



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

सत्यमेव जयते

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

(Friday the 12th February of , 2021)

**Appeal No.293/2018**

Appellant

M/s. Arch Bishop Athipetti  
Jubilee Memmorial Hospital  
North Paravoor,  
Ernakulam- 683513

By Adv. C. B. Mukundan

Respondent

The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Kaloor  
Kochi – 682017

By Adv.Thomas Mathew Nellimmottil

This case coming up for hearing on 12.01.2021 and this Tribunal-cum-Labour Court passed the following on 12.02.2021.

**ORDER**

Present appeal is filed from order no. KR / KCH / 3421/Enf-6(2)/ 2018 / 2712 dt. 4/6/2018 assessing the dues in respect of non-enrolled employees U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the

period from 5/1999 to 12/2016. The total dues assessed is Rs. 12,07,349/-.

2. The appellant is a Charitable Hospital started in the year 1953. The hospital was started with financial help from the local residence and also the church. However the hospital started incurring financial loss from 1997 and the hospital ceased to function from 31/1/1998. After meeting all the statutory requirements the appellant establishments was finally closed. The appellant establishment re-started its operation from 15/2/2014 under a new management. The appellant was regular in compliance till its closure on 31/1/1998. An Enforcement Officer of the respondent inspected the appellant establishment on 02/01/2017 and directed the appellant to produce records from 4/2010. All the available records were produced. The Enforcement Officer issued an inspection note stating that the appellant is liable to pay an amount of Rs. 12,07,349/- towards PF dues. The respondent initiated an enquiry U/s 7A of the Act on the basis of the report of the Enforcement Officer. On 15/2/2017, the appellant produced the documents to prove that the appellant establishment was lying closed from 1/2/1998 to 15/2/2014. A true copy of the list of

documents is produced and marked as Annexure A3. The appellant also filed Annexure 4 letter explaining the circumstances. From the above documents it can be seen that the hospital ceased functioning from 31/1/1998. Without considering any of the evidence and written submissions, the respondent issued the impugned order. The claim of the Enforcement Officer that the Director of the institution was present at time of preparing the spot mahazer and also the reported statement of the Director that the hospital was closed in 2001, are not correct. The statement of the Enforcement Officer that the four lady staff were working continuously is partially correct as they were working till 31/1/1998. Appellant has not engaged any employees from 1/2/1998 to 15/2/2014 as the hospital was lying closed. The four names shown in the report of the Enforcement Officer as non enrolled employees from May 1999 to Feb 2014 were not employed by the appellant. The appellant had not paid any wages and maintained any muster roll or wage register during the period of closure. A true copy of affidavit filed by the staff member of the appellant who signed the mahazer is produced and marked as Annexure A5. The respondent has relied only on the

report of the Enforcement Officer and not on any of the documents produced by the appellant in the enquiry to arrive at a conclusion that the appellant establishment was working from 1/2/1998 to 15/2/2014 and the four lady employees were working in the appellant establishment during that period.

3. The respondent filed counter denying the above allegations. An Enforcement Officer of the respondent inspected the appellant establishment on 2/1/2017 and submitted a report dt. 20/1/2017. According to the report the Director and the Accountant were present during the inspection. The Director of the appellant establishment stated that the appellant establishment was closed in 2001 and re- open during 2014-15. The appellant also stated that records prior to 2014-15 were not available. The Enforcement Officer prepared a spot mahazer of the non-enrolled employees available on the day of the visit and the list was countersigned by a representative of the appellant. The Enforcement Officer reported non- enrollment of 18 employees including contract employees. The appellant failed to produce any documents other than some cash vouchers from 3/2014 to 10/2016. The Enforcement Officer

also reported that 4 employees claimed that they were working in the appellant establishment for quite long periods. Since the appellant failed to produce any documents prior to 3/2014. The Enforcement Officer prepared the dues report on the basis of the information furnished by the employees. The respondent initiated an enquiry U/s 7A of the Act. In the enquiry the advocate appearing for the appellant requested for examining the four non-enrolled employees in the enquiry. On 25/4/2018 all the 4 non-enrolled employees were examine and they submitted that they have been working in the establishment since their date of joining as per the statement submitted by them. They also submitted that provident fund had been deducted from their salary and salary was paid regularly. Siji Joseph and Gracy George two of the non-enrolled employees are still working in the establishment and Smt. Rejitha left on 15/1/2017 and Smt. Sabeth John on 9/3/2018. The witness were examined in the presence the Advocate representing the appellant. The Enforcement Officer also reported non-enrollment of other eligible employees for the period from 3/2014 to 12/2016. The total number of non- eligible employees comes to 50. No dispute

regarding the non-enrolled employees was raised by the appellant before the respondent authority. Hence it is clear that there were 4 non-enrolled employees for the period from 5/1999 to 2/2014 and 46 non-enrolled employees from 4/2014 to 12/2016. All the 4 non-enrolled employees from 5/1999 to 2/2014 gave evidence before the respondent in the enquiry that they were working in the appellant establishment during the relevant period and hospital was not closed fully. Further one among the four non-enrolled employees Smt. Siji Joseph produced experience certificate issued by Director of the hospital which showed that Smt. Siji Joseph was working with appellant establishment from 1/6/2002 to 31/12/2007. Further in the statements given by other non-enrolled employees, it was clearly stated that all of them were working in the appellant establishment from May 1999. The Division Bench of the Hon'ble High Court of Andhra Pradesh in **J&J Dechane Vs RPFC** , 1960 (1) LLJ 765 held that an Enforcement Officer U/s 13 of the Act when acts within the powers conferred under the Act to implement the provision of the Act and the schemes framed thereunder, any measure taken by the Enforcement Officer to implement the EPF Act would not ipso facto be

unwarranted or arbitrary. The Enforcement Officer has also produced a letter dt. 6/1/2017 submitted by the Director of the appellant establishment wherein the Director has stated that the appellant establishment was under closure during 2001. The letter is produced and marked as Exbt 1. The 4 employees, who were non-enrolled, also signed in the spot mahazer and also gave evidence before the respondent authority U/s 7A of the Act. In the statement given by the non-enrolled employees it was stated that Smt . Siji Joseph joined the appellant establishment on 1/6/2002 and is still working. Smt.Rejitha E.P jointed the appellant establishment on 4/5/2005 and left employment on 15/1/2017. Gracy George joined the appellant establishment on 5/1999 and still working. Smt. Sabeth John joined the appellant establishment on 25/5/1999 and left the employment on 9/3/2018. The impugned order is issued on the basis of the report of the Enforcement Officer, the evidence collected during investigation and also the oral evidence recorded during the course of the 7A enquiry. A copy of the report of the Enforcement Officer was also given to the appellant along with a calculation sheet of contribution in respect of non-enrolled employees for the

appellant to offer his comments. The appellant failed to file any comments on the report of the Enforcement Officer as well as the calculation of the employees.

4. According to the learned Counsel for the appellant establishment remain closed for the period from May 1999 to February 2014 and no employees were working with the appellant establishment during that period. Though no documents were produced in the enquiry, the list of documents produced and marked as Annexure A3 and the letter given by the Director takes a stand that the appellant establishment was closed from May 1999 till 15/2/2014 when the hospital reopened under a new management. Hence the assessment of dues will have to be viewed from two angles. First is with regard to the claim of 4 employees that they were working with the appellant establishment for the period from May 1999 to February 2014, when the appellant claims that the establishment remained closed. The second part of the assessment pertains to the non-enrolled employees for the period from March 2014 to December 2016. As per the letter dt. 6/3/2018 given by the Director of the appellant establishment to the respondent, the appellant has no dispute regarding the enrollment of



non-enrolled employees from March 2014 to December 2016 and the appellant is ready and willing to remit the contribution. Hence the main dispute is with regard to non-enrollment of four employees from May 1999 to Feb 2014. It is seen that these four employees were present during the inspection of the appellant establishment by the Enforcement Officer of the respondent and they signed the spot mahazer prepared by the Enforcement Officer. These 4 employees were produced as witness by the management before the authority U/s 7A and they gave statements, according to which they were working in the appellant establishment between May 1999 and 15/2/2014. Smt. Siji Joseph joined the service of the appellant establishment on 1/6/2002 and is still working and Smt. Gracy George who joined the appellant establishment on May 1999 is still working with the appellant establishment. Smt. Siji Joseph also produced an experience certificate issued by the appellant hospital stating that she was working with the appellant establishment for the period from 1/6/2002 to 31/12/2007, when the appellant claims that the appellant establishment remained closed. The report of the Enforcement Officer, the spot mahazer prepared by the

Enforcement Officer, letter dt. 6/1/2017 of the Director of the appellant, the depositions of the four non-enrolled employees before the 7A authority and the certificate issued by the Director of the appellant that Smt. Siji Joseph worked in the establishment from 1/6/2002 to 31/2/2007 would adequately support the case of the respondent that the appellant establishment was not fully closed and was functional between May 1999 and 15/2/2014. When the respondent succeeded in proving their claim, it was up to the appellant to produce records to prove that the appellant establishments were fully closed and no employees were working with the appellant establishment during the relevant period of time. The list of documents produced by the appellant will not in any way disprove the claim of 4 employees that they were working with the appellant establishment from 5/1999 to 15/2/2014. Having failed to produce the documents before the 7A authority the appellant cannot come up in appeal and plead that the 4 non-enrolled employees were not working with the appellant during the relevant point of time. It is also seen from the impugned order that the appellant was given adequate opportunity to substantiate their contentions. The appellant

did not avail the opportunity to prove that the 4 employees were not working with the appellant establishment during the relevant point of time, particularly when the employees prima facie proved that they were working with the appellant establishment during the relevant point of time. It is also relevant that the appellant did not raise any objection regarding the report of the Enforcement Officer, though the appellant was given an opportunity to file their objection if any by the Sec 7A authority. The oral evidence of the employees before the Sec 7A authority also could not be discredited by the appellant.

5. Considering all the facts, evidence pleadings and arguments, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer