



सत्यमेव जयते

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

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

( Tuesday the 31<sup>st</sup> day of August, 2021)

**APPEAL No.252/2018**

(Old No. A/KL-30/2017)

Appellant : M/s. C.J Constructions  
1<sup>st</sup> Floor , J-Square Center  
Athirampuzha P.O-686 631.  
Kottayam , Kerala.

By Adv. Thomas P. Makil

Respondent : The Assistant PF Commissioner  
EPFO, Thirunakkara,  
Kottayam -686 001

By Adv. Joy Thattil Itoop

This case coming up for final hearing on  
19.04.2021 and this Tribunal-cum-Labour Court on  
31.08.2021 passed the following:

**ORDER**

Present appeal is filed from order No KR / KTM /  
20401 / Enf-1(1) / 2016 / 2834 dt. 16/11/2016 assessing  
dues in respect of non-enrolled employees U/s 7A of EPF & MP  
Act, 1952 (hereinafter referred to as 'the Act'.) for the period

from 09/2014 to 11/2015. The total dues assessed is Rs. 34,97,286/-.

2. The appellant is a proprietary concern engaged in the business of construction. The appellant is covered under the provisions of the Act. An Enforcement Officer of the respondent visited the appellant establishment on 03/12/2015 and inspected the wage sheet of the appellant establishment. The Enforcement Officer thereafter gave an inspection report which is produced and marked as Annexure A1. According to the inspection report, the Enforcement Officer alleged that the appellant failed to enroll 90 employees for the period from 09/2014 to 11/2015. An Accounts Officer of the appellant establishment visited the office of the respondent and explained the anomalies in the inspection report, specifically stating that majority of the non-enrolled employees are excluded employees since they were drawing a salary beyond Rs.15000/-. The appellant thereafter received a notice U/s 7A of the Act, a copy of which is produced and marked as Annexure A3. An authorized representative of the appellant attended the hearing on 06/10/2016 and requested for some time to produce the records called for. It was also pointed out to the respondent

authority that 68 of the employees shown in the list are excluded employees and therefore they were not enrolled to provident fund membership. The wage sheet of the appellant for the period from 09/2014 to 11/2015 were also produced but the respondent refused to consider the same. The copies of the wage sheet for the period from 09/2014 to 11/2015 is produced and marked as Annexure A3. The authorized representative of the appellant could not attend the hearing scheduled on 1/11/2016 as she was laid down due to ill-health. The respondent authority finalized the enquiry on 1/11/2016 and issued the Annexure A4 impugned order.

3. The respondent filed counter denying the above allegations. An Enforcement Officer of the respondent during her inspection of the appellant establishment found that the appellant failed to enroll 90 eligible employees to provident fund membership. A copy of the inspection report was also provided to the appellant. The respondent authority thereafter initiated action U/s 7A of the Act. A representative of the appellant attended the hearing on 06/10/2016 and sought time for production of records. Accordingly the enquiry was adjourned to 1/11/2016 but nobody attended the hearing on

1/11/2016 and no objection was filed against the report of the Enforcement Officer. The respondent authority therefore concluded that the appellant failed to enroll 90 eligible employees and assessed dues to the tune of Rs. 34,97,286/-. The claim of the appellant that they sought adjournment over telephone is not correct and is denied. The appellant failed to produce any document or filed any written statement or objection to the report of the Enforcement Officer. Hence there is a clear suppression of material facts and the appellant is not entitled for any relief.

4. The simple issue involved in this appeal is whether the appellant was given adequate opportunity to represent their case before the respondent authority and whether there is any violation and principles of natural justice. It is seen that the appellant was given an opportunity for hearing on 06/10/2016 and the matter was adjourned to 01/11/2016 on the request of the appellant. It is also seen that a copy of the inspection report of the Enforcement Officer was provided to the appellant at the time of inspection itself. According to the learned Counsel for the respondent the appellant failed to file any objection to the report of the Enforcement Officer and also

failed to produce any records to substantiate their claim that 68 out of the 90 non-enrolled employees are excluded employees. According to the learned Counsel for the appellant, though the appellant produced the wage sheets for the period from 09/2014 to 11/2015, the respondent authority failed to take note of the same. On perusal of Annexure A1 report of the Enforcement Officer it is seen that majority of the employees were drawing a salary of Rs 15,000/- during the relevant point of time. It is not normal in construction industry that majority of the employees were drawing the same salary during the relevant point of time. It is possible that the Enforcement Officer has restricted the wages of the employees to the statutory limit of Rs.15000/-as on 09/2014. The question whether these employees are really excluded employees can only be decided by verifying the wage register and also the books of accounts of the appellant establishment. The respondent shall also verify Form 11 required to be maintained by the appellant establishment to confirm whether these employees were provident fund members earlier to joining the appellant establishment. It is true that the respondent authority has given two opportunities to the appellant to produce records.

However depending exclusively on the report of the Enforcement Officer to decide the eligibility to be enrolled is not fair and proper. It is felt that the appellant deserves one more opportunity before the matter is finalized.

5. Considering the facts, circumstances and pleadings in this appeal I am not inclined to accept the assessment in the impugned order.

Hence the appeal is allowed the impugned order is set aside and the matter is remitted back to the respondent to reassess the dues after providing an opportunity to the appellant to produce the records, within a period of 6 months after the receipt of this order. If the appellant fails to produce the documents called for, the respondent may decide the matter according to law. The pre-deposit made by the appellant as per the direction of this Tribunal U/s 7(O) of the Act may be adjusted after finalization of the enquiry.

Sd/-

**(V. Vijaya Kumar )**  
Presiding Officer