



सत्यमेव जयते

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

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

(Friday the 19th day of March, 2021)

**Appeal No.235/2018**

(Old No. AK/L-23/2017)

Appellant : Thiruvananthapuram Corporation,  
Office of the Municipal Corporation  
Palayam,  
Thiruvananthapuram.

By Adv. Achuth Kylas

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

By Adv. S. Sujin

This appeal came up for hearing on 12/02/2021 and this Industrial Tribunal cum Labour Court issued the following order on 19/03/2021.

**ORDER**

Present appeal is filed from Order No. KR/KR/26531/Enf-1(3)/2016/7193 dt. 10/11/2016 assessing damages U/s 7A of EPF & MP Act,1952 (hereinafter referred

as 'the Act'.) for the period from 01/2011 to 01/2013. The total damages assessed is Rs. 30,93,596/-.

2. The appellant is a Municipal Corporation. The respondent initiated proceedings U/s 7A of the Act alleging non-payment of contribution in respect of some unidentified person who was alleged to have been engaged by the Corporation during the period from 01/2001 to 01/2013. The respondent issued notice U/s 7A. The appellant appeared and submitted a note and also explained that dues were not remitted because the nature of work and the employees engaged were not permanent. The appellant also pointed out that from 07/2012 onwards the appellant is remitting contribution in respect of all contract and casual employees engaged by them. In spite of the specific submission that the appellant remitted the contribution from 07/2012 to 01/2013, the respondent assessed the dues including the said period. The hearing note submitted by the respondent before the respondent authority is produced and marked as Annexure A1. Ignoring the contention taken by the appellant, the respondent issued the impugned order assessing the dues from 01/2001 to 01/2013. The appellant was not served with any inspection report till a formal request is made by

the appellant. A true copy of the inspection report dt.14/2/2019 is produced and marked as Annexure A3. The amounts covered by Annexure 2 order is recovered by the respondent from the bank account of the appellant. The appellant never employed any person as claimed in the inspection report. They are self employed persons. The appellant had no control over them. There was no master/servant relationship. All person sought to be covered cannot be identified as they do not work with appellant on a permanent basis. It will be difficult to track the workers employed on casual basis. The dues from July 2012 had already been remitted. Hence the assessment of dues from July 2012 is irregular. The non supply of the report of the Enforcement Officer has hampered the appellant from properly framing its defence. The action of the respondent is in violation of principles laid down by the Hon'ble Supreme Court in **Food Corporation of India Vs PF Commissioner and Another**, 1990 SCC (1) 68.

3. The respondent filed counter denying the allegations in appeal memo. The appellant is covered under the provision of Act under Code No. KR/ TVM/ 26531 w.e.f 08/01/2011.

Government of India vide notification No.SO/30/E dt.08.01.2011, notified all Municipalities and Corporation under the provision of the Act. Therefore the appellant is liable to comply with provisions of the Act from January 2011. The respondent vide letter dt. 21.02.2011 informed the appellant regarding the notification of Government of India dt. 08/01/2011 and also informed them of their statutory obligation under the Act. However, the appellant failed to start compliance under the provision of the Act. Hence an Enforcement Officer was deployed to conduct and inspection of the appellant establishment. The Enforcement Officer reported that the appellant made partial remittance from 07/2012 to 01/2013. The Enforcement Officer also after verification of the records maintained by the appellant, submitted a provisional assessment of dues. A copy of the said report along with the dues statement was forwarded to the Secretary of the appellant establishment under registered post and the same was acknowledged by him. However the appellant failed to comply with the provision of the Act and also the instructions contained in communication send. Hence one more letter was issued to the Secretary vide letter dt. 12/3/2014. The appellant neither

complied with the provision of the Act nor send any reply to the communications send to him along with the provisional assessment of dues. Since the appellant failed to comply with the provisions, the respondent initiated action U/s 7A of the Act. A summons was issued to the appellant directing an authorized representative to appear before the respondent on 24/8/2016. On the request of the appellant the enquiry was adjourned to 19/9/2016. On 19/9/2016 a representative of the appellant attended the hearing and admitted that the statutory dues from 01/2011 to 06/2012 in respect of the casual employees were not remitted. The representative also submitted that they started compliance from 07/2012 and they are complying regularly from the said date. He also requested that the contribution from 01/2011 to 6/2012 may be waived. The representative of the appellant again appeared in the enquiry on 07/11/2016 and submitted that the daily wages employees are not working continuously and provident fund contributions were not deducted from the salary of the employees. The respondent informed the appellant vide letter dt. 21/02/2011 that all categories of employees such as permanent, casual, temporary, piece rated, contract and daily wages are entitled to be enrolled

to provident fund w.e.f 1/2011, other than those employees who are eligible for PF or old age pension as per the rules framed by the state Government. In spite of the notice and communications the appellant failed to enroll all the those eligible employees to provident fund membership. U/s 2(f) of the Act an "Employee" is a 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. As already pointed out the inspection report of the Enforcement Officer was communicated to the appellant which was acknowledged by the appellant. Further the enquiry was attended by a representative of the appellant and the representative never raised any dispute regarding the proposed dues. The only contention raised by the representative of the appellant was that the employees contribution in respect of those employees were not deducted from their salary. The claim of the appellant that they never employed any person in the list provided to them is contrary to Annexure A1 hearing note filed by the appellant. The assessment is made on the basis of the data available in the records maintained by the appellant. The appellant was afforded

adequate opportunity during the course of hearing and therefore the appellant cannot contest the impugned order on the ground of violation of natural justice. The appellant had admitted before the respondent authority that in spite of specific direction from the respondent they failed to deduct the contributions from wages of employees who were not permanent.

4. All the Municipalities and Corporations in India are brought under the purview of EPF and MP Act vide notification No. SO/ 30/E dt. 08/01/2011. Hence all the contract, casual, daily wages employees except the permanent employees who are eligible for provident fund and pension benefit as per the State Government rules are required to be brought EPF & MP Act w.e.f 08/01/2011. The Government of India was prompted to bring in this notification in view of the fact that lakhs and lakhs of employees who were working on casual or contract basis with the corporations and municipalities are not extended the benefit of any social security in India. It is seen that after the said notification by Government of India, the respondent informed the appellant vide letter dt. 21/02/2011, its statutory obligation to remit provident fund contribution in respect of all casual,

temporary, contract and daily wages employees under the Act. But the appellant failed to comply with the instructions issued by the respondent. Hence the respondent issued communications to the Secretary of the respondent. Since there was no response an Enforcement Officer was deputed by the respondent to verify the records of the appellant and also to assess the dues that the appellant is liable to pay. The dues statement furnished by the Enforcement Officer was send to the Secretary of the appellant establishment by registered communication. Though the appellant acknowledged the letter alongwith the report, there was no response from the side of the appellant. Hence the respondent issued another communication dt.12/03/2014 instructing the appellant to comply with the provision of the Act. Still the appellant failed to start the compliance. The respondent initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the hearing on various dates and requested to waive the provident fund dues in respect of these employees for the period from 01/2011 to 06/2012. It is pertinent to know that the appellant has neither disputed the provisional dues given by the respondent nor raised any other dispute before the respondent authority. In this appeal



the learned Counsel for the appellant came with a plea that the respondent failed to identify the employees against whom the assessment is made. It is surprising that a Municipal Corporation is taking a stand that they are not in a position to identify the employees deployed by them. Even otherwise, such a stand cannot be accepted because the appellant was put on notice with regard to its statutory liability under the Act in the month of February 2011 itself by the respondent and if the appellant failed to take note of its statutory obligation and failed to comply with provisions atleast from that date, the appellant cannot take a plea that the respondent failed to identify the employees against whom the dues are assessed. The appellant being the custodian of all such information it is the responsibility of the appellant to ensure that the benefits reach the concerned employees. The learned Counsel for the appellant also argued that the default is for the period from 01/2011 to 06/2011. However the respondent proceeded to assess the dues up to 01/2013 inspite of the fact that the appellant started compliance from 07/2012 onwards. It is admitted by the respondent that the appellant started partial compliance from 07/2012 onwards. And it is seen that the remittance made by

the appellant is accounted in the impugned order itself. Hence the claim of learned Counsel for the appellant that the remittance made from 07/20012 to 01/2013 is not accounted by the respondent has no basis.

5. 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