



सत्यमेव जयते

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

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

(Friday the 10th day of December, 2021)

APPEAL No.366/2018

(Old no.19(7)2007)

Appellant : M/s.South Paw Security and
Mantech Service Pvt Ltd
30/287A, 1st Floor
Post Office Building
Poonithura P.O.
Ernakulam - 682309

By Adv.Thomas Abraham

Respondents : 1. The Regional PF Commissioner
EPFO, Sub Regional Office, Kaloore
Kochi – 682017

2. The Assistant PF Commissioner
EPFO, Sub Regional Office, Kaloore
Kochi – 682017

By Adv.S. Prasanth

3. The Chief General Manager
M/s.Bharat Sanchar Nigam Ltd(BSNL)
Trivandrum

By Adv.Saji Varghese

This case coming up for final hearing on 20.09.2021 and this Industrial
Tribunal-cum-Labour Court on 10.12.2021 passed the following:

ORDER

Present appeal is filed against order no.KR/KC/15980/PD/B/T(2)/2006/12122 dt.06.11.2006 assessing damages U/s 14B of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for belated remittance of contribution for the period from 03/2002 to 01/2005. The total damages assessed is Rs.7,34,620/-. The interest demanding U/s 7Q of the Act for the same period is also being challenged in this appeal.

2. The appellant is a private limited company engaged in the business of providing security guards to both Govt and private institutions. The appellant obtained license under Contract Labour (Regulation & Abolition) Act, 1970 which is a statutory requirement for undertaking any contract involving engagement of contract labour. The Director General of Resettlement (DGR), New Delhi has recognised the appellant establishment. The DGR sponsored the appellant for supply of security guards initially to the Department of Telecommunication and later to Bharat Sanchar Nigam Ltd. A true copy of the letter dt.24.12.1998 issued by DGR to Divisional Engineer (Phones), Department of Telecommunications is produced and marked as **Annexure A1**. The sponsorship of DGR continued even after formation of BSNL. During the pendency of the contract, the constitution of the appellant establishment is changed to that of a private limited company. A true copy of the agreement

dt.01.02.1999 between the Department of Telecommunication and the appellant is produced and marked as **Annexure A2**. Ex-Jawans Security Service was the name of the proprietary concern which later changed its name to that of M/s.South Paw Security and Mantech Service Pvt Ltd. Upto 02/2001 the contract was in the name of Ex-Jawans Security Service and from 03/2001 onwards the contract continued in the name of appellant agency. A true copy of a sample agreement dt.01.04.2002 between BSNL and appellant M/s.South Paw Security and Mantech Service Pvt Ltd is produced and marked as **Annexure A3**. DGR had issued strict directions regarding compliance with regard to EPF and ESI Act. True copy of the document is produced and marked as **Annexure A4**. Though it was an obligation on the part of BSNL as principal employer to meet the statutory requirements, they failed to do so. Hence the default on the part of BSNL was brought to the notice of provident fund authorities. As per the agreement, BSNL was bound to make payment before 7th day of every month. The compliance with the above term of the agreement is mandatory in view of the provisions of CLRA Act. In spite of these, there was delay on the part of BSNL in making payments to the appellant. The appellant brought the statutory obligation under Provident Fund Act before the notice of the third respondent. The 3rd respondent, BSNL informed the appellant that the liability under Provident Fund and ESIC

Act are that of the appellant and the 3rd respondent will not take any responsibility for the same. The appellant therefore took up the matter with the 1st respondent, Provident Fund Commissioner. The true copy of the letter dt.18.03.1999, 23.04.1999 and 18.05.1999 submitted by the appellant before the provident fund authorities are produced and marked as **Annexures A5, A5(a), A5(b)** respectively. The 1st respondent also did not take any action on the complaints filed by the appellant. Sec 1(3), 2(e), 2(f)(1) would clearly establish the liability of the principal employer to remit contribution in respect of the contract employees. The appellant made desperate efforts to convince the 1st and 3rd respondent regarding their liability under the Act to ensure that payments in respect of contract employees are required to be paid by the principal employer in the first instance. In the meanwhile, the 3rd respondent continued delaying the payments to the appellant establishment. Aggrieved by the delay in receiving payments, the appellant sent letters dt.22.02.2001, 07.01.2002, 24.09.2005 and 15.06.2005 to BSNL as well as to the Regional Provident Fund Commissioner. Copies of those letters are produced as **Annexure A6, A6(a), A6(b) and A6(c)**. A tabulated list showing the details of the bill amounts and the outstanding balance for the period from 01.03.2001 to 31.03.2006 is produced and marked as **Annexure A7**. In view of the above, there is no justification for levying interest and damages on the

appellant. In spite of the above position, the 2nd respondent fixed the liability U/s 14B and 7Q on the appellant. The impugned order U/s 7Q is produced as **Annexure A8** and impugned order U/s 14B is produced as **Annexure A9**. Since the 1st respondent, the Provident Fund Commissioner also did not comply with the statutory requirements, the appellant submitted a representation before the Secretary, Ministry of Labour, Govt of India and the Chief Provident Fund Commissioner. A true copy of the representation dt.15.11.2006 is produced and marked as **Annexure A10**.

3. The 1st and 2nd respondents filed counter denying the above allegations. The appellant is covered under the provisions of the Act. The appellant defaulted in payment of provident fund contribution for the period from 03/2002 to 01/2005. Belated remittance of contribution will attract damages U/s 14B and interest U/s 7Q of the Act. Hence statutory proceedings were initiated U/s 14B of the Act. The appellant was also given an opportunity for personal hearing before the impugned orders are issued. The appellant filed W.P. no.31396/2005 before the Hon'ble High Court of Kerala challenging both Annexure A8, A9 levy orders contenting that the appellant is engaged by BSNL with whom the appellant is having contract since 1998 to deploy security persons. The 3rd respondent BSNL was not prompt in paying the wages bills and there was consequent delay in remittance of contribution. While

admitting the writ petition, the Hon'ble High Court of Kerala permitted the appellant to file statutory appeal before this Tribunal against Annexure A9 order and stayed recovery steps pursuant to Annexure A8 proceedings for 6 weeks on the condition that the appellant shall remit 50% of the determined amount within one month. The Hon'ble High Court vide interim order dt.31.01.2007 vacated the stay and directed the appellant to remit the balance amount of interest as per Annexure A8 levy order U/s 7Q clarifying that in case it is found that the 3rd respondent is bound to clear the liabilities, the petitioner will be entitled to get an order of reimbursement of the amount paid by it, from BSNL. A copy of the interim order of the Hon'ble High Court of Kerala dt.31.01.2007 is produced and marked as Exbt.R1. The appellant is an independent and separate entity allotted with a separate code number. The appellant is having more than 200 employees in its rolls who are deployed in various public and private sector institutions. BSNL, 3rd respondent is only one of the clients. The appellant is not its exclusive contractor and therefore BSNL cannot be treated as principal employer merely for the reason that the appellant is providing security services to BSNL. The statutory liability of the 3rd respondent U/s 8A of the Act read with Para 33 of EPF Scheme arises if the appellant is rendering security service exclusively to BSNL and the appellant is not having any independent existence. The appellant is a separate

entity independently covered with a separate code number. The appellant cannot ignore the statutory liability cast upon him as an employer under Para 30 and 38 of EPF Scheme to remit the monthly contribution invariably within 15 days of close of every month. Any delay in remittance beyond the stipulated date results in default attracting damages and interest. The appellant has attributed delay in payment by BSNL as the sole reason for the delay caused in remittance of provident fund contribution for the entire assessment period. The delay in payment by BSNL is an internal matter and the appellant can move appropriate authority against BSNL for breach of contract if BSNL is violating the terms of contract. The 1st and 2nd respondents are vested with the responsibility of administering a social security scheme for the benefit of its members and therefore the respondent organisation cannot be held hostage to a trivial dispute between the appellant and BSNL to the detriment of the interest of the members. Though the security guards employed by the appellant are deployed in several institutions other than BSNL, the appellant failed to remit monthly contribution in respect of any employee promptly, which sufficiently proves that the contention of the appellant is baseless and without any merits. The Annexure A3 contract between the appellant and BSNL unambiguously mandates that all the

statutory benefits like ESI, EPF etc., related to the security guards shall be met by the appellant establishment themselves.

4. The 3rd respondent also filed written statement denying the allegations against them in the appeal memorandum. The 3rd respondent is a company registered under the Companies Act, 1956 and incorporated on 01.10.2000. The appellant is another company and is a distinct legal entity. Admittedly the appellant is providing security guards to both Govt and private institutions and the 3rd respondent is only one among such institutions. The appellant is independently covered under the provisions of the Act. The appellant is paying contribution in respect of security guards employed by them. The 3rd respondent is also covered under the provisions of the Act and is complying under a different code number. As per the terms of agreement between the appellant and the 3rd respondent, the responsibility of remitting provident fund and ESI contribution lies exclusively with the appellant. The security guards are the employees of the appellant and they are under their control. There is no employer-employee relationship between this respondent and the employees of the appellant. The contentions of the appellant that the respondent is the principal employer of the employees of the appellant is absolutely baseless and the relationship between the appellant and the 3rd respondent is that of principal to principal basis. Due to

acute financial crisis faced by the BSNL, there was delay in payment of dues to contractors and others. Under Contract Labour (Regulation & Abolition) Act, 1970 the responsibility of payment of wages is that of the contractor. The liability to remit provident fund contribution is that of the appellant and the 3rd respondent is in no way responsible for the same.

5. The appellant filed rejoinder against the written statements filed by the 2nd and 3rd respondents. It is pointed out that against the judgment of the Hon'ble High Court of Kerala in W.P.(C) no.31396/2005 the appellant had filed W.A. no.2211/2007. The appellant is only a labour supply contractor to the 3rd respondent and the respondent had the duty to release the payment due to the contract labour workmen after deducting the employees and employer's contribution and all other charges payable to the provident fund authorities. Sub Section 3 of 8A, forbids any contractor from deducting employer's share from the wages of the employees.

6. The appellant has challenged the Annexure A8 and A9 orders issued U/s 7Q and 14B of the Act basically on the ground that the appellant is not liable to remit the interest and damages being a labour supply contractor. The learned Counsel for the appellant took this Tribunal through various provisions of the Act particularly Sec 8A of the Act wherein the liability of the principal employer is explained. According to the learned Counsel for the

appellant, there was an agreement between the appellant and the 3rd respondent to supply security guards to their various locations. Being a security agency registered with DGR, they are bound by the instructions issued by DGR under Annexure A4. The appellant is also an establishment registered under Contract Labour (Regulation & Abolition) Act, 1970. Though the agreement entered into between the appellant and the 3rd respondent specifies that the contract payments shall be made every month by 7, the 3rd respondent BSNL violated the same. When the delay in payment increased, the appellant brought it to the notice of the 3rd respondent as well as the 1st respondent. But neither of them took any action. The delay in receipt of payments from 3rd respondent delayed the remittance of contribution by the appellant. According to the learned Counsel for the appellant, BSNL being the principal employer shall be held responsible for the delay in remittance of contribution and the same shall be recovered from the 3rd respondent. According to the learned Counsel for the 1st and 2nd respondent, the appellant is an independent contractor supplying security guards to various private and public sector undertakings and therefore the BSNL cannot be held as principal employer. According to him, though the delay in remittance of contribution is attributed to the delay in receipt of payments from the 3rd respondent, there was delay in remittance of contribution in respect of other

employees as well. According to the learned Counsel for the 3rd respondent, the appellant is an independent contractor, independently covered under the provisions of the Act and the relationships of the appellant with the 3rd respondent is not that of the principal and contractor but is that of principal to principal basis. The learned Counsel for the 3rd respondent also pointed out that appellant was supplying security guards to them on the basis of an agreement. As per the terms of agreement, the appellant is liable to pay the contribution in respect of the employees engaged by them and the 3rd respondent has absolutely no obligation to remit any contribution with regard to the employees engaged by the appellant. The appellant was remitting the contribution in respect of its employees and the 2nd respondent was accepting the same. Therefore the 3rd respondent cannot be held responsible the delay, if any, in remittance of contribution.

7. In the context of the rival claims of the appellant and the respondents it may be relevant to examine the definition of an employer U/s 2(e)(ii) of the Act.

“ Employer means in relation to any other establishment, the person who or the authority which has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a

manager, managing director or managing agent, such manager, managing director or managing agent ”.

Going by the above definition of the employer, it can be seen that the “ultimate control over the affairs of the establishment” is the test for deciding who is the employer. In the present case, it can be seen that the person who is having ultimate control over the affairs of the establishment with regard to the appellant establishment, is the appellant himself and it is not possible to allege that 3rd respondent is having the ultimate control over the affairs of the appellant establishment. As rightly pointed out by the learned Counsel for the 1st and 2nd respondent that the appellant establishment is deploying their security guards to different institutions, public as well as private and the 3rd respondent is only one among them. If the delay in receipt of payments from the 3rd respondent is the only ground for the delayed remittance of provident fund contribution by the appellant it is for the appellant to explain why there was delay in remitting contribution in respect of security guards deployed in other establishments. The learned Counsel for the 1st respondent relied on the decision of the Hon'ble High Court of Delhi in **Group 4 Securitas Guarding Ltd Vs EPF Appellate Tribunal and others**, W.P.(C) no.4408/2000. In this case M/s.Group 4 Securitas Guarding Ltd was deploying security guards to M/s.Havels India Ltd and M/s.Whirlpool. The Provident Fund Commissioner

found that the wages paid to the employees was splitted into various allowances thereby reducing the contribution and held that M/s.Group 4 Securitas Guarding Ltd shall remit the difference in contribution. In appeal before EPF Appellate Tribunal, the above order of the Regional Provident Fund Commissioner was reversed and the principal employer was held liable to remit the contribution. The Hon'ble High Court of Delhi considered the issue in detail, held that the personnel provided by M/s.Group 4 Securitas Guarding Ltd to its clients including M/s.Havels and others were not provided as a contractor, but on principal to principal basis. Therefore the clients cannot be termed as the principal employer for those security guards provided by M/s.Group 4 Securitas Guarding Ltd. The learned Counsel for the 1st respondent also referred to the decision of Punjab and Haryana High Court at Chandigarh in **Calcutta Constructions Company Vs RPFC**, C.W.P.no.5333/2011 wherein the issue regarding the employees engaged through a contractor was considered and after examining the definition of employer as well as employee and contribution as per Sec 2(c), the Hon'ble High Court held that

“ **Para 15.** On going through the plain language of Sec 2(e) and (f) it envisages that the employer means in relation to an establishment, the person who is the ‘authority’ which has the ultimate control over the

affairs of the establishment. The definition of employee has to be read in conjunction with the definition of employer and as per the definition of employer (supra) the employee would mean a person who is employed for wages in any kind of work, manual or otherwise in or in connection with the work of an establishment, and getting his wages directly or indirectly from the employer.

Para 16. In the instant case, it is a matter of record that all the employees/workers employed by the contractor were paid salary by the petitioner contractor. The petitioner contractor has also been allotted a separate code number. Thus the plea that it is the establishment who has the control over the affairs of the company thus is liable to pay contribution of the employees falls flat on the face of the petitioner contractor. Even going by the language of Para 30 of the Scheme as referred to by the appellate authority in the order under challenge dt.16.09.2010 it reveals that it is the employer who in the first instance avail the contributions paid by himself and also on behalf of the employees employed by him directly or indirectly and thereafter the employee employed by the employer or his contractor shall recover the contribution payable by such employees. The aforesaid provisions envisages the situation where the contractor has not been allotted code

number, for the reasons that in such situation the employee should not be made to suffer ”.

8. The Hon'ble High Court of Jharkhand considered the issue in a recent decision in **Binod Saw Vs Chairman, Jharkhand State Electricity Board (JBVNL) and others**, 2022 LLR 226. The facts of this case and that of the present case is same. The grievance of the petitioner is that the respondent JBVNL is responsible for the delay caused in depositing the EPF contribution since the due payment of the petitioner establishment was not released in time inspite of repeated request made by the petitioner. In this case also the issue involved was whether the contractor is liable for the damages U/s 14B and interest U/s 7Q in view of the delayed payment of the contract amount. After examining the provisions, the Hon'ble High Court held that

“ Para 6. This Court is of the considered view that the statutory liability of the petitioner to deposit the employees provident fund contribution in time under the provisions of the Act 1952 cannot be mixed up with the delay caused by the respondent–JBVNL in making payment of certain amounts to the petitioner out of contractual obligation. The alleged delay by the respondent–JBVNL in making payment to the petitioner leads to civil consequences whereas the liability of the petitioner to deposit the employees provident fund contribution before the EPFO in

time flows from the statute and the scheme framed thereunder. The liability of making payment under the agreement executed between the petitioner and the JBVNL is a contractual liability and the petitioner has every remedy to move before the appropriate Court of law/forum alleging violation of the terms and conditions of the agreement by the respondent–JBVNL “.

9. Taking into account the law as explained by the Courts and the statutory provisions as discussed above, the claim of the appellant that the 3rd respondent is liable to remit the damages U/s 14B and interest U/s 7Q cannot be sustained.

10. On perusal of Sec 7(I) of the Act, it is seen that there is no provision U/s 7(I) to challenge an order issued U/s 7Q of the Act. The Hon’ble Supreme Court of India in **Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal is maintainable against 7Q order. The Hon’ble High Court of Kerala in **District Nirmithi Kendra Vs EPFO**, W.P.(C) 234/2012 also held that Sec 7(I) do not provide for an appeal from an order issued U/s 7Q of the Act. The Hon’ble High Court of Kerala in **M/s.ISD Engineering School Vs EPFO**, W.P.(C) no.5640/2015(D) and also in **St.Marys Convent School Vs APFC**, W.P.(C) no.28924/2016 (M) held that the order issued U/s 7Q of the Act is not appealable.

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

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer