



सत्यमेव जयते

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

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

(Friday the 23rd day of October, 2020)

Appeal No.242/2018

Appellant : M/s. Bini Tourist Home,
Round North ,
Trichur - 680 001.

By Adv. K.K. Premalal

Respondent : The Assistant PF Commissioner
EPFO, Kaloor
Kochi – 682 017

By Adv.Thomas Mathew Nellimmottil

This appeal came up for hearing on 02/03/2020 and this Industrial Tribunal cum Labour Court issued the following order on 23/10/2020.

ORDER

Present appeal is filed from order No.KR/KC/8160/ENF-IV(1)/2017 dt.31/03/2017, assessing dues U/s 7A of EPF & MP

Act, 1952 (hereinafter referred to as 'the Act') for the period from 04/1998 to 07/2009. The total dues assessed is Rs.1,11,679/-.

2. The appellant establishment is covered under the provision of EPF & MP Act,1952. The appellant was regular in compliance. While so, the appellant received a summons issued by the respondent U/s 7A of the Act. The appellant could not attend hearing on 12/12/2016 and the respondent issued an order dt. 31/03/2017 directing appellant to remit an amount of Rs.1,11,679/-in respect of one person by name by Shri. K.N.Ramachandran for the period from 04/1998 to 07/2009. The appellant filed a review application U/s 7A (4) of the Act for setting aside the ex-parte order. On the request of the appellant a copy of the complaint from Mr.K.N.Ramachandran was given to the appellant. The enquiry was further posted on 14/06/2018 for filing written statement and documents on the side of the appellant. The Council appearing for the appellant sent the Written Statement and also the documents by email and speed post to the respondent. A true copy of the Written Statement along with the documents is produced as Annexure3.A true copy of the covering letter dt.14/06/2017 is produced and marked as

Annexure 4. The documents were received by the respondent on 19/06/2018. A true copy of the 7A(4) order dt. 02/07/2018 is produced and marked as Annexure 7.

3. The respondent filed counter affidavit denying the allegations in the appeal memorandum. The appellant was the Managing Partner of M/s. Bini Tourist Home, Trichur. The appellant establishment is covered under the provision of the Act. One Shri. Ramachandran K.N filed a complaint dt. 10.02.2016 alleging that he was an employee of the appellant establishment and was not extended the benefit of Provident Fund for the period from 04/1998 to 07/2009. An Enforcement Officer of the respondent was deputed to investigate into the complaint. On the basis of the report of Enforcement Officer it was decided to initiate an enquiry U/s 7A of the Act to verify the authenticity of the complaint. The enquiry was posted on 12/12/2016, 10/01/2017, 01/02/2017 and 07/02/2017. The complainant attended all the hearings but there was no representation from the appellant. The complainant who attended the hearing appeared and produced proof of his employment at various establishment under the appellant. On the basis of these

records the impugned order was issued. According to the complainant, he worked at various establishment under the ownership of the appellant, at different periods from 04/1989 to 07/2009. According to the report of the Enforcement Officer, the appellant was not an employee in the appellant establishment but worked as a consultant. No records were produced by any of the said establishments before the Enforcement Officer for inspection. Hence an ex-parte order assessing dues were issued by the respondent. Appellant filed an application U/s 7A (4) of the Act for setting aside ex-parte order. The case was re-opened and was posted on various dates and finally on 14/06/2018. Though the appellant agreed to file a written arguments and also the documents called for, there was no representation for the appellant on 14/06/2018. The case was adjourned and the appellant was given 13 opportunities before the order rejecting Sec 7A (4) application was issued.

4. According to the learned Counsel for the respondent there was a complaint filed by one Shri. Ramachandran K.N alleging that he worked in various establishments owned and run by the appellant, such as M/s Bini Tourist Home, Asokan &

Co., Ashok Traders, Aramana Bar & Restaurant, Hotel Hill Top, Dany Traders and Ashoka Inn. Some of these Units are covered under the provision of the Act whereas others are not covered. The complainant of Shri. K.N Ramachandran is that he worked with all these establishments during different spells of time but he was not extended the benefit of Provident Fund after 2008-2009. He was covered under the provisions of Act from 2003-2004 to 2008-2009 when he was working with M/s. Hotel Hill Top covered under Code No. KR/19551. The Enforcement Officer who investigated the case submitted a report stating that Shri K.N. Ramachandran worked as a consultant for many of the above units and there is no evidence to show that he worked as an employee after that period. Shri. K.N Ramachandran alleges that he was in receipt of Rs. 9,650/ as salary in July 2009. However he could not produce any documents substantiate the same. He produced a copy of the receipt having received bonus for the year 2004-2005. He also submitted a statement regarding the salary and wages details received by him during the periods when he worked with various establishments run by the owner of the establishment. According to the learned Counsel for the

appellant he filed a Written Statement and also produced certain documents to show that the complainant never worked with the appellant establishment. He worked with M/s Hotel Hill Top for some time and he was extended the benefit of provident fund during that time. The complainant has produced some records to prove that he worked with the group of concern for some time. But there is no proof that he worked with the appellant at any point of time. The respondent was forced to take a decision on the basis of the available records since the appellant failed to produce the required information during Sec 7A as well as Sec.7A(4). The available evidence only indicate that the complainant worked with one of the units during which period he was extended the benefit of Provident Fund. However there is no evidence that he worked with appellant establishment and further details are not available for the correct assessment of the dues.

5. In view of the above it is felt that the appellant shall be given one more opportunity to appear before the respondent and produce the records so that the respondent can issue a proper order.

Hence the appeal is allowed impugned order is set aside and matter is remitted back to the respondent to reassess the dues after issuing notice to the appellant and also the complainant, within a period of 3 months time. If the appellant fails to appear before the respondent and produce records called for, the respondent may take an adverse inference and finalise the matter according to the law.

Sd/-

(V. Vijaya Kumar)
Presiding Officer