



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

सत्यमेव जयते

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

(Tuesday the 7<sup>th</sup> day of September, 2021)

**Appeal No. 656/2019**

(Old No.ATA-219(7)2013)

Appellant

M/s. Indus Motors Company  
Private Limited  
M.G. Road, Thevara  
Ernakulam - 682013

By Adv. U.K. Devidas

Respondent

1. The Regional PF Commissioner  
EPFO, Sub Regional Office  
Kottayam – 686001
2. The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Kottayam – 686001

By Adv. Joy Thattil Ittoop

This case coming up for hearing on 19.04.2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 07/09/2021.

**ORDER**

Present appeal is filed from order No.KR/  
KTM/ RPFC / HMT / dt. 29/01/2013 U/s 7A of EPF & MP

Act, 1952 (hereinafter referred to as 'the Act') on non-enrolled employees of the Kodimatha unit for the period from 04/2004 to 07/2009 and of the Kanjirapally unit for the period from 05/2007 to 08/2009. Total dues assessed is Rs.19,60,831/-.

2. The appellant is an establishment engaged in the sales and service of Maruti Vehicles. In the year 2009 the 2<sup>nd</sup> respondent passed an order U/s 7A and the appellant complied with the said orders. Thereafter the 1<sup>st</sup> respondent issued another notice for assessment of dues without considering the existence of earlier order. The 1<sup>st</sup> respondent proposed assessment of dues in respect of excluded employees and apprentices. On 15/01/2013 appellant sent a letter seeking adjournment. The proceedings were adjourned to 29/01/2013. The appellant received the notice only at 3.40 pm on 29/01/2013. The appellant immediately sent a letter, fax and email stating the above facts. Without considering the communications from the appellant the 1<sup>st</sup> respondent passed an order on 29/01/2013 assessing a total dues of Rs. 19,60,831/-. The above order is passed ex-parte and therefore the appellant filed a review petition U/s 7(B) of the Act. Though the review petition was received on 07/02/2013 the 1<sup>st</sup> respondent failed to take any action on the review petition.

Therefore the appellant sent a reminder to the 1<sup>st</sup> respondent on 12/02/2013. The 1<sup>st</sup> respondent did not take any action on the review petition and therefore the appellant approached the Hon'ble High Court of Kerala in WP (C) No. 4476/2013. When the matter came up for hearing on 15/02/2013, the 1<sup>st</sup> respondent did not disclose to the Hon'ble Court that review petition had already been rejected. The Hon'ble High Court disposed the writ petition with a direction to the 1<sup>st</sup> respondent to dispose the review petition within a period of one month. Thereafter the appellant received an order dt.12/02/2013 rejecting the review petition. This order is also issued by the 1<sup>st</sup> respondent without hearing the appellant. Without giving any notice to the appellant, the 1<sup>st</sup> respondent freeze the bank account of the appellant establishment and therefore the appellant approached the Hon'ble High Court of Kerala in WP(C) No. 4748/2013. The Hon'ble High Court stayed all coercive steps on the condition that the appellant shall deposit Rs.5 lakhs with the respondent which amount is required to be adjusted in the 7(O) pre-deposit when the appeal is filed before the Appellate Tribunal. The 2<sup>nd</sup> respondent, Assistant Commissioner issued an order dt. 22/07/2009 directing the Kodimatha unit of the appellant unit to remit Rs.51,615/- being contribution in respect of 10 non-enrolled employees.

The appellant complied with the order. The 1<sup>st</sup> respondent thereafter issued a notice with regard to non-enrolled employees of Kodimatha and Kanjirappally unit from 09/2004 to 07/2009 and 05/2007 to 08/2009 respectively. The 1<sup>st</sup> respondent did not take into account the earlier order issued by the 2<sup>nd</sup> respondent, a copy of which is produced and marked as Annexure 1. The 1<sup>st</sup> respondent initiated action to assess dues in respect of excluded employees and apprentice. A true copy of the appointment order issued to one apprentice is produced and marked as Annexure 2. The 1<sup>st</sup> respondent during the course of enquiry found that there is some truth in the stand taken by the appellant and therefore directed an Enforcement Officer to conduct a further investigation and he submitted report dt. 16/11/2012 and 15/01/2013. A true copy of the notice dt. 31/12/2012 issued by the 1<sup>st</sup> respondent is produced and marked as Annexure 3.

3. The respondent filed counter denying the above allegations. The respondent covered branches of appellant establishment at Kodimatha and Kottayam w.e.f 01/05/2005. The Enforcement Officer who conducted an inspection of the appellant establishment reported that there is non-enrollment in Kodimatha and Kajirappally units from 09/2004 to 07/2009 and 05/2007 to 08/2009 respectively. The respondent

authority initiated an enquiry and the appellant attended the hearing through their authorized representative. Another Enforcement Officer was deputed to furnish a detailed report on the basis of the contentions raised by the appellant. The Enforcement Officer filed report dt.16/11/2012. Notice for further hearing was issued to the appellant on 15/01/2013. The appellant sent a letter seeking adjournment of hearing. The hearing was adjourned to 29/01/2013 and the appellant acknowledged the receipt of the notice on 28/01/2013. The appellant sent a letter, fax and mail to the 1<sup>st</sup> respondent stating that the above notice was received by the appellant only on 29/01/2013 at 3.40 pm. The enquiry was started in the year 2009 and many opportunities were given to the appellant. It is correct that the 2<sup>nd</sup> respondent initiated an enquiry U/s 7A of the Act against the non- enrolled employees for the period from 08/2008 to 05/2009 in respect of 10 employees and the appellant remitted the same. It was subsequently noticed that the appellant defaulted in enrollment of employees working in Kodimatha and Kanjirappally unit for the period 09/2004 to 07/2009 and 05/2007 to 08/2009 respectively. After providing many opportunities the respondent issued the impugned order. The dues in respect of apprentices/ trainees in Kanjirappally unit

was not assessed as the appellant produced Certified Standing Order for apprentice/trainees whereas the non-enrolled employees in Kodimatha unit were only probationers. Hence their wages were taken into account for assessment of dues. A sample copy of the appointment order in respect of Mr. Aneesh Chandran, one among from the 31 employees in Kodimatha unit is produced and marked as Annexure R4. On a comparison of Annexure 11 and Annexure R4 it can be seen that Annexure 11 appointment order is as apprentice trainee where as Annexure R4 is appointment of a probationer. On the request of the appellant the enquiry was adjourned to 29/01/2013 and the same was informed to the appellant vide notice dt. 15/01/2013. The appellant received notice on 28/01/2013 in his Kozhikode and Kottayam address. Copy of the notice dt.15/01/2013 and postal acknowledgement in token of receipt of the notice are produced as Annexure R1,R2,R3 respectively. The impugned order is not an ex-parte order. The appellant was given so many opportunities between 2009 & 2013 before the impugned order was issued. Only on the last date of posting the appellant did not attend the hearing. The impugned order was issued on the basis of the documents called for and produced by the appellant and there is no violation of the

principles of natural justice. The existence of Annexure 1 order was considered by the 1<sup>st</sup> respondent. The impugned order is issued after verifying the appointment letters in respect of Kanjirappally outlet wherein 37 employees were appointed as apprentices for acquiring technical knowledge and paid stipend as per the standing orders. Hence those 37 apprentices were excluded from the assessment. In respect of 31 employees at Kodimatha unit they are all appointed as probationers and hence they are not entitled for any exclusion. Further the payments made to the employees at Kodimatha are shown as salary and the appointment letters also indicate that they are appointed as probationers. Annexure 11 submitted by the appellant is related to an apprentice engaged in Kanjirapally Unit and not in Kodimatha unit. Annexure R4 will clearly show that the 31 non-enrolled employees at Kodimatha unit are engaged as probationers and not apprentices as per the standing orders.

4. The main issue involved in this appeal is with regard to the provident fund contribution assessed by the first respondent in respect of non-enrolled employees at Kanjirapally and Kodimatha units of the appellant. According to the learned Counsel for the appellant there was an earlier order issued by the 2<sup>nd</sup> respondent U/s 7A in respect of non-

enrollment of 10 employees at Kodimatha unit. The said order was not considered by the 1<sup>st</sup> respondent while issuing the impugned order. On a verification of Annexure A1 it is seen that the said order is issued in respect of 10 non-enrolled employees at Kodimatha unit for the period from 08/2008 to 05/2009. In the impugned order the assessment is made in respect of Kodimatha from 09/2004 to 07/2009. According to the learned Counsel for the appellant it can be seen from the list of employees that the assessment is made in respect of different set of employees and there is no overlap with regard to the assessment for Kodimatha unit. Further it is seen that since the appellant raised certain doubts regarding the report submitted by the Squad of Enforcement Officers, the respondent authority deputed another Enforcement Officer to verify the records of the appellant establishment. The Enforcement Officer inspected the books of accounts of the appellant establishment and submitted a report in respect of Kanjirappally unit for the period 05/2007 to 08/2009 along with fresh employee wise statement outstanding dues as on 19/10/2012 and Kodimatha for the period from 09/2004 to 07/2009 on 16/11/2012. Copies of these reports along with fresh statement of dues were provided to the authorized representative of the appellant on 19/10/2012 and 19/11/2012.



The appellant did not file any objection to the reports of the Enforcement Officer as the same was based on the records maintained by the appellant establishment. The case of the appellant before the respondent authority was that there were total of 96 employees working at Kanjirappally unit out of which 21 were enrolled to the fund. 24 employees are excluded and 37 are apprentices. They admitted that 14 employees are required to be enrolled. According to the appellant there were 89 employees employed at Kodimatha outlet out of which 38 are enrolled. 14 employees are excluded and 20 are apprentices and 17 are not enrolled who are required to be enroll the fund. Some of the contract employees are also not enrolled to provident fund. The impugned order elaborately provides the details of documents produced by the appellant before the 7A authority. After verifying the records the respondent authority found that the 37 persons engaged at Kanjirappally outlet are apprentices appointed under Standing Orders and they were being paid only stipend. Accordingly all the 37 persons were excluded from the assessment by the respondent authority. With regard to the 31 employees engaged at Kodimatha outlet the respondent authority examined all the appointment orders and found that they were appointed as probationers and they were

paid wages as per books of accounts maintained by the appellant. As per the Standing Orders a probationer is a workman who is provisionally employed to fill a permanent vacancy post and has not completed his probationary period as stipulated in the appointment letter. Hence it is clear that the 31 employees who are appointed as probationers will not get the exclusion as per Sec 2(f) of the Act. It is also seen that the appellant produced the service records in respect of some employees who were claimed to be excluded employees since they were drawing more than Rs.6500/- as salary, the respondent authority after verifying the records produced by the appellant in the enquiry concluded that the records now produced by the appellant are incomplete documents specifically created by the appellant for the purpose of enquiry. Hence the claim of the appellant that 24 employees at Kanjirappally outlet and 14 employees at Kodimatha outlet are excluded was not accepted by the respondent authority. The appellant failed to produce any document in this appeal to substantiate their claim that these employees were really excluded employees. The respondent authority also found that in the wage registers produced by the appellant in the enquiry the names of 13 employees in Kanjirapally outlet and names of 83 employees of Kodimatha unit were missing. Hence the

respondent authority concluded that the wage registers produced in the enquiry cannot be relied upon to decide the question of exclusion of employees. It can be seen that the respondent authority in the impugned order has answered all the points raised by the appellant during the course of Section 7A enquiry. The appellant failed to produce any further documents in the proceedings to disbelieve the finding of the respondent authority. Hence I don't find any reason to interfere with the impugned order.

5. Considering all the facts, circumstances, pleading 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