



सत्यमेव जयते

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

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

(Monday the 7th day of June, 2021)

APPEAL No.412/2019

(Old No. ATA 1426(7) 2015)

Appellant

M/s. Anand Motors
Kottom,
Post Mundalur,
Kannur – 670 622.

Respondent

The Assistant PF Commissioner
EPFO, Regional Office,
V.K Complex, Fort Road
Kannur - 670001

Adv. K.C.Santhosh Kumar

This case coming up for final hearing on
17/03/2021 and this Tribunal-cum-Labour Court on
07/06/2021 passed the following:

O R D E R

Present appeal is filed from order No.KR/KNR/
11860/Enf.1(1)/7A/2015-16/2286 dt.26/08/2015 assessing
dues on evaded wages U/s 7A of EPF and MP Act, 1952

(hereinafter referred to as 'the Act') for the period 04/2004 to 05/2014. The total damages assessed is Rs.7,05,893/-. The order No. KR / KNR / 11860 / Enf.1(1) / 2015-16 / 3159 dt.28/10/2015 is also being challenged in this appeal.

2. The appellant is a transport company employing four workers. A former employee of the appellant establishment who had been working in the bus bearing No.KL-13-J 3069 from 2004 to 2012 filed a complaint with respondent authority. The complainant was a daily wage worker who was drawing his daily wages without allowing the appellant to deduct the employees' share of contribution from his wages and the appellant had been remitting both shares of contribution. The appellant sold the above bus in 10/2012, hence the complainant was assigned the job as a cleaner in another bus. Since the complainant refused to work in the new bus he was removed from the service. The complainant approached the Deputy Labour Officer and in the joint meeting held by the Deputy Labour Officer the complainant agreed to work diligently but after joining duty the complainant refused to work. The complainant started creating problems by staging protest on the top of the bus demanding Rs.1,50,000/- from the appellant. The appellant filed a suit for

injection before the Munsiff Court of Kannur. As per the direction of the Court the bus was moved to the Court premises with the help of the Police. The complainant again approached the appellant and demanded an amount of Rs.1,00,000/-. Since the appellant failed to acceded to the illegal demand of the complainant, he approached the Assistant Provident Fund Commissioner. Without consider the pleadings of the appellant, the respondent authority issued the impugned order. The review petition filed U/s 7B was also rejected by the respondent. The appellant establishment was not coverable under provisions of the Act as employment strength never crossed 20. The appellant however remitted the contribution in respect of the employees. The respondent authority has already given certificate stating that the appellant remitted both employer and employees share of contribution. The appellant never deducted the employees' share of contribution from employees' salaries and same was also remitted by the appellant establishment. The respondent ought to have noticed that the respondent office issued no due certificate every year and the compliance of the past years were satisfactory.

3. The respondent filed counter denying the above allegations. The appellant establishment as well as employees of the appellant voluntarily opted for coverage U/s 1(4) of the Act. Even though the employment strength was below 20, the appellant establishment was covered w.e.f. 01/06/1991 on the request of the appellant and its employees. The office of the respondent received a complaint from Sri.K.Sunil, one of the ex-employees stating that though the appellant is deducting the amount towards the provident fund from his wages, the appellant is not remitting the full amount to provident fund account. An Enforcement Officer was deputed to investigate the complaint. The Enforcement Officer submitted his report dt.27/09/2014 stating that the appellant was not remitting the dues in accordance with the provision of the Act. The appellant remitted contribution on lesser wages than that is shown in the wage register. Hence the enquiry U/s 7A of the Act was initiated for assessing the dues on evaded wages from period 04/2004 to 05/2014. The appellant produced the same records before the officer but the appellant failed to produce the wage register of employees in respect of bus No KL-13U-7756. Hence the dues were assessed based on the wage details of the employees of the

bus No KL-13J-3609. Once an establishment is covered under the provision of the Act whether under 1(3) or under 1(4) the establishment is liable to comply with the provisions of the Act and the Schemes thereunder. The appellant remitted contribution in respect of 3 employees and that to based on wages according to the whims and fancies of the employer. As per the memorandum of settlement arrived at between the appellant and the complainant employee before the Deputy Labour Officer, Kannur the complainant was given the benefit retrospectively from 2001 and was allowed to work in the new bus purchased by the appellant w.e.f. 24/06/2014. A copy of the memorandum is produced and marked as Exbt-R(a). The review application filed by the appellant was rejected as the review was not in the prescribed format and no additional documents were produced to review the order U/s 7A of the Act. No due certificate was issued to establishment based on the returns and the remittance made by the appellant. The no due certificate will not help the appellant if there is evasion in membership or in wages which will be subjected to assessment as per the statutory provisions. The appellant was having 2 buses and 8 employees working with the appellant till

15/10/2012. The appellant was remitting contribution in respect of only 3 employees and that too on lesser wages. It is the statutory obligation of the appellant to remit the contribution at the rate of 10% of the wages of all its employees within 15 days of close of every month. The appellant failed to produce the wage register in respect of one bus deliberately.

4. The appellant establishment is covered U/s 1(4) of the Act, voluntarily by consent of the appellant and its employees. There was no dispute regarding compliance till one of the employee filed a complaint with the respondent authority that the appellant establishment is not remitting contribution according to Law. Accordingly the matter was investigating through an Enforcement Officer and it was found that the appellant establishment is not extending the provident fund benefits to all the employees and also evaded contribution by reducing the wages suppressing the actual wages shown in the wage register. On the basis of this, an enquiry U/s 7A was initiated. From the documents available in the file it is seen that the main contention of the appellant is against the employee who complained against the appellant establishment to the

respondent authority. It is seen that the complainant employee was party to the proceedings in the 7A proceedings before the respondent authority and is not impleaded as a party in this appeal. Hence the appeal is bad and is required to be dismissed on the ground of non joinder of essential party to the proceedings.

5. In the impugned order the respondent authority calculated the dues on the basis of the records made available at the time of the enquiry. Basically the respondent relied on the salary register for the period from 04/2004 to 05/2014 in respect of the employees of bus no KL-13J-3609. The appellant failed to produce the wage register of Bus No.KL-13U-7756. The respondent has followed the principle of best judgment and in the circumstance of this case I do not find, there is anything illegal in the said assessment. The appellant is relying on the no due certificate issued by the respondent authority to argue that after having issued the no due certificate, the respondent authority cannot go back and reassess the dues. According to the learned Counsel for the respondent no due certificate is issued on the basis on the records made available to the respondent. The respondent relies on the remittances and

returns filed by the appellant while issuing the certificate. That will not in anyway estoppe the respondent from investigating into any complaint filed by the employees of the appellant. During the course of investigation, it is found that there is evasion in contribution and enrolment. The no due certificate issued by the respondent authority will be no more valid, in this particular case, as an ex-employee of the appellant establishment filed a complaint that there is huge evasion in provident fund contribution and after investigation it is found that the complaint is true and therefore the no due certificate issued by the respondent will not save the appellant from remitting the evaded contribution of its employees.

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

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer