vacancy of permanent staff, in order to get practical experience in teaching. Number of persons were engaged as trainees. The appellant is not liable to enrol the trainees, casual and temporary employees. The appellant was remitting contribution in respect of employees whose full particulars are available. The respondent initiated proceedings under Sec 7C to determine the dues for the period from 08/2005 – 12/2011. After conducting the proceedings, the respondent authority issued the impugned order dated 28.05.2015. A copy of the said order is produced and marked as Annexure A1. The respondent conducted an enquiry under Sec 7A of the Act for determining dues for period from 04/2011 – 08/2011. During the course of the enquiry, the period was changed from

08/2005 – 12/2011. Copy of the said order dated 26.06.2012 is produced and marked as Annexure A2. The appellant preferred an appeal before the EPF Appellate Tribunal as ATANo.732(7)2012 and the Hon'ble Tribunal set aside the order and remanded the case back to the respondent authority to re-determine the dues. Copy of the order of EPF Appellate Tribunal dated 25.02.2014 is produced and marked as Annexure A3. In the present order, the dues were determined on the basis of the reports submitted by the Enforcement Officer on 28.05.2015. The copy of the report or its annexures showing the details of the alleged dues were not served on the appellant. The appellant has never admitted the dues as stated by the respondent in the impugned order. The statement as contained in the order to the effect that "President has no difference on the opinion about the dues as reported by the Enforcement Officer", is absolutely false. The persons to whom the amount is to be remitted is not identified in the impugned order. The respondent is legally bound to determine the amount independently. The enquiry conducted was an empty formality. In the earlier enquiry, the employees

to be enrolled were 192. In the impugned order, 350 employees are identified as non-enrolled to the fund. 60 persons included in the list are excluded employees who were drawing salary more than Rs.6500/- per month. About 35 persons were not identified, nine names are duplicate, five persons, ie; Sl. Nos. 44,122,147,156 and 176 are already covered under the provisions of the Act. During the pendency of ATANo. 732(7)/2012, as per the judgement of the Hon'ble High Court of Kerala in W.P.(C)No.22894/2012, the appellant remitted an amount equal to 20% of the amount ordered in Sec7A order. Copy of the judgment dated 31.01.2013 is produced and marked as Annexure A6. Copy of the letter dated 27.06.2013 sent to the respondent is produced and marked as Annexure A7. Copy of the chalan dated 19.03.2012 showing the remittance of Rs.2,79,579/- is produced and marked as Annexure A8. A copy of the chalan dt.30/03/2013 showing remittance of Rs.2,52,329/- is produced and marked as Annexure A9. Accordingly, the appellant has already deposited an amount of Rs.5,31,908/-.

3. The respondent filed counter denying the above allegations. The appellant is a registered society and EPF code number was allotted to the society for enrolling the employees of various educational institutions managed by the society. The society runs several educational institutions and the appellant society therefore was brought under the purview of the Act w.e.f 01.08.2005. A squad of Enforcement Officers visited the appellant establishment and reported that the appellant establishment failed to enrol substantial number of eligible employees to Provident Fund membership. An enquiry under Sec 7A was initiated for the period 04/2011 – 08/2011. During the course of the enquiry, the period was changed to 08/2005 to 12/2011 without notice to the appellant. The appellant challenged the said order before EPF Appellate Tribunal, New Delhi as ATA No. 732(7)2012. The Tribunal directed the appellant to pay 40% of the assessed dues under Sec 7A of the Act. The appellant approached the Hon'ble High Court of Kerala wide W.P.(C)No.22894/2012 wherein the Hon'ble High Court directed the petitioner to deposit 20% of the determined amount. The EPF Appellate Tribunal vide its

order dated 25.02.2014 set aside the Sec 7A order directing the respondent to re-determine the dues. An enquiry under Sec 7A of the Act was initiated vide summons dated 20.06.2014 for determining the regular dues. An enquiry under Sec 7C was also initiated to determine the escaped amount, as dues in respect of all employees were not determined under Sec 7A. The enquiry under Sec 7C was initiated for the period 06/2006 – 12/2006, 01/2007 – 05/2007, 08/2007 – 11/2007, 04/2008-11/2008, 12/2008 – 01-2009, 01/2010 – 04/2010 and 12/2010 – 04/2011. The enquiry under Sec 7C was concluded after providing 13 chances to the appellant to produce records. The appellant did not produce any records during the course of the enquiry. The dues were arrived at on the basis of the enquiry report and also the photostat copies of the wage register handed over to the Enforcement Officer during the course of inspection. The enquiry under Sec 7C of the Act was initiated by the respondent to determine the escaped amounts for the period cited above, which are not included in the order issued under Sec 7A. According to the copies of the wage register, wage

statements and report of the Enforcement officer, it was found that 350 eligible employees were not enrolled to the fund. On the final date of hearing the appellant has agreed that the report submitted by the Enforcement officer is correct and is based on the records maintained by them. The appellant also admitted that the photostat copies submitted by the Enforcement officer were copies of original wage register maintained by them. The President of the Trust, on behalf of the appellant and Sri. Arun A, the complainant admitted in the hearing dated 28.05.2015 that they don't have any objection regarding the report of the Enforcement officer and the dues assessed by him. The noting of the Daily Order Sheet by the respondent authority on 28.05.2015 is produced as Exbt. R1, which clearly shows that the appellant admitted the liability as reported by the Enforcement officer and he has also admitted that he is not producing any further records before the enquiry officer. The names of the employees and their date of joining were taken from the records of the appellant and therefore there is no basis in the claim that these employees cannot be identified. The respondent received complaints regarding non

remittance of contribution, non-attestation of claims, non-generation of UAN, non updation of date of joining and date of exit on the part of the appellant, on the basis of the said complaint, the Enforcement Officer conducted the inspection and submitted a report. Two separate orders were passed under Sec 7A and Sec 7C of the Act. The order passed under Sec 7C is being challenged in this appeal and the order passed under Sec 7A of the Act is challenged in Appeal No.338/2019. The impugned order issued under Sec 7C of the Act stands as proof of violation of the provision of the Act and Schemes. There was clear violation of Sec 6 and 6C of the Act read with Para 30 and 38 of EPF Scheme. The appellant never raised any of the contention raised in this appeal before the respondent authority. Therefore the contentions regarding the eligibility raised in this appeal cannot be considered, as the same is not raised before the respondent authority. In ***Ess Dee Carpert Enterprises Vs Union of India***, 1985 LIC 1116 the Hon'ble High Court of Rajasthan held that a question of fact not raised before the Regional Provident Fund

Commissioner in the enquiry under Sec 7A cannot be raised in the writ petition.

4. The issue involved in this appeal is with regard to non-enrolment of large number of employees to provident fund membership. The respondent received complaints from the employees that the appellant is not remitting contribution, filing returns, not forwarding the claim applications etc. Therefore the respondent authority deputed an Enforcement Officers to investigate the complaint. The Enforcement Officer reported that there is huge evasion and the establishment is defaulting in remittance of dues. Hence an enquiry under Sec 7A of the Act was initiated which culminated in Annexure A2 order assessing dues in respect of non-enrolled employees for the period from 08/2005 to 12/2011. The appellant challenged the said order before EPF Appellate Tribunal, New Delhi in ATA No. 732(7)2012. The EPF Appellate Tribunal vide its order dated 25.02.2014, Annexure A3, set aside the impugned order and directed the respondent authority to re-assess the dues und Sec 7C of the Act. Accordingly the respondent authority initiated fresh

proceedings under Sec 7C of the Act. As per Sec 7C, where an order determining the amount due from an employer under Sec 7A or 7B has been passed, and if the officer who passed the order has reason to believe in consequence of information in his possession that any amount to be determined under Sec 7A or Sec 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure on the part of the employer he may within a period of five years reopen the case and pass appropriate order re-determining the amount. Accordingly the respondent authority initiated action under Sec 7C of the Act. On further investigation, the respondent authority found that 350 employees were not enrolled to the fund and therefore assessment order is issued determining the dues for 350 non-enrolled employees. In this impugned order, the appellant has clearly identified the 350 employees. It is seen that the Enforcement Officer who conducted the investigation has collected the wage registers, attendance register etc. and submitted the same before the respondent authority. During the course of the 7C proceedings, the President of the Trust

attended the hearing and admitted the liability quantified by the Enforcement Officer and also accepted that the copies of the documents produced by the Enforcement Officer are the photocopies of the registers maintained by the appellant. Though the learned Counsel for the appellant denied the admission of the amount by the President of the Trust, it is seen from Exbt. R1Daily Order Sheet that the appellant clearly admitted the liability during the 7C proceedings. Another contention taken by the learned Counsel for the appellant is that the employees are not properly identified by the respondent authority. As already pointed out, the names of 350 non-enrolled employees were extracted from the attendance registers and wage registers of the appellant establishment and the names of all these 350 employees forms part of the impugned order itself. The learned Counsel for the appellant also pleaded that the copy of the report of the Enforcement Officer was not provided to the appellant. When the report of the Enforcement Officer and quantification of dues are admitted by the President of the appellant Trust,

there is no basis in the claim of the appellant that a copy of the report is not given to the appellant.

5. During the course of hearing, on 16.04.2021, the learned Counsel for the appellant submitted that the appellant establishment is remitting the amount as per the impugned order and requesting for some time to clear the dues.

6. Considering the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to interfere with the impugned order.

7. Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer