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

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

(Wednesday the, 29th day of December 2021)

APPEAL No. 6/2020

Appellant : M/s. Travancore Titanium Products Ltd
Kochuveli,
Thiruvananthapuram – 695 021.

By Adv. Anil Narayanan

Respondents : 1. The AssistantPF Commissioner
EPFO, Regional Office,
Pattom.P.O.
Thiruvananthapuram – 695 004

By Adv. Nitha N S

2. M/s. Ananthapuri Detective and
Investigative Services
TC 15/436, Vasumathy,
CSM Nagar, Vellayambalam
Sathamangalam (PO)
Thiruvananthapuram – 695 010

This case coming up for final hearing on 08.09.2021 and this Tribunal-cum-Labour Court on 29.12.2021 passed the following:

ORDER

Present Appeal is filed from order No. KR/RO/TVM/ 1638975/Enf.II(2)19-20/4318-A dated 04.11.2019 assessing dues under Sec 7A of EPF and MP Act 1952, (hereinafter referred to as 'the Act') for the period from 01/2018 to 10/2018. The total dues assessed is Rs.4,52,635/- (Rupees four lakh fifty two thousand six hundred and thirty five only).

2. Appellant is a public sector undertaking under the control and management of Government of Kerala and covered under the provisions of the Act. The appellant outsourced security services to 2nd respondent as per work order no 431/17-18dated 29.12.2017 for a period of one year from 01.01.2018. Among other things the work order specifically stipulates the 2nd respondent/contractor will be paid at the rate of Rs. 379/- plus GST at 18% per day per person for 8 hrs duty and the 2nd respondent will be responsible for statutory deductions such as ESI,EPF, Welfare Fund etc. The 2nd respondent accepted the work order and executed an agreement on 08.01.2018. A copy of the work order dated 29.12.2017 and agreement dated 08.01.2018 are produced and marked as Exhibit A2 and A3

respectively. The 2nd respondent was allotted a separate code No. KR/TVM/1638975. The 2nd respondent is an independent employer of the security guards employed in the appellant company. Therefore the 2nd respondent is liable for any short remittance by the contractor. As per the agreement also, the 2nd respondent is liable to remit EPF contribution in respect of its employees deployed at appellant establishment. Once the contract is finalised it is for the contractor or the 2nd respondent to ensure compliance under the Act. The respondent authority initiated an enquiry under Sec 7A of the Act and the appellant entered appearance and explained the facts to the 1st respondent authority. The enquiry was initiated against the 2nd respondent. However the impugned order is issued holding that the appellant is also liable for the short remittance made by the 2nd respondent for the period from 01/2018 – 10/2018. A copy of the impugned order dated 04.11.2019 is produced and marked as Exhibit A4. The 2nd respondent filed a review application under Sec 7B of the Act which was rejected by the 1st respondent vide order dated 14.01.2020. A copy of the review order is produced and marked as Exhibit A5. It is a settled legal position that recovery steps are to be initiated against a contractor. The contract amount was

fixed at the rate of Rs. 379/- plus GST. The 1st respondent authority is not the competent authority to decide the issues relating to Minimum Wages Act. It is not clear as to how the Enforcement Officer arrived at the wages payable as short remittance since the appellant was paying a consolidated amount to the 2nd respondent contract. The 1st respondent ought to have given a calculation sheet since the appellant was also made liable to remit the Provident Fund contribution.

3. The respondent filed counter denying the above allegation. Appellant is an establishment covered under the provisions of the Act. A complaint was received from Kerala State Security and House Keeping Association (CITU), TTPL Unit that the security personnel engaged by M/s. Ananthapuri Detective and Security Services (contractor) in M/s. Travancore Titanium Products Ltd; are not paid minimum wages notified by the Government of Kerala and EPF remittance is not made on actual salary. An Enforcement Officer was deputed to investigate the complaint. The Enforcement Officer reported that the contractor short remitted EPF dues for the period from 01/2018 – 10/2018 amounting to Rs. 4,52,635/-. Accordingly a summons dated

09.01.2019 was issued to the proprietor of M/s. Ananthapuri Detective and Security Services to attend the enquiry with all relevant records on 30.01.2019. The proprietor appeared before the respondent and the enquiry was adjourned to 03.04.2019, 08.05.2019, 11.06.2019, 04.07.2019, 13.08.2019 and 19.09.2019. The contractor requested that the principle employer Travancore Titanium Ltd. and the Trade Union which filed the complaint may be made party to the proceedings. Accordingly they were also summoned in the enquiry. During the enquiry, the 2nd respondent/contractor contended that his establishment was selected by Travancore Titanium Products Ltd. for supply of 30 Nos. of security guards on the basis of the lowest quotation submitted by him and the principle employer (TTPM) was paying him Rs.379/- per day per security guards. The amount received from the principle employer were paid to the employees after meeting the minimum administrative cost and statutory payments. Since the amount received is less, the 2nd respondent could pay only less Provident Fund. He also pointed out that a dispute regarding minimum wages is pending with the designated authority and unless it is settled, he will not be liable to pay higher Provident Fund contribution. The principle employer

M/s. TTPL contented that the contractor is liable to remit the statutory dues as they are bound by the contract. The union raised a point that the proceedings under Sec 7A need not wait for the settlement of minimum wages. The union also produced the salary slip of employees for the period from January 2018 – March 2019. As per the salary statements, the employees are paid between Rs.7,350/- to Rs.14,000/- per month and the wages reported to the first respondent was only Rs.5,000/-. The appellant is the principle employer and as per Sec 2(f) of the Act and Para 30(3)of the EPF Scheme 1952, it is the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of employees employed by or through a contractor. Sec 8A of the Act provides for the modes of recovery of the amount of contribution by the principle employer from the contractor. The appellant cannot take shelter under any contract signed between itself and the contractor in violation of the provisions of the Act. The 2nd respondent contractor is also equally responsible to remit the contribution on full wages. Taking into account all the contentions, the 1st respondent

authority held that the appellant as well as the 2nd respondent are jointly and severally liable to pay the contribution.

4. The 1st respondent authority received a complaint from a trade union alleging that the 2nd respondent contractor is not remitting the contributions in respect of the contract employees engaged by the appellant through the 2nd respondent. The 1st respondent authority caused the matter investigated through an Enforcement Officer. The Enforcement Officer reported that the 2nd respondent contractor is not remitting the contributions according to the Scheme provisions. The 1st respondent authority therefore initiated an enquiry under Sec 7A of the Act against the 2nd respondent contractor. During the course of hearing, the 2nd respondent contractor requested that the appellant being the principle employer and the trade union which filed the complaint may be summoned in the enquiry. The 1st respondent authority summoned both the trade union and also the appellant in the proceedings. The appellant took a view that the first respondent contractor is engaged to supply 30 security guards on the basis of an agreement and an amount of Rs. 379/- per duty per security guard plus GST is fixed. It is further pointed out that as per the agreement the 2nd respondent

contractor is liable to remit the Provident Fund contribution in respect of its employees. The 2nd respondent contractor took a stand that a dispute regarding minimum wages is pending before the designated authority and unless that is finally decided, he will not be in a position to take any further action in this regard. The trade union pointed out that the dispute regarding Minimum Wages Act has got nothing to do with the present proceedings under Sec 7A and produced salary slips to prove the wages paid by the 2nd respondent contractor to the security guards. The respondent authority taking into account the definition of employee under 2(f) of the Act and Para 30(3) of EPF Scheme 1952 issued the impugned order assessing the dues and also holding that the 2nd respondent contractor and the appellant are jointly and severally liable to remit the contribution.

5. In this appeal, the learned Counsel for the appellant reiterated the earlier stand that the appellant establishment is not in any way liable to remit the contribution in respect of the security guards engaged through the 2nd respondent contractor in view of the agreement between the appellant and the 2nd respondent according to which the 2nd respondent is liable to remit the contribution.

6. While deciding the issue regarding the liability of the principle employer, one of the questions to be examined is as to who is the employer as per the provisions of the Act. As per Sec 2(e) of the Act, “An employer means

1. ....

2. In relation to any other establishment, the person who or the authority which has the ultimate control or over the affairs ofthe establishment and where the said affairs are interested to a Manager, Managing Director or Managing Agent, such Manager, Managing Agent, Managing Director or Managing Agent”. The implication of the above definition is considered by the Hon’ble High Court of Gujarat in ***Gujarat State Civil Supplies Corporation Vs Regional Provident Fund Commissioner and Others***, 1999 (2) LLJ 844 GUJ, the Hon’ble High Court held that

> Para 10 : “*The requirement envisaged to consider a person to be employer in relation to an establishment other than factory is that, that person or authority which has ultimate control over the affairs of the establishment is considered to be employer in relation to the workmen employed in that establishment or where the affairs are entrusted to a*

Manager, Managing Director or Managing Agent, such Manager, Managing Director or Managing Agent is considered to be an employer vis-a-vis employees employed in relation to the establishment whose affairs have been entrusted to such persons as Manager, Managing Director or Managing Agent. From the perusal of the definition, it is abundantly clear that what is required to consider a person to be an employer is the control over the affairs of the establishment in which or in respect of which any person is employed and not direct or indirect control over the functioning of the employees by such persons. The control of affairs of the establishment in which or in respect of a person is employed, has different connotations than control or supervision over the employees concerned in the context in which the term has been used for the purpose of giving effect to the provisions of the Act of 1952 which is a beneficial legislation extending a scheme of economic security of future, by way of making provision for by accumulations in a Provident Fund through contributions from employees as well as employer. It is not the case of the petitioner that they are not controlling the affairs of the

establishment of the Corporation in question and all its establishments which includes places of working of respondents.

Para 11: In these circumstances, the ultimate control of the fiscal affairs, namely, the finances of the establishment and control over its affairs concerning the payments, deductions, deposits etc has to be viewed. Even in the case of employees directly employed by the owner may be supervised and controlled by officers other than Manager, Managing Director or Managing Agent or the person having authority or ultimate control over the affairs of the establishment. If the petitioners' contentions were to be accepted, the owner of the establishment will not be an employer even in respect of employees directly employed under him and shall render the whole Scheme of Act unworkable. In such event, the owner authority or Manager, Managing Director or Managing Agent, as the case may be, cannot with reference to this definition cease to be employer of the workman employed in the establishment provided they fall within the definition of employee given under Sec 2(f).

The Hon'ble High Court was considering the definition employer in relation to contract employees engaged by the principle employer. Hence it is clear from the above decision that the appellant establishment will come within the definition of the employer in respect of employees engaged in the appellant establishment through a contractor.

7. Having decided the status of the appellant as an employer, let us examine the definition of employee under provisions of the Act. As per Sec 2(f) "employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of establishment and who gets his wages directly or indirectly from the employer and includes any person,

1. Employed by or through a contractor in or in connection with the work of the establishment.

2,............."

After introduction of the words 'and includes any person employed by or through a contractor in or in connection with the work of the establishment" in definition of employee under the Act there cannot be any doubt regarding the status of an

employee employed through a contractor. The Hon'ble Supreme Court of India in ***Royal Talkies, Hyderabad Vs Employees State Insurance Corporation***, 1978 (4) SCC 204, examined the implication of the words 'in or in connection with the work of the establishment'. According to the judgement,

> "*The expression 'in connection with the work of the establishment' ropes in a wide variety of workman who may not be employed in the establishment but may be engaged only in connection with the work of the establishment. Some nexus must exist between the establishment and the work of the employee but it may be a loose connection. 'In connection with the work of the establishment' only postulates some connection between what the employee does and the work of the establishment. He may not be doing anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work*

which is ancillary, incidental or has relevance to or link with the object of establishment.

8. The Hon'ble High Court of Delhi considered the above issue in ***MMTC Ltd NewDelhi Vs Regional Provident Fund Commissioner***, W.P.(C)No. 2679/1997 and held that the contract employees engaged by MMTC ltd. for transporting their goods through a contractor will be considered as the employee of the principal employer. In the present case, the appellant was engaging 30 security guards through the second respondent and therefore the appellant cannot argue that the contract employees engaged by them were not doing the work 'in or in connection with the work of the appellant'.

9. The learned Counsel for the appellant pointed out that the 2nd respondent contractor was an establishment covered under the provisions of the Act independently. It is therefore the responsibility of the 2nd respondent to remit the contributions in respect of the employees engaged by him in the appellant establishment. There is a point in the argument of the learned Counsel for the appellant that the primary responsibility of remitting the contribution lies with the 2nd respondent,

contractor who is independently covered under the provisions of the Act. However in view of the above discussion regarding the definition of employer and employee and the appellant being the principle employer cannot escape the liability. The learned Counsel for the 1st respondent also pointed out that the Sec 8A of the Act and Para 30 of EPF Scheme obligates the appellant of its responsibility to deposit the contributions in respect of the employees engaged through contractors even if the contractor is independently covered. According to him, having failed to monitor proper compliance by the contractor, the appellant cannot escape the obligation under the provisions of the Act and Schemes.

10. As per the impugned order, the appellant as well as the contractor is jointly and severally held liable for the contribution in respect of the contract employees engaged by the 2nd respondent. I don't find any infirmity in the finding. The 1st respondent shall take all action for recovery of the dues from the 2nd respondent, failing which the appellant will be liable to remit the dues.

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

Hence the appeal is dismissed.

Sd/-

(V.Vijaya Kumar)
Presiding Officer