



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

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

(Wednesday the 18th day of May, 2022)

Appeal No.628/2019
(Old No. ATA 585(7)/2013)

Appellant : Emmanuel College
Vazhachal
Kudapanamoodu P.O
Thiruvananthapuram 695 510.

By M/s. Chandrasekharan &
Chandrasekhara Menon

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Pattom,
Thiruvananthapuram -695004.

By Adv. Nita. N.S

This appeal came up for hearing on 24/11/2021 and this Industrial Tribunal cum Labour Court issued the following order on 18/05/2022.

ORDER

Present appeal is filed from Order No. KR/16994/Enf-1(5)/2007/2671 dt. 08/06/2007 issued U/s 7A of EPF & MP Act, 1952

(hereinafter referred as 'the Act'.) assessing dues for the period from 09/1995 to 07/1998 and the order issued U/s 7B of the Act dt. 18/06/2013. The total dues assessed is Rs. 2,82,409.75.

2. The appellant is one among the two self financing colleges of a society registered under Act XII of 1955(TC). The Latin Diocese of Trivandrum was bifurcated during the year 1996 and new diocese was formed at Neyyattinkara on territorial limits of southern region of the parent diocese. 29 aided schools under the diocese were transferred to the corporate management of the new diocese, Neyyattinkara. The copy of the order of DPI dt.12/08/1997 is produced and marked as Annexure A. A list of educational institutions are produced and marked as Annexure B. The Trivandrum Latin Diocese formed a registered society as a separate legal entity known as Catholic Educational and Charitable Society. The copy of the Memorandum of Association of the society is produced and marked as Annexure C. Upon bifurcation, the administration of the society stood vested with the newly formed Neyyattinkara diocese. Thus the college is vested with the society. The appellant college has nothing to do with the diocese known as

Neyyattikara diocese. The appellant college was affiliated to Kerala University. The order of the university granting affiliation is produced and marked as Annexure-D. The 2nd respondent initiated action U/s 7A of the Act. The appellant objected to the proceedings contenting that the college is not functioning under diocese of Neyyatinkara. The administration, supervision and control of Emmanuel College is with the separate legal entity called Catholic Educational and Charitable Society. On 27/04/2007, the appellant submitted the objection before the respondent authority, a copy of which is produced and marked as Annexure E. Without giving an opportunity for proving contentions in Annexure-E, the respondent authority passed an order dt. 27/04/2007 whereby it was held that the appellant college as well as the schools under the corporate management of the diocese is a single unit for the purpose of determination of liability under the Act. The true copy of the impugned order is produced and marked as Annexure F. The appellant challenged the order before the Hon'ble High Court of Kerala in W.P.(C)No.20141/2007. The Hon'ble High Court admitted the appeal and passed an interim order of stay. The copy of the order

is produced and marked as Annexure G. The writ petition filed was dismissed for default. Later the writ petition was restored by the Hon'ble High Court of Kerala. In the meanwhile, the Recovery Officer of the respondent initiated recovery action. The Hon'ble High Court vide judgment dt. 07/03/2003 disposed off the writ petition with certain directions. A copy of the judgment is produced and marked as Annexure H. As per the direction of the Hon'ble High Court, the appellant filed a review application U/s 7B of the Act. A copy of the review petition is marked as Annexure 1. The Hon'ble High Court of Kerala directed that Annexure F proceedings shall be put on hold till orders are passed in review petition. In spite of the admission by the learned Counsel for the respondent organization before the Hon'ble High Court, the Recovery Officer of the respondent organization recovered the amount from the account of the appellant maintained in the Federal Bank. The appellant filed a detailed statement before the respondent authority and sent it by speed post on 13/06/2013. A copy of the argument notice is produced and marked as Annexure K. The acknowledgement card received from the respondent is produced and marked as Annexure L. The impugned order is

dt.12/06/2013. However the subsequent endorsement in the proceedings referred above would go to show that the said proceedings was dispatched to the appellant only on 18/06/2013. The original order in the review petition is produced and marked as Annexure M. The respondent authority ought to have found that the management of the school vested in the society continued under Annexure-C and the appellant did not have any managerial control and supervision over those schools and society. The review petition was decided without giving the appellant a proper opportunity for hearing. The respondent ought to have issued a notice to the society which according to A, B,C,D & E and other relevant documents show that the society was a necessary party to the proceedings.

3. The respondent filed counter denying the above allegations. The appellant establishment was covered under the provisions of the Act with effect from 01/08/1998 and a coverage notice was issued on 11/01/2005. The appellant was required to start compliance on satisfying the statutory requirements. An enquiry U/s 7A was initiated vide notice dt.

06/03/2006. The appellant is one of the educational institutions under the Catholic Educational and Charitable Society, Trivandrum. The Manager of the society appeared before the respondent authority. The enquiry U/s 7A concluded on the strength of records produced by the appellant and the appellant establishment was covered with effect from 11/09/1995 and also the dues were assessed vide order dt. 08/06/2007. The appellant approached the Hon'ble High Court of Kerala in W.P.(C) No. 20141/2007 and the Hon'ble High Court stayed the 7A order. In the final judgment dt.07/03/2013 the Hon'ble High Court allowed the petitioner to apply for review U/s 7B of the Act within a month. The appellant filed this 7B application on 04/04/2013. In the Sec 7B review application the appellant contended that the 7A proceedings were issued without considering the separate entity of the society. The respondent authority failed to consider whether the college is run by the corporate management of Neyyanttinkara diocese or the College is functioning under the registered society as a self financing college. The 7B review was heard on 21/05/2013 and the same was adjourned to 12/6/2013. The issues raised by the appellant were considered in

detail. Since the appellant failed to file any additional documents in the review petition and material evidence other than those already taken into consideration, the review petition was rejected. The Latin diocese of Trivandrum has been bifurcated into Thiruvananthapuram and Neyyattinkara with a new diocese and Bishop of Neyyattinkara with effect from 19/03/1997. Consequently the school, run by Bishop, Trivandrum where also transferred to the new Educational Agency under the Bishop of Neyyattinkara. As such the management of 19 educational institutions and management of the appellant establishment were transferred to the corporate management of Latin Catholic Diocese, Neyyattinkara. The employment strength in the said college as on 11/09/1995 was 12 and the employment strength of the institutions under the same management including the aided schools were more than 20 as on 11/09/1995. Hence the respondent issued the order U/s 7A of the Act taking the college and schools under the Corporate Management of Neyyattinkara Diocese as a single unit. As such the Act is applicable to appellant with effect from 11/09/1995. The appellant was given more than adequate opportunity by the respondent and the Manager of the

appellant establishment appeared before the respondent authority on behalf of the appellant on various occasions. There is absolute no illegality in the impugned orders as the schools and colleges run under corporate management can always be taken as a single unit. The contentions that Catholic Educational Charitable Society is a separate unit is absolutely wrong. It is very clear that the formation of the charitable society and the initial funding is done by the corporate management of Neyyattinkara diocese. The fund transactions are also there between corporate management and the newly introduced society. It is to be noted that while bifurcating the diocese, the administration of the educational society was given to the Corporate Management of Neyyattinkara Diocese. The Hon'ble High Court of Kerala vide its order dt. 07/03/2013 directed the appellant to apply for review within a period of one month. The Hon'ble High Court further directed that the proceedings for recovery shall be put on hold till the orders are passed on the review petition. Since the appellant failed to remit the contribution the Recovery Officer of the EPFO issued an order of recovery U/s 8(F) on 01/02/2013 to the branch Manager, Federal Bank, Amboori, Trivandrum. The order of recovery U/s

8(F) was issued to the bank on 01/02/2013, well before the judgment of the Hon'ble High Court of Kerala on 07/03/2013.

4. The appellant establishment was covered under the Act provisionally with effect from 01/08/1998. Since the appellant failed to comply with the provisions, the respondent initiated an enquiry U/s 7A of the Act to finalize the date of coverage as well as quantify the dues. The respondent authority found that the appellant college is one of the units of education institutions under the Catholic Educational Charitable Society, Thiruvananthapuram. The University of Kerala granted provisional affiliation vide order dt. 16/06/1995 for the academic year 1995-96. The appellant college under the Catholic Educational Charitable Society started functioning with effect from 28/08/1995. The Director of Public Instructions vide letter dt.12/08/1997 accepted the transfer of the 19 educational institutions and the management of M/s Emmanuel College to the Latin Catholic Diocese, Neyyattinkara. The communication specifically says that Latin diocese of Thiruvananthapuram has been bifurcated into Thiruvananthapuram and Neyyattinkara with

a new diocese and new Bishop of Neyyatinkara. Consequently the schools run by the Bishop of Thiruvananthapuram are sought to be transferred to the new educational agency under the Bishop of Neyyattinkara. Hence the Directorate of Public Instructions is pleased to approve the bifurcation of Latin Diocese of Thiruvananthapuram and Neyyattinkara with a new diocese and bishop of Neyyattinkara with effect from 19/03/1997. It is further clarified in the above order that

“As such the management of 19 educational institutions and the management of Emmanuel College vest with the corporate management of Latin catholic schools Neyyattinkara”.

It is clear from the above order of Directorate of Public Instructions that the management of 19 educational institutions and the management of Immanuel College is transferred to the corporate management of Latin Catholic Schools, Neyyattinkara and the same is approved by the Government of Kerala. Aggrieved by the said order the appellant filed a writ petition before the Hon'ble High Court of Kerala. The Hon'ble High Court in its

judgment dt.07/03/2013 directed the appellant to approach the respondent authority in review, U/s 7B of the Act and also directed the respondent not to take any coercive action till orders are passed in the review application. The appellant filed a review application before the respondent authority and the respondent authority dismissed the review application holding that no additional documents are produced. Both these orders are under challenge in this appeal.

5. According to the learned Counsel for the appellant, the appellant college is managed by Catholic Education and Charitable Society. The society is having two educational institutions, Emmanuel College which is started in 1995 and the Emmanuel B.Ed Training College started in the year 2005. The Neyyattinkara diocese is running 29 aided schools and the same is run by the corporate management of Neyyanttikara diocese and day to day affairs are handled by the corporate management. According to him the Catholic Educational and Charitable Society and the aided schools run by the Corporate Management of Neyyattinkara diocese are two entirely different and independent

establishments and cannot be treated as one legal entity. The learned Counsel for the respondent relied on the communication No. ETS/34360/97/K.Dis dt.12/08/1997 issued by the Director of Public Instructions, Trivandrum, according to which, the original bifurcation of the education institutions run by the Corporate Management of aided Schools of Thiruvanthapuram diocese is approved. The order specifically states that the management of 19 educational institutions and the management of M/s. Emmanuel College vests with the corporate management of Latin Catholic Schools, Neyyattinkara with effect from 19/03/1997. The respondent authority, according to the learned Counsel for the respondent, took the total employment strength of the educational institutions to arrive at the conclusion that the appellant establishment is liable to be covered under the provisions of the Act with effect from 11/09/1995. Even assuming that there is a society as claim by the appellant, there is no legal impediment in clubbing and covering educational institutions run by a society or a corporate management. The Hon'ble High Court of Karnataka in **Shri.Narayana Guru English Medium School, Mangalore Vs RPFC**, 1998 (2) LLJ 993 held that three schools established and

managed by same management constituted a single establishment. The general rules of clubbing is not relevant in such cases. The appellant also failed to substantiate their claim that the aided schools are run by the corporate management and the appellant college is run by Catholic Educational Charitable Society as claimed by them.

6. Having said that, the question is whether the employment strength of the aided institutions run by a management can be taken for the purpose of coverage of a college whose employment strength is less than the statutory limit. The respondent authority failed to consider the above aspect in the impugned order U/s 7A of the Act as well as in the review U/s 7B of the Act. The respondent authority will have to examine whether the claim of the appellant that the aided educational institutions and the appellant college are run by two different entities. It is true that the communication relied on by the respondent gives sufficient indication that the aided schools and the appellant college are run by the corporate management of Neyyattinkara Diocese. However in view of the stand taken by the

appellant that they are two different entities the respondent shall examine the same in case the appellant produces sufficient evidence to prove the claim. Further the respondent shall also examine whether the employment strength of aided institutions which are not otherwise covered under the Act can be taken for counting the employment strength of the appellant college.

7. The learned Counsel for the appellant also argued that the Recovery Officer of the respondent organization recovered the assessed amount violating the directions of the Hon'ble High Court of Kerala in W.P.(C) No. 20141/2007. It is seen that the Hon'ble High Court vide its judgment dt. 07/03/2013 directed the appellant to file a review application U/s 7B of the Act and the respondent was restrained from taking recovery action for recovery of the assessed amount. According to the learned Counsel for the respondent the Recovery Officer of the respondent organization initiated action for recovery after the writ petition was dismissed by the Hon'ble High Court of Kerala. The order U/s 8(F) was issued on 01/02/2013 whereas the Hon'ble High Court passed the judgment on 07/03/2013. Though the action of the

Recovery Officer is not in compliance with the directions of the Hon'ble High Court it is not possible to blame the action of the Recovery Officer since the Hon'ble High Court issued the directions only on 07/03/2013 and the recovery action had already been initiated on 01/02/2013. Considering the delay involved, I am not inclined to issue any directions regarding the refund of the recovered amount.

8. Considering the facts, circumstances pleadings and evidence in this appeal, I am not inclined to uphold the impugned order.

Hence the appeal is allowed the impugned order is set aside and the matter is remitted back to the respondent. The respondent shall decide

1) Whether the aided schools run by the Neyyattinkara diocese and the appellant colleges are run by two different entities as claimed by the appellant and

2) Whether the employment strength of the aided schools, not covered under the provisions of the Act, can be counted for

covering the appellant establishment under the provisions of the Act.

Taking into account the fact that the assessed dues had already been recovered long back, the respondent is directed to decide the above issues within a period of 6 months after issuing notice to the appellant. If the appellant fails to appear or produce the records called for, the respondent is at liberty to decide the matter according to law. The amount recovered from the appellant shall be refunded or adjusted after finalization of the enquiry.

Sd/ ~

(V.Vijaya Kumar)
Presiding Officer