



**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.550/2019**  
(Old No. ATA-253(7)2010)

Appellant : M/s. Thanal Placement &  
Real Estate Services  
Sreeragam,Gauri Nagar  
Pongummoodu, Chenthy  
Medical College P.O  
Trivandrum – 695 011

By Adv. Anil Narayan

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

By Adv. Ajoy. P.B

This case coming up for final hearing on  
07.04.2021 and this Tribunal-cum-Labour Court on  
31.08.2021 passed the following:

**ORDER**

Present appeal is filed from order No KR /22014/Enf-  
1(4)/2008/4721 dt.14/10/2008 assessing dues U/s 7A of EPF &  
MP Act, 1952 (hereinafter referred to as ‘the Act’) for the

period from 1/2005 to 11/2006. The total dues assessed is Rs. 2,94,515/-

2. The appellant is the proprietrix of the appellant establishment which is a voluntary organization. The appellant started the establishment in 2002. The appellant establishment is conceived as a social service organization to help unemployed and poor persons. The appellant deploys the unemployed persons to homes as domestic servants and home nurses on payment of wages by those persons engaging their services directly. There is no element of profit for the appellant establishment. In 2004 two Enforcement Officers from the respondent organization visited the appellant establishment. On their request the appellant provided the names of 50 women who got their work through the appellant. The appellant also informed the Enforcement Officers that the appellant establishment is not maintaining any attendance or wage register for these employees. The appellant used to register the names of these employees who will be deputed to houses on request. The appellant is only an intermediary agent and not an employer. The respondent authority initiated an enquiry U/s 7A of the Act. The appellant was also allowed to cross examine the Enforcement Officer who submitted the report. The appellant was denied a further

opportunity to adduce evidence by way of examining the employer, few of the employees and a few registered family members. The respondent issued an order dt.27/07/2008 assessing the dues for the period from 01/2005 to 11/2006. The appellant filed Writ Petition No.8688/2009 before the Hon'ble High Court of Kerala for getting the order quashed. The Hon'ble High Court of Kerala disposed of the Writ Petition directing the appellant to file a review petition before the respondent authority. A true copy of the judgment is produced and marked as Exbt A4. Thereafter the appellant filed a review petition, a copy of which is produced and marked Exbt A5. The respondent considered the review petition and rejected the same vide order dt. 07/09/2009 stating that there was no ground to review the 7A order. A copy of the said order is produced and marked as Exbt.A4. The appellant again approached the Hon'ble High Court of Kerala challenging the Exbt A2 order. The same was dismissed by the Hon'ble High Court. The appellant filed Writ Appeal No. 317/2010 before the Division Bench. The Division Bench of the Hon'ble High Court of Kerala vide order dt. 04/03/2010 dismissed the appeal stating that the available remedy for the appellant is to file a statutory appeal. A copy of the judgment of the Hon'ble High Court Writ Appeal No. 317/2010 is produced and marked as Exbt A6.

3. The respondent filed counter denying the above allegations. The appellant establishment is engaged in providing home nurses for patient care. The appellant at the time of coverage produced a list of employees containing the names of employees, date of joining, monthly wages etc. The appellant establishment failed to start compliance w.e.f 01/2005. Hence the appellant was summoned U/s 7A. The proprietrix of the appellant establishment appeared in the enquiry and submitted that she engaged women employees for different services. She also admitted during the course of enquiry that she signed the list of employees containing the details of 50 women engaged at the rate of Rs.1000/- per month. She further submitted that the appellant establishment closed its operation on 08/12/2006 and also produced dissolution of partnership deed. She failed to produce any further documents stating that all the records were destroyed in fire and lost. On verification of the documents submitted by the appellant to the Enforcement Officer at the time of coverage it is seen that the appellant establishment is coverable under the Act as per schedule head GSR731 dt.17/05/1971. The employment strength furnished by the proprietrix of the appellant establishment shows that they were engaging 50 employees at the time of coverage. The appellant

failed to produce any documents at the time of the enquiry stating that all the documents were destroyed in a fire that occurred in the premises of the appellant establishment. Hence the respondent issued the impugned order on the basis of information furnished by the appellant at the time of coverage of the appellant establishment. The appellant approached Hon'ble High Court Kerala and Hon'ble High Court of Kerala directed the appellant to file review U/s 7B of the Act. The review application filed by the appellant U/s 7B of the Act was rejected as the appellant failed to produce any fresh documents which could not be produced at the time of 7A enquiry.

4. The contention of the appellant that the appellant establishment is a social service organization is not correct. It is seen that the appellant establishment is taking service charges from the respective homes where home nurses are deployed. A part of the service charges is being paid by the appellant as wages to the employees. The proprietrix of the appellant establishment through her signed statement confirmed the engagement of 50 employees with their names and the wages paid to them. There were complaints against the appellant that they were exploiting the poor employees and also the general public. A report in Mathrubhumi daily dt. 16/03/2011 shows that the appellant has

taken Rs. 8500/- towards service charges but no home nurse was deployed to a customer.

5. In the written statement filed by the respondent it is stated that the appellant establishment failed to remit the pre-deposit amount of 40% of the determined amount as directed by the EPF Appellate Tribunal. However in the order dt. 27/11/2013 the EPF Appellate Tribunal, New Delhi itself has admitted that the appellant satisfied the requirement of the pre-deposit as per the direction of the Hon'ble High Court of Kerala in Writ Petition No.10277/2013.

6. The main case of the appellant is that, the appellant establishment is not statutorily coverable under the provisions of the Act. According to the learned Counsel for the appellant, the appellant registers the names of unemployed women and are deployed to houses as home nurses or domestic workers. The salary of these employees are paid by the households and not by the appellant establishment and therefore there is no employer-employee relationship between the appellant and the so called employees. According to the learned Counsel for the respondent, the proprietrix of the appellant herself has given the list of 50 employees as on the date of coverage along with the

salary paid. Since the appellant establishment was rendering expert service by deploying home nurses the coverage of the appellant establishment cannot be disputed. The learned Counsel for the respondent also denied the case of the appellant that the salary of the employees are paid by the houses where they are deployed. According to the learned Counsel, the appellant takes lumpsum service charges from the households where the home-nurses are deployed and the part of the service charges, so taken, was being disbursed as salary to these employees. It was also argued by the learned Counsel for the respondent that more than adequate opportunity was provided to the appellant and he was also allowed to cross examine the Enforcement Officer who conducted investigation against the appellant establishment. It was also pointed out by the learned Counsel for the respondent that the assessment was made on the basis of the admitted salary reported by the proprietrix of the appellant establishment and therefore the appellant cannot dispute the assessment. I find that the appellant was given adequate opportunity to produce records, cross examine the Enforcement Officer and also to present documents to substantiate her case. After availing all the opportunities, the appellant cannot come in appeal and argue that there was violation of principles of natural justice. The

appellant ought to have produced documents before the respondent authority to prove that the appellant was not paying wages to its employees. The claim of the appellant that the documents were destroyed in fire cannot be accepted in the absence of any proof such as FIR filed before the police. Basically the impugned order is issued on the basis of the admissions made by the proprietrix of the appellant establishment, in her signed statement and also on the basis of statutory return in Form 5A of filed by her.

7. Considering all the facts, circumstances pleadings and evidence I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-  
**(V. Vijaya Kumar )**  
Presiding Officer