



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

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

(Monday the 13th day of December, 2021)

APPEAL No.96/2018

Appellant M/S Veekshanam Printing &
Publishing Company Limited,
Veekshanam Road
Kochi -682018

By Adv. C.S. Ajith Prakash

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

By Adv. S. Prasanth

This case coming up for final hearing on
20/09/2021 and this Tribunal-cum-Labour Court on
13/12/2021 passed the following:

ORDER

Present appeal is filed from order No. KR/
KCH/4837/Enf ~5 (1)/ 2017-18/13523 dt. 06/02/2018
assessing dues U/s 7C of EPF & MP Act, 1952 (hereinafter

referred to as 'the Act'.) on non-enrolled employees for the period from 11/2005 to 8/2012. The total dues assessed is Rs. 8,00,601/-.

2. The appellant is a company registered under the Companies' Act. Appellant is engaged in the business of publication of a malayalam daily. The appellant establishment is covered under the provisions of the Act. Due to financial difficulties the appellant establishment was closed on 04/09/1998. Thereafter the appellant establishment started functioning w.e.f 14/11/2005. The respondent initiated proceedings under Sec 7C of the Act in respect of two non-enrolled employees, Shri.TV Puram Raju and Shri. T.D George. Both these persons were engaged on honorarium basis to help the newspaper with its functioning. As such these persons were not employees as defined under the Act. The records of these two persons are also not available with the appellant. They are no longer with the appellant establishment. An Enforcement Officer of the respondent's office visited the appellant establishment and

furnished an inspection report dt. 07/04/2016. Copy of the inspection report dt. 07/04/2016 was not served on the appellant. During the course of hearing, the representative of the appellant pointed out that the demands raised by these employees are not legal as both of them were working on honorary basis. Ignoring the contentions of the appellant, the respondent proceeded to assess the dues in respect of these two employees on the basis of the inspection report. The inspection report also does not contain any details regarding the employees. The impugned order is non-speaking and same is passed in a mechanical manner. The records and other details in respect of the two non-enrolled employees are not available with the appellant. The appellant establishment is currently running at a loss of approximately 75 lakhs as per its audited balance sheet.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f 08/02/1979. An Enforcement Officer of the respondent's office who is the Inspector

appointed U/s 13 of the Act reported that the appellant establishment has not enrolled all the eligible employees under EPF Scheme. The Enforcement Officer submitted a list of two employees who were engaged by the establishment in connection with the work of the establishment from the year 2005 onwards and drawing salary regularly, and also were not enrolled to provident fund membership. The two employees are Shri.T.V Puram Raju who joined the appellant establishment on 05/08/2005 on a monthly salary of Rs.22000/~ and Shri. T.D George, who joined the service of the appellant 22/10/2005 and his monthly salary was Rs.16500/~. Accordingly the inspection report along with a summary of calculation of the amount of dues was send to the appellant establishment. The appellant was directed to comply within 7 days time. The track record of the appellant establishment was not satisfactory and therefore the respondent has taken Sec 7A action for assessment of dues on various occasions. Since the appellant failed to comply, the respondent issued notice U/s 7A of the Act, fixing the

enquiry on 02/08/2016. Nobody attended the enquiry on 02/08/2016, 26/10/2016, & 03/04/2017. On 21/06/2017 an authorized representative attended the hearing, and requested for adjournment. The enquiry was further adjourned to 26/07/2017, 21/09/2017, 19/10/2017, 21/11/2017 and finally to 20/12/2017. Though the representative of the appellant attended the hearing, he failed to produce any documents or filed any written statement. The Enforcement Officer has already served a copy of inspection report dt. 07/04/2016 and the appellant did not file any objection to the report of the Enforcement Officer. Hence the enquiry was concluded and the impugned order was issued. Government of India vide notification dt. 04/12/1956 amended EPF Scheme by inserting Chapter 10 in the Employees PF Scheme 1952 incorporating therein Para 80 providing Special Provisions in the case of newspaper establishments and newspaper employees. As per this, EPF Scheme is made applicable to newspaper establishments as defined in Sec 2 of Working

journalist (condition of service and miscellaneous service) Act 1955. As per Para 80(2) the income ceiling has not been applied to the employees of newspaper establishments. In the result the newspaper employees, irrespective of their pay are entitled to the benefit of the Scheme. Newspaper employees defined U/s 2(f) of the Act subsumes in its definition any individual or person engaged in or in connection with the newspaper establishment and who gets its wages directly or indirectly from the employer. Para 80 (2) and 26 of EPF Scheme mandates that every newspaper employee other than the excluded employee is entitled and required to become a member of the fund from the date of their eligibility. The two employees, employed by the appellant, in connection with the work of the appellant establishment is not enrolled to the fund. The report of the Enforcement Officer was provided to the appellant by the Enforcement Officer himself for compliance. The appellant did not raise any objection regarding their employment or wages reported by the Enforcement Officer.

4. The only issue involved in this appeal is with regard to the eligibility of two employees employed by the appellant but not enrolled to the fund. On the basis of a complaint, the respondent deputed an Enforcement Officer to investigate. The Enforcement Officer found that two employees were not enrolled to the fund from their date of eligibility. Accordingly he prepared a report and submitted the same to the appellant establishment with a direction to comply with a inspection observations. The appellant establishment did not comply. The respondent authority therefore initiated an enquiry U/s 7A of the Act. A representative of the appellant attended the hearing. The enquiry was adjourned on 9 occasions, on the request of the appellant. The enquiry started on 02/08/2016 and concluded on 20/12/2017. The representative who attended the hearing never raised any dispute regarding the report of enquiry by the Enforcement Officer nor produced any records as required in the summons. The respondent authority therefore issued the

impugned order in terms of the report of the Enforcement Officer.

5. In this appeal, the learned Counsel for the appellant raised 3 issues. The 1st issue is that the report of the Enforcement Officer was not provided to the appellant. According to the learned Counsel for the respondent a copy of the report of the Enforcement Officer was provided to the appellant by the Enforcement Officer himself with a direction to enroll the 2 employees. As already pointed out the enquiry was posted on 9 occasions and representative of the appellant also attended the hearing. At no point of time, during the time of the enquiry, the appellant raised the question regarding non-receipt of the report of the Enforcement Officer. Hence there is no reason to believe the contention of the respondent that the report was provided to the appellant by the Enforcement Officer with a direction for compliance. Hence it is not possible to accept the pleadings of the learned Counsel for the appellant that they never received the copy of the report of the Enforcement Officer.

Further it is seen that the appellant has taken a contradictory stand in the appeal memo itself. In Para 6 (d) of the appeal memorandum it is pleaded that “ The inspection report also does not contain any details of the case.” The second ground pleaded by the appellant is with regard to the fact that the 2 non-enrolled employees were working on honorary basis and they were not regular employees of the appellant establishment. It is a fact that the appellant establishment was closed and re-started its functioning from 14/11/2005. It is seen from the report of the Enforcement Officer that Shri. TV Puram Raju joined the appellant establishment on 05/08/2005 and Shri.T.D. George on 22/10/2005. It is fairly conceded by the learned Counsel for the appellant that these 2 employees were engaged on honorary basis to help the newspaper with its functioning which was closed for a long time. As per definition of an employee, any person who is engaged in or in connection with the work of the establishment is an employee. The learned Counsel for the respondent also argued that as per Para 80 providing special

provisions with regard to newspaper establishments and newspaper employees and Para 26 of EPF Scheme, there is no income sealing for newspaper employee to be enrolled to provident fund benefits. Accordingly these 2 employees are required to be enrolled to provident fund membership from their date of eligibility. The appellant failed to produce any document in spite of the fact that they were provided more than adequate opportunity to produce the records and substantiate their claim. In the event of non co-operation by an employer, the Act provides the mode of assessing the dues. As per Sec 7A (3A)

“ Where the employer, employee or any other person required to attend the enquiry under sub Sec (1) fails to attend such enquiry without any valid reason or **fails to produce any document** or to file any report or return when called upon to do so, the officer conducting the enquiry may decide the applicability of the Act or **determine the amount due from any employer,** as the case may

be, on the basis of the evidence adduced during such enquiry and other document available on record ”.

When such an order is passed the employer has a right to file a review application under Sec 7A (4) within 3 months from the date of communication of such order. In this particular case, it is seen that the appellant failed to produce any document called for by the respondent and therefore the respondent authority issued the impugned order on the basis of the report of the Enforcement Officer. The statutory remedy available to the appellant in such situation was to file a review before the respondent authority within 3 months from the date of communication of such order. It is also relevant in this case that the appellant failed to produce any documents with regard to these employees in this appeal also. It is seen from the impugned order that these employees worked till 08/2012 with the appellant establishment and the proceedings U/s 7A was initiated on 29/06/2016. Hence the claim of the appellant that the records and

documents pertaining to the engagement of these 2 employees is not available with the appellant establishment cannot be accepted.

6. The third issue raised by the learned Counsel for the appellant is that the impugned order is a non-speaking order. As already pointed out the appellant never disputed their liability before the respondent authority and filed no objection regarding the report of the Enforcement Officer . Hence it is sufficiently clear that the appellant had no serious objection regarding the report of the Enforcement Officer and the appellant did not produce any documents before the respondent authority to disprove the report of the Enforcement Officer or atleast to prove that the two non-enrolled employees were not engaged in the normal course of business of the appellant establishment as pleaded in this appeal. The Hon'ble High Court P&H in **T.C.M Woollen Mills Vs Regional PF Commissioner**, 1980(57) FJR 222 held that

“ Unless the objections and factual matters are pressed before the Commissioner, he cannot

imagine the same and adjudicate thereon. When the objections raised are vague and devoid of necessary particulars, a finding that a plea is untenable would be sufficient compliance with the requirement of a reasoned order.”

A similar stand was taken by the Hon'ble High Court of Bombay in **Super Processors Vs Union of India** , 1994 (III) LLJ 564 (Bom), wherein the Hon'ble Court held that “ Since the petitioner have chosen not to file reply to the show cause notice and not to lead evidence in support thereof, there was nothing which was required to be adjudicated upon. Hence the impugned order cannot be assailed on the ground that it is not a speaking order.” In this case, though the appellant was afforded nine opportunities by the respondent he failed to file any written statement of objection or evidence before him to substantiate their claim. In such circumstances, it is not possible to argue that the

impugned order is a non-speaking order calling for any interference by this Tribunal.

7. 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