सत्यमेव जयते

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

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

(Monday the 08th day of February, 2021)

Appeal No.136/2018

Appellant : M/s. Kerala Institute of Local Administration, Mulankunnathukavu Trichur – 680 581

By Adv. C.B.Mukundan

Respondent : The Assistant PF Commissioner EPFO, Sub -Regional Office Kaloor, Kochi- 682017

By Adv. Thomas Mathew Nellimmoottil

This case coming up for hearing on 04/01/2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 08/02/2021.

O R D E R

Present appeal is filed from order No. KR/KC /15911/ Enf - IV (4) 2017/12701 dt. 18/01/2018 assessing dues on non- enrolled employees U/s 7A of EPF & MP Act (hereinafter referred to as 'the Act') for the period 09/2014 to 11/2016. Total dues assessed is Rs. 19,92,957/-.

2. The appellant is an autonomous body under Government of Kerala. The appellant was established with the main objective of imparting training to various levels of officers and members of local self government bodies. An Enforcement Officer of the respondent conducted inspection of the records of the appellant establishment on 27/10/2016. As part of the inspection the Enforcement Officer verified the records for 2nd and 3rd respondents who are two independent agencies, ie., M/s Vijayasree Kudmbasree unit and M/s. All Kerala Ex-Servicemen Charitable Trust. The 2nd respondent is running a canteen in the premises of the appellant establishment and 3rd respondent is providing security guards to the appellant establishment. The appellant allowed the 2nd respondent to run a canteen in the premises. The appellant has no direct or indirect control over the affairs of the canteen as well as over its employees. There is no employer employee relationship between the appellant and employees engaged by that agency. The 3rd respondent is an independent security agency. The appellant is only hiring some of the personnel from that agency. Appellant received a notice from the respondent dt. 10/2/2017. The appellant

appeared before the 1st respondent and submitted the above facts during the course of 7A enquiry. The appellant also requested the respondent to summon 2nd & 3rd opposite parties for arriving at a just and reasonable conclusion. Without considering the above request the respondent issued the impugned order, the appellant has not even furnished copies of inspection report on the basis of which the assessment was made. The appellant was also not allow to examine the inspectors who conducted the inspection. The appellant ought to have summoned the 2nd and 3rd respondents in the enquiry for a fair assessment of the situation.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provision of the Act w.e.f 1/10/1993. The appellant failed to enroll 13 security staff and 16 canteen employees and remit their provident fund contribution for the period from 9/2014 to 11/2016. Hence an enquiry U/s 7A of the Act was initiated. An Enforcement Officer of the respondent visited the establishment on 27/10/2016 and reported that the employer defaulted in provident fund dues in respect of 13 security staff and 16 canteen employees. During the

course of 7A, the representative appearing on behalf of the appellant submitted that all the canteen and security employees were enrolled to the fund with effect from 12/2016. And also submitted the details of enrolled employees. The representative of the appellant also produced the details of the agreement between the security agency and also the Kudumbasree unit. The representative of the appellant also submitted that the security agency is independently covered under the provisions of the Act w.e.f 1/10/2011.On the basis of the details furnished by the representative of the appellant, the dues in respect of the canteen employees as well as the security agency employees were assessed up to 11/2016. It is also seen that those employees were enrolled to the provident fund w.e.f 12/2016 in the code number of the appellant establishment. The Hon'ble High Court of Kerala in ***Dr. AV Joseph Vs Assistant PF Commissioner and Another,*** 2010 LLR 75 (KHC) held that Sec 2(f) contains 2 substantial parts and that the expression " in connection with the work of the establishment", includes a wide variety of workmen who may not be employed in the establishment but may be engaged in connection with the work of an establishment

through a contractor when such work is incidental and ancillary or has relevant or link to the object of the establishment and thus covers workers of canteen run by a contractor. In ***Enfield India Ltd Vs RPFC,*** 2000 (1) LLJ 1612 the Hon'ble High Court of Madras held that persons employed by the contractor exclusively doing the work of principal employer are employees of the principal employer. Similarly *in* ***Indian institute of Technology Vs RPFC*** 1980 (40) FLR 123 the Hon'ble High Court of Madras held that where an education institution runs a mess as subsidiary or incidental to its primary activity of imparting education, then the mess is not an independent establishment. In ***Gangadhar Bajpai and others Vs Indian Oil Corporation,*** 2009(3) CLR 936 the Hon'ble High Court of Delhi held that security guards working on the premises of the Corporation are employees U/s 2(f) of the Act and the Indian Oil Corporation as principal employer is liable to deposit the provident fund contribution of the security guards.

4. The appellant establishment is a training institute under Government of Kerala. The institute is engaging a Security Agencies for providing security

personnel to the appellant establishment and they are providing 13 security guards. The canteen in the premises of the appellant establishment is run by another agency called Vijayasree Kudumbasree Unit and they are engaging 16 employees for running the canteen. The only issue to be decided in this appeal is whether the employees engaged by these contractors can be treated as employees of the principal employer. As per Sec 2 (f) of the Act " Employee means any person who is employed for wages in any kind of work manual or otherwise in or in connection with the work of an establishment and who get its wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with the work of the establishment. From the above resolution of an employee it is clear that any person employed by or through a contractor or in connection with establishment will be an employee of the appellant establishment. In this case it is clear that the appellant is engaging two contractors in connection with the work of the appellant establishment and therefore the employees engaged by them can only be treated as employees of the appellant establishment. Further as per Sec 6 of the Act

" the contribution which shall be paid to fund shall be 12 % of the basic wages, DA and retaining allowance if any for the time being payable to each of the employees whether employed by him directly or ***by or through a contractor***.... ". It is clear from the above provisions that the appellant is liable to pay contribution in respect of the contract employees also. Sec 8A of the Act also specifies that a principal employer is liable to pay contribution in respect of an employee employed by or through a contractor and the said amount may be recovered by such employer from the contractor either by deduction from any amount payable to the contractor under any contract or as debt payable by the contractor. The Employees Provident Fund Scheme provisions also support the case of the respondent that the principal employer is responsible for deducting and paying contribution in respect of the contract employees. As per Para 30 (1), the employer shall pay both the contributions on behalf of the member employed by him directly *or* ***by or through a contractor*** . As per Para 30 (3), it shall be the responsibility of the principal employer to pay both the contributions payable by himself in respect of the employees directly employed by him and also in respect

of the employees employed by or through a contractor. From the above legal provisions it is very clear that the appellant cannot escape the liability of paying contribution in respect of the contract employees engaged by them.

5. The learned Counsel for the appellant raised 2 technical issues : One is with regard to non supply of the copy of the report of the Enforcement Officer who conducted inspection in the premises of the appellant establishment. The 2nd issue is with regard to non issue of notice to the contractors before assessing the dues. These are issue which are vital in assessment of dues U/s 7A of the Act. In this particular case, it is seen that the appellant had already enrolled the contract employees under their code number w.e.f 12/2016. Hence issuing notice to the contractors will only meet the technical requirement and will not improve the case any further. With regard to the allegation of the learned Counsel that copy of the report of the Enforcement Officer is not given, it is pointed out that the assessment is made on the basis of the information furnished by the appellant, during the course of the enquiry and the report of the Enforcement Officer is only a supplementary evidence in the proceeds. Hence in the

special circumstance of this case it is felt that remanding the case to the respondent to re-assess the dues will only delay the process of recovery and is not going to improve the contents of the order. However it is clarified that the appeal is at liberty to recover the dues from the contractors as discussed in the above Paras.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer