



सत्यमेव जयते

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

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

(Tuesday, the 26th day of October 2021)

APPEAL No. 533/2019

Old No. ATA 401 (7) 2009

Appellant

M/s. Chitra Multi Speciality Hospital
M.C.Road, Pandalam
Pathanamthitta – 689 501

By Adv. K.P. Mehboob Sheriff

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Pattom, Trivandrum – 695 004

By Adv. Nita N S

This case coming up for final hearing on 18.03.2021 and this Tribunal-cum-Labour Court on 26.10.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/16013/ Enf.I(5) 2007/6571 dated 01.10.2007 assessing dues under Section 7A of EPF and MP Act(hereinafter referred to as 'the Act')

against non-enrolled employees' for the period from 04/1998–03/2007. Total damages assessed is Rs.19,47,721/- (Nineteen Lakh forty seven thousand seven hundred and twenty one only)

2. Appellant is a hospital covered under provisions of the Act. The respondent authority issued notice under Sec 7A of the Act informing that an enquiry will be conducted on 13.06.2007. The appellant was also directed to produce the records called for. The Enforcement Officer of the respondent's office inspected the appellant establishment and sought production of documents from the year 2000 onwards. The appellant produced the available documents before the Enforcement Officer. Several records could not be produced as they were not available and some of the documents were seized by the Income Tax department pursuant to a search conducted in appellant establishment on 06.09.2005. A true copy of the Panchanama issued by the Income Tax department on 06.09.2005 is produced and marked as Annexure A1. A true copy of the Annexure KJJ-BS attached along with the

Panchanama showing the details of the records seized is produced and marked as Annexure A2. On 13.06.2007, a representative of the appellant attended the hearing and informed the respondent authority regarding the search and seizure by the Income Tax department. Without considering the request for a long adjournment the respondent authority posted the enquiry on 29.06.2007 with a direction to produce required documents. On 29.06.2007 also the representative of the appellant sought further time to produce the records. The enquiry was further adjourned to 23.07.2007 directing the appellant to produce Balance Sheet and Profit & Loss A/c and salary register. On 23.07.2007, the appellant produced the Balance Sheet and Profit & Loss A/c for the years from 1998-1999 to 2006-2007. The enquiry was further adjourned to 10.08.2007. The respondent authority issued the impugned order without giving the appellant adequate opportunity to produce the records and documents. The determination of dues is done on the Balance Sheet figures of salary and wages paid to the employees. The respondent authority failed to consider the fact that the 12 doctors and 3 canteen employees

were excluded employees, while quantifying the dues as per the impugned order. There is no finding by the respondent authority that the appellant failed to remit the contribution from April 1998 onwards. Hence the assessment of contribution from April 1998 is erroneous. The reports referred in Annexure A3 order, alleged default only from July 2004. Hence the assessment of dues from April 1998 is illegal. There is absolutely no evidence as to the default in relation to any employee under the Act prior to July 2004. The appellant employs several persons who are excluded employees under the provisions of the Act when the monthly wage ceiling for exclusion of persons was lower than Rs.6500/-. Until 30.05.2001, the wage limit was Rs.5000/- only. 34 of the so called employees who are not enrolled to the fund are apprentices under Standing Orders applicable to the appellant. The respondent authority failed to consider that the trainees engaged under Standing Orders are excluded employees under provisions of the Act.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under provisions of the Act w.e.f. 31.05.1996. An Enforcement Officer of the respondent office inspected the appellant establishment during April 2007 and found that the number of employees working in the establishment appointed directly or through contractors are not enrolled to the fund. The appellant establishment was directed to produce the relevant records for verification for the period from 2000 onwards. Instead of producing records from 2000, appellant produced records pertaining to 2007. From the available records it was found that out of 101 employees working in appellant hospital only 18 employees are enrolled to the fund. On receipt of the report from the Enforcement Officer, the respondent authority initiated an enquiry under Sec 7A of the Act. The appellant was represented in the enquiry on 13.06.2007. They did not produce any records. The representative submitted that there was an Income Tax raid on 07.09.2005 and they seized certain records. Enquiry was adjourned to 29.06.2007 with direction to produce the records. From the documents collected from

the Enforcement Officer from the appellant establishment it is seen that the appellant employed 50 employees as on the date of coverage but enrolled only 19 employees. According to the representative of the appellant, the other employees were not enrolled to the fund as they were not willing to join the fund. Accordingly it was decided to prepone the enquiry to 04/1998. To facilitate production of records from 1998 the enquiry was further adjourned to 23.07.2007. On 23.07.2009, the representative of the appellant produced the Balance Sheet and Profit & Loss A/c from 1998-99 to 2006-2007. The enquiry was further adjourned to 10.08.2007 for production of wage registers and other documents for the period from 1996 – 1997 onwards. The representative of the appellant on 10.08.2007 submitted that the other records were taken over by Income Tax authority and therefore they were unable to produce the same. But the appellant failed to produce the seizure memo issued by Income Tax authority. From the available records produced by the appellant and also those produced by the Enforcement Officer, it was found that the appellant establishment was employing 101 employees and

was paying a salary of Rs.1,10,700/-month. Out of this, 18 employees were already enrolled to the fund and 12 employees were drawing salary more than Rs.6500/- and are therefore excluded employees. Hence the respondent authority noticed that 71 employees were not enrolled to the fund. Hence the respondent authority on the basis of the available records, quantified the dues in respect of 71 non-enrolled employees. Though the appellant was provided more than adequate opportunity, they fail to produce the complete documents to substantiate their claim. The appellant failed to produce the seizure memo issued by Income Tax department to confirm that rest of the documents were seized by the Income Tax department. Other than the doctors who were excluded employees, the appellant is required to enrol all other employees and therefore the respondent authority issued the impugned order on the basis of the records and documents produced by the appellant.

4. The issue involved in this appeal is non-enrolment of eligible employees to provident fund and quantification of

the contribution payable to them. An Enforcement Officer of the respondent authority during a routine inspection found that against 101 employees employed by the appellant establishment, only 19 employees were enrolled to the fund. This finding lead to further investigation by the Enforcement Officers and they found that contract employees engaged by the appellant, the trainees, the employees of School of Nursing and canteen employees were not enrolled to the fund. On the basis of the information provided by the Enforcement Officer, the respondent authority initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the hearing and submitted that there was a raid by the Income Tax department and they seized many of the records called for by the respondent authority. He however failed to produce any seizure memo from the Income Tax department. The Enforcement Officer produced the payment details of cleaning contractors, attendance of School of Nursing for 2005-2007, attendance register of trainees for 2005-2007, attendance register of 27 contract employees, attendance register of employees enrolled to provident fund, wage register of doctors

for 02/2007, wage register of employees of School of Nursing from month of 04/2007 and Form 6A of 18 employees enrolled to the fund. The appellant during the course of hearing also produced the Balance sheet, Profit & Loss A/c from 1998-1999 to 2006-2007. The appellant produced a copy of the seizure memo issued by the Income Tax department on 06.09.2005 and the list of inventory of records seized by them as Annexure A1 and A2. From Annexure A2, it is seen that the Income Tax department seized the salary registers for 1998-1999 to 2000-2001 and the cash book and ledger for the same period. The other records and documents seized by the Income Tax department is of no relevance for assessment of provident fund dues. Further it is seen that the appellant failed to produce any documents other than Balance Sheet and Profit & Loss A/c, for the period from 2001-2002 to 2006-2007 for which there is absolutely no explanation from the side of the appellant. Therefore the respondent authority concluded that the appellant is only trying to avoid production of documents for a proper assessment of dues in respect of non-enrolled employees. The only ground pleaded before the respondent

authority was that the non-enrolled employees were not willing to join the provident fund membership. The respondent authority concluded that the employer or the employees have no choice with regard to provident fund membership. In this appeal, the appellant is trying to cover up the violations by stating that the respondent authority has assessed the dues on the basis of Balance Sheet and Profit & Loss A/c. When the appellant failed to produce the required documents before the respondent authority, the respondent authority cannot be expected to assess the dues in respect of non-enrolled employees on the documents withheld by the appellant. As already pointed out there was no explanation for non-production of records for the period from 2001-2002, before the respondent authority. The appellant also has taken a contention that the respondent authority assessed the dues in respect of enrolled employees and also excluded employees. It is also not apparently correct. On a perusal of the impugned order it is seen that the monthly salary worked out in respect of 71 employees is Rs.1,10,700/-, 12 doctors and 18 enrolled employees were excluded from the assessment. However the

wages on which the contribution assessed was Rs. 70,468/- per month. The appellant has also raised a contention that 33 persons non-enrolled are trainees. However it is seen that no such contention is taken before the respondent authority and it is not possible to decide those issues for the first time in this appeal in the absence of any evidence.

5. On a perusal of the impugned order, it is seen that the respondent authority has taken a fixed salary of Rs.70,468/- for the period from 04/1998 – 03/2007 for assessing the dues. This is probably done on the Balance Sheet and Profit & Loss A/c figures. It is pointed out by the learned Counsel for the appellant that the respondent authority has taken the wage ceiling as Rs.6500/- for deciding the eligibility. However the wage ceiling upto 30.05.2001 was Rs.5000/-which will have to be taken into account while deciding the eligibility of the employees to be enrolled to the fund. Though the respondent authority found that the employment strength at the time of coverage was 50 and only 19 employees were enrolled to the fund for the purpose of

assessment of dues the employment strength is taken uniformly as 101 from April 1998 onwards.

6. Considering the pleading of the learned Counsel for the appellant that they were prevented by external circumstances from producing complete records before the respondent authority and also on the finding that the assessment is made on the basis of Balance Sheet figures, it is felt that the appellant can be given one more opportunity to produce the records and documents before the respondent authority. It is not clear whether the appellant will be in a position to produce those records which they could not produce before the respondent before 14 years.

7. Considering the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to uphold the impugned order.

8. Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent authority to reassess the dues on the basis of the above guidelines within a period of six months after issuing notice

to the appellant. If the appellant fails to appear or produce the required documents before the respondent authority, the respondent may issue the orders as per law. The pre-deposit made by the appellant as per the direction of EPF Appellate Tribunal shall be adjusted or refunded after finalising the enquiry.

Sd/-
(V. Vijaya Kumar)
Presiding Officer