



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

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

(Monday the 20th day of December, 2021)

APPEAL No.547/2019
(Old No. ATA-87(7)2010)

Appellant : M/s. Sara Bhai Institute of Science & Technology (SIT), Uriyacode, Vellanad, Thiruvananthapuram – 695 543

By Adv. M. Gireesh Kumar

Respondent : The Assistant PF Commissioner EPFO, Pattom Trivandrum – 695 004.

By Adv. Ajoy. P.B

This case coming up for final hearing on 03/09/2021 and this Tribunal-cum-Labour Court on 20/12/2021 passed the following:

ORDER

Present appeal is filed from order No. KR / 22173 / ENF-1(1) / TVM / 2009 / 8953A dt.15/01/2010 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.) against non-enrolled employees for the period 04/2006 to 09/2008. Total dues assessed is Rs.4,12,536.65.

2. Appellant is a self financing Engineering College functioning under the Space Engineer's Welfare Society Ltd. The appellant establishment is covered under the provisions of the Act. The appellant received a summons U/s 7A from the respondent directing them to appear before him on 03/12/2008. The enquiry was initiated on the basis of report submitted by a squad of Enforcement Officers. A copy of the summons is produced and marked as Exbt P1. According to the report of the Enforcement Officers there, was non-enrollment of 26 employees for the period 04/2006 to 09/2008, 8 canteen employees for the period 07/2006 to 09/2008 and evasion of provident fund in respect of 38 employees for the period 08/2008 to 09/2008 and non-enrolment of 8 drivers for the period 07/2007 to 09/2008. The respondent authority failed to provide a copy of the report of the Enforcement Officer. The appellant also contended that there is no evasion of eligible employees. It was also pointed out that the canteen was run on the basis of an agreement entered with one Mr. Murali. A copy of the agreement dt. 09/07/2006 is produced as Exbt P2. As per Clause 2 of Exbt. P2 it can be seen that the canteen is an independent establishment. Immediately after the inspection, the appellant sent a letter dt.28/10/2008 to the canteen contractor to comply, with the provisions of the Act.

Copy of the said letter is produced and marked as Exbt P3. Since the canteen contractor failed to comply, he was directed to vacate the premises and the contract was cancelled. A copy of the letter dt.05/12/2008 is produced and marked as Exbt P4. A fresh agreement dt. 15/01/2008 was entered for running the canteen. Copy of the agreement dt.16/12/2008 is produced and marked as Exbt P5. As per Clause 8 of Exbt P5, it is the responsibility of the contractor to comply with the provisions of the Act. Since the contractor failed to comply, a notice dt.25/07/2009 was issued to the contractor, a copy of which is produced and marked as Exbt. P6. A new contract was signed on 28/08/2009 for running the canteen. A copy of the agreement dt.28/08/2009 is produced and marked as Exbt. P7. The appellant issued letter dt.01/12/2009 to the contractor directing to remit the provident fund contribution. A copy of the letter is produced and marked as Exbt P8. The canteen contractors are principal employers for the employees engaged by them and therefore the contractors are liable to remit the contribution in respect of employees engaged by them. The squad of Enforcement Officers also reported that the drivers of the vehicles owned by the appellant is not enrolled to the fund. The appellant hired the services of M/s. Ananthapuri Travels as per agreement dt. 12/07/2007. A copy of the

agreement is produced and marked as Exbt.P9. The drivers and other staff are working under Ananthapuri Travels and the principal employer of those drivers is the proprietor of M/s. Ananthapuri Travels. The respondent alleged that there were another 25 non-enrolled employees working under the appellant. There is no such non-enrollment as alleged. Ignoring the contentions of the appellant the respondent issued the impugned order, a copy of which is produced and marked as Exbt P10. The appellant produced all the documents to prove that the canteen employees and drivers were not engaged by the appellant. The respondent ought to have issued notice to the contractors. The findings of the respondent authority that 25 non-enrolled employees are working with the appellant establishment is without any evidence. None of these employees are identified by the respondent authority. The respondent failed to issue notice to the proprietor of M/s. Ananthapuri Travels to ascertain whether the employees engaged by him are members of Kerala State Motor Workers Welfare Fund Board and if that be so those employees need not be enrolled to EPF Scheme. Out of the 8 drivers identified by the squad 5 are regular employees of the appellant and they are already enrolled to the fund. The regular drivers are Mr. Prabha Kumar, V.S. Prasad, Reji. C, Hrudayan K

Nair and Vinod Kumar. The impugned order includes the name of these 5 drivers. The canteen is not an integral part of the appellant establishment and therefore the appellant cannot be held liable for the provident fund contribution in respect of canteen employees. The non serving of a copy of the report of the Enforcement Officer is a gross violation of natural justice.

3. The respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. It is reported that the appellant establishment failed to enroll 26 employees and there is evasion of provident fund in respect of 38 employees and dues in respect of 8 drivers. Hence an enquiry U/s 7A was initiated to determine the statutory dues. A squad of Enforcement Officers inspected the appellant establishment and reported the details of 26 non-enrolled employees with their monthly dues for the period 04/2006 to 09/2008. The dues in respect of 8 canteen employees for the period 07/2006 to 09/2008 and evasion of provident fund in respect of 38 employees for the period 08/2008 to 09/2008 and non-enrollment of 8 derivers for the period 07/2007 to 09/2008. The list of non-enrolled employees is produced and marked as Exbt R1. Sec 8 A read with Para 30

makes it clear that the appellant as principal employer is liable for remitting the provident fund contribution in respect of employees engaged through contractors. The management representative during the course of enquiry submitted that out of 26 non-enrolled employees, 4 employees are drawing a salary above Rs.6500/- where as the records available along with the squad report would show that those employees are also drawing a salary of Rs. 6500/- only. The appellant establishment is using 16 vehicles exclusively for the service of college. All the buses are used exclusively by the appellant establishment and the buses bear and the name and address of the college and four buses are tourist buses used for the conveyance of students of the college having fixed sticker of the name of college and two vehicles are Tata sumo van used by the college. The appellant stated that they have engaged 7 buses on contract basis from M/s. Ananthapuri Travels. The squad reported in respect of 8 drivers who are not enrolled to the fund. The squad has furnished the details of the buses and the vehicles used by the appellant establishment. A copy of the same was handed over to the appellant on his request. The appellant stated that out of the 26 non-enrolled employees 8 employees are trainees engaged for data entry and other jobs. The appellant produced the acquaintance roll in respect of 4

employees and they were found to be eligible to be enrolled to the fund. The appellant failed to produce any documents regarding the canteen employees and requested that they may be exempted from the assessment. The appellant establishment cannot escape the liability to remit contribution in respect of all the employees engaged by them.

4. The appellant establishment failed to enroll all the eligible employees to provident fund membership. A squad of Enforcement Officers visited the appellant establishment and found that 26 employees were not enrolled for the period 04/2006 to 09/2008, 8 canteen employees were not enrolled to the fund for the period 07/2006 to 09/2008 and provident fund is not paid in respect of 38 employees for the period 01/2008 to 09/2008 and provident fund benefits were not extended to 8 drivers for the period 07/2007 to 09/2008. The respondent initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the hearing and submitted that out of the 26 non-enrolled employees, 4 employees are drawing salary above Rs. 6500/-. However on verification of the records produced by the appellant, the respondent authority found that they were drawing a salary of Rs.6500/- and therefore they are liable to be

enroll the provident fund membership. It was also reported that 5 out of the 26 non-enrolled employees left the service of the appellant establishment during 10/11/2008 and 08 employees are trainees. It was also pointed out by the representative of the appellant that many of the employees joined the appellant establishment after they retired from VSCC and KSRTC. Shri. Satish Satyan whose name is figured in the 26 non-enrolled employees is a petitioner under employees pension scheme and therefore is eligible for exclusion. The representative of the appellant also submitted that out of the 26 non-enrolled employees, 8 employees are trainees engaged for data entry operator job etc however as per the definition of employee U/s 2(f) of the Act, the trainees are also employees except those trainees engaged under Apprentices Act or standings orders of the appellant establishment. With regard to the evasion of wages with regard to 38 employees it was pointed out that the interim relief was granted from 02/2008. The respondent also provided the copy of the report of the squad to the appellant to come out with the actual dues payable on the interim relief paid to the employees for the period 02/2008 to 09/2008. During the course of the proceeding the representative of the appellant admitted that on verification of the records maintained by them

the evasion of contribution as reported by the Enforcement Officer is correct. The appellant remitted Rs. 41164/- and the same was not included in the assessment. The squad of Enforcement Officers reported that the appellant establishment is utilizing 16 vehicles and the details of the vehicles were also furnished. 10 of the buses used are in the name of the appellant establishment and the name and address of the college is painted on these buses. 4 buses are tourist buses and 2 vehicles are Tata Sumo van. The representative of the appellant contended that 4 buses and 2 tata sumos are owned by the college and they engaged permanent drivers for running those vehicles. The representative also submitted that 8 buses are engaged on contract basis from M/s Ananthapuri Travels. After verifying the records of the Enforcement Officer and the submission of the representative of the appellant, the respondent authority concluded that 8 drivers are yet to be enrolled to the fund. It is seen from Exbt P9 agreement dt. 12/07/2007 that the contractor will be transferring the buses in the name of the Principal of the appellant establishment and the appellant establishment will arrange the finance for purchase of the vehicle and the EMI will be paid by the appellant to the financial institution and the same will be adjusted against the rent of each

month. Hence it is clear that the vehicles are purchased for the appellant establishment and the agreement between M/s. Ananthapuri Travels and the appellant is only a sham arrangement to evade the provisions of law. With regard to the canteen employees the respondent authority accepted the contention of the appellant that the contractor was engaging only 3 employees for running the canteen and the respondent authority restricted the assessment on the basis of the pleadings by the representative of the appellant .

5. The basic contention for learned Counsel for the appellant is that the drivers and canteen employees are engaged through contractors and the appellant is not liable to remit the contribution in respect of the contract employees engaged by them. It is seen that the assessment in respect of the contract employees are done on the basis of the pleadings and evidence of the representative of the appellant before the respondent authority at the time of the enquiry U/s 7A of the Act. The impugned order U/s 7A is very clear and specific on this point. However the question is whether the appellant is liable for the provident fund contribution in respect of contract employees. As per sec 2 (f) of the Act, “An “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 the 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 establishment.
- 2) 2.....”

Whatever may have been the doubts about the persons employment through contractor prior to its amendment, by inserting, the words ‘and includes any person employed by or through contractor in or in connection with the work of an establishment ’ about the status of a person employed through contractor and getting his wages directly from him, there cannot be any ambiguity in the face of Clause 1 or Sec 2(f) about the status of a person employed by or through contractor in or in connection with the work of an establishment. In **M/s P.M. Patel and Sons and Others Vs Union of India and Others**, 1986 (1) LLJ 88 the Hon'ble Supreme Court of India held that the term of definition of employee are wide. They include not only persons employed directly by the employer but also persons employed through a contractor. The Hon'ble Supreme Court of India

considered the question of contract employees **in Royal Talkies Vs Employees State Insurance Corporation, 1978 (4) SCC 204** and held that ;

“ Firstly, he must be employed “in or in connection with” the work of an establishment. The expression “ in connection with the work of an establishment” ropes in a wide variety of workmen 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 do 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 the smooth running of the establishment or integral to the adventure. It is enough if the employees does some work which is ancillary, incidental or has relevance to or link with the object of

the establishment. Surely, an amenity or facility for the customers who frequent the establishment has connection with the work of the establishment.”

The primary test in the substantive clause being thus whether the employees of the canteen and that of the bus drivers engaged through contractors can be described as “employed in connection with the work of the establishment.” The issue regarding the liability of the employers was also considered by the Hon'ble Supreme Court in **The Officer in Charge, Sub Regional PF Office and Another Vs Godavari Garments Ltd**, Civil Appeal No. 5821/2019. The Hon'ble Supreme Court held that “ the definition of employees U/s 2(f) of the EPF Act is an inclusive definition and is widely worded to include any person engaged either directly or indirectly in connection with the work of an establishment.” As already pointed out the respondent authority considered all the submissions made by the appellant establishment, accommodated their request, wherever possible, and issued the impugned order. The appellant cannot escape the liability of remitting contribution in respect of contract employees, in view of the authorities discussed above. With regard to the assessment in respect of the other non enrolled employees the

appellant has taken a contradictory stand in this appeal that those employees are not indentified. It is seen that the other non-enrolled employees are clearly identified and the only claim of the representative of the appellant before the respondent authority was that 8 of the non-enrolled employees were trainees and 5 employees left the service. As rightly pointed out by the learned Counsel for the respondent the appellant is liable to enroll trainees also except those trainees who are appointed under the apprentices Act and also under the standing orders of the establishment.

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

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer