



सत्यमेव जयते

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

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

(Friday the, 28th day of January 2022)

APPEAL No. 743/2019

(Old No. ATA. 349(7)2012)

Appellant : M/s. Hotel Surya
Nedumangadu
Thiruvananthapuram – 695 541.

By Adv. M.S.Vijayachandra Babu

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
Pattom
Thiruvananthapuram – 695 004.

By Adv. Ajoy.P.B.

This case coming up for final hearing on 07.10.2021 and this Tribunal-cum-Labour Court on 28.01.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/12687 A/Enf 1(2)/2011/10298 dated 27.10.2011 assessing dues on evaded wages and non-enrolled employees on Sec 7A of EPF and MP Act (hereinafter referred to as 'the Act') for the period from 01/2010 –

02/2011. The total dues assessed is Rs.2,13,820/- (Rupees Two lakh thirteen thousand eight hundred and twenty only)

2. Appellant is an establishment covered under the provisions of the Act w.e.f. 01.01.2004. The respondent initiated proceedings under Sec 7A for determining dues for the period March 2009 – December 2009 and an order was issued under proceedings dated 26.04.2010. The appellant remitted the amount as directed by the respondent. Based on the report of the Enforcement Officer, the respondent authority initiated fresh proceedings for the period from October 2010 – February 2011. The appellant appeared before the authority on 15.06.2011. The request for adjournment of enquiry posted on 28.06.2011 on medical grounds was rejected and respondent authority finalised the enquiry and issued the impugned order. A copy of the impugned order dated 27.10.2011 is produced and marked as Annexure A1. Aggrieved by the order, the appellant filed a review petition under Sec 7B(1). A copy of the review petition dated 06.12.2011 is produced and marked as Annexure A2. Since the appellant did not get any opportunity to produce documents before the Sec 7A authority, the appellant produced Form 3A for the period from 01.04.2010 – 31.03.2011 of Hotel Safari, an

establishment of the same management having code number KR/Tvm/22491 along with the review petition. This document is produced and marked as Annexure 3. Another document produced along the review petition is Form 3A of M/s. Hotel Samrat, KR/Tvm/22490, another establishment of the same management. A copy of the same is produced and marked as Annexure A4. Another document produced along with the review petition is the Sec 7A order dated 26.04.2010. A copy of the same is produced and marked as Annexure A5. Without considering the contentions in the review petition, the same was rejected vide order dated 13.01.2012. A copy of the order dated 13.01.2012 is produced and marked as Annexure A6. In the Sec 7A order dated 26.04.2010, the respondent authority directed the appellant to enrol 13 employees for the period from 01.03.2009 – 01.09.2009 and determined the contribution for the non-enrolled employees. Though the Regional Provident Fund Commissioner is the authority under Para 26B of EPF Scheme to enrol new members, the appellant complied with the order of the respondent authority enrolling all new members. With regard to the 6 non-enrolled employees in the impugned order, it is pointed out that none of the employees are eligible to be enrolled to the

fund. The respondent authority only endorsed the report of the Enforcement officer without examining the merits of the case. The eligibility of the six employees to be enrolled to the fund is required to be decided by the Regional Provident Fund Commissioner under Para 26B of EPF Scheme. Out of the non - enrolled employees as per the impugned order, Sri. Arunkumar is enrolled to the fund w.e.f. 01.01.2010 under the code number KR/22491-9 in hotel Safari, Trivandrum. His name is included in Form 3A for the period and he was engaged on working arrangement in appellant establishment. This document was produced along with the review application, but the same was not considered by the respondent authority. Sri. Jayakumar, another employee included in the impugned order for enrolment is also covered under KR/22490/2 and his name is entered in Form 3A for the said period. Even though this document was also produced along with the review application, the appellant failed to take the same into account. Sri. Sabeer, Sinitha and Sudarshanan did not work with the appellant establishment during January 2010 – February 2011 period. From May 2011 onwards they were enrolled to the Scheme. Sri.Raghavan is not an employee of the appellant establishment.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 01.01.2004 under code No. KR/12687/A. The appellant did not enrol 6 employees and defaulted in regular dues for the period from 01.2010 – 02.2011. An Enforcement Officer of the respondent organisation inspected the appellant establishment and reported that the six employees are not enrolled and the appellant failed to remit regular contribution for the period from 01/2010–02/2011. Accordingly an enquiry was initiated under Sec 7A and the enquiry was scheduled on 15.06.2007. The appellant was directed to produce the relevant records. Sri. Mohan Kumar, HR Manager attended the hearing and stated that the date of joining furnished in the report of the Enforcement officer is not correct. But he did not produce any evidence regarding the date of jointing of the said employees. The appellant was directed to produce Cash Book, Ledger, Balance sheet, Profit & Loss A/c and appointment order of these employees. The appellant was provided two more opportunities but none attended the hearing nor requested for any adjournment. The appellant failed to remit Provident Fund contribution on Basic pay and DA as required under Sec 6 of the

Act. The appellant remitted PF on a fixed amount of Rs.3,000/- which is not related to any component of wages. The appellant is also liable to enrol employees engaged through contractors. The respondent therefore issued the impugned order dated 27.07.2012. The appellant filed a review application under Sec 7B of the Act. The appellant was given a personnel hearing on 28.12.2011. The appellant did not produce any new or important documents. Hence the Sec 7B review application was rejected. In the review application under Sec 7B, the appellant has submitted a statement of remittance in respect of 3 employees who were already enrolled to the fund in KR/22490 and KR/22491. The records of the account section was verified and necessary adjustments were made on dues determined under Sec 7A. The appellant was provided opportunities on 15.06.2011, 28.06.2011 and 07.07.2011 to appear and produce records for assessment of dues. A representative of the appellant attended the hearing on 15.06.2011 but failed to produce any documents to substantiate their claim. In the review application filed under Sec 7B also the appellant failed to produce any new or important documents. The Form 3A contribution cards submitted by the appellant were duly considered and outstanding arrears worked

out and dues determined after necessary adjustments. It is not a case where there is a dispute between the employer and the employee to be determine the eligibility under Para 26B of the EPF Scheme. As per Sec 2(f) of the Act, the appellant is liable to enrol all the employees including contract employees.

4. The respondent authority issued the impugned order under Sec 7A of the Act assessing dues on evaded wages and also with regard to the dues in respect of non-enrolled employees. The appellant had not challenged the assessment of dues in respect of evaded wages, fully knowing his liability to remit contribution on basic pay and DA paid to his employees. The appellant paid contribution only on a fixed amount without taking into account the basic pay and also DA and therefore there is no challenge with regard to assessment of dues in respect of evaded wages.

5. The appellant seriously contested the assessment with regard to non-enrolled employees. According to the learned Counsel for the appellant, they filed a review application under Sec 7B of the Act as they could not produce valid and additional documents at the time of 7A enquiry. In the Sec 7B review application, the appellant produced documents such as

Annexure A3 and A4 to show that some of the non-enrolled employees were already employed in a sister concern of the appellant establishment and they were working in the appellant establishment on a working arrangement. It was also pleaded that three employees Sabeer, Sinitha and Sudarshan never worked from January 2010 to February 2011 and they were enrolled to the fund from May 2011. Sri. Raghavan had no continuous employment from 01.01.2010. He is only a substitute as a security guard and his engagement is casual. In view of the additional documents produced by the appellant, the respondent ought to have considered to review the order under Sec 7B of the Act. According to the learned Counsel for the respondent, taking into account the contribution cards necessary adjustments were made in the assessment order. However there is no proof that the same is communicated to the appellant establishment. The dispute boils down to the non-enrolment of Sri.Raghavan, security guard who according to appellant is engaged as a substitute security guard. As seen from the impugned order, the security guards are engaged through M/s.Legion Security Service, Thirumala which is an establishment independently covered under the provisions of the

Act. Hence the respondent ought to have summoned the security agency to confirm whether Sri.Raghavan is enrolled to the fund before assessing dues against the principal employer.

6. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the assessment of dues on evaded wages for the period from 01/2010 to 02/2011. However the assessment in respect of the non-enrolled employees cannot be sustained in view of the reasons given above.

Hence the appeal is partially allowed. The appeal against assessment of dues against the non-enrolled employees is allowed. However the assessment of dues against the evaded wages is upheld.

Sd/-
(V.Vijaya Kumar)
Presiding Officer