



सत्यमेव जयते

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

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

(Tuesday the 26th day of October, 2021)

APPEAL No.01/2019

Appellant : M/s.Jyothi Theatre
Nilambur
Nilambur P.O.
Malappuram – 679329

By Adv. P. Ramakrishnan

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Eranhipalam
Kozhikode – 673006

By Adv.(Dr.)Abraham P. Meachinkara

This case coming up for hearing on 12.07.2021 and this Industrial Tribunal-cum-Labour Court on 26.10.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KK/11063/ENF-3(4)/2018/2279 dt.30.11.2018 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 01/2016 to 06/2018. The total dues assessed is Rs.74,580/-.

2. The appellant is the proprietor of the appellant establishment. The appellant closed down the establishment after terminating the service of its employees during 12/2012. Thereafter the appellant establishment was given on lease to one Sri.P.S.Natarajan. A copy of the lease deed dt.18.02.2012 is produced and marked as Annexure A1. Sri.P.S.Natarajan managed the theatre engaging his own workers and paying their wages. Sri.P.S.Natarajan has the ultimate control over the affairs of the establishment and therefore the employer as defined in Sec 2(e) of the Act in respect of employees engaged in the establishment for the period from 18.02.2012-23.12.2017. After terminating the lease of Sri.P.S.Natarajan on 23.12.2017, the running of the theatre was given on lease to one Abdul Rasak T.T for a period of 6 months and thereafter the appellant had run the theatre for a period from 01.06.2018-25.11.2018. An Enforcement Officer of the respondent authority inspected the appellant establishment on 23.07.2008 and submitted a report according to which an amount of Rs.74,580/- was payable in arrears. A true copy of the said inspection report is produced and marked as Annexure A2. Thereafter the appellant received a notice dt.24.09.2018 issued by the respondent authority directing the appellant to appear for an enquiry on 25.10.2018. The enquiry was adjourned to 27.11.2018 on the request of the appellant. On 27.11.2018 the appellant appeared in person and filed a written objection before the

respondent authority. A true copy of the objection is produced and marked as Annexure A3. Ignoring the contentions of the appellant, the respondent authority assessed the dues for the period from 01.02.2016-06/2018. A copy of the impugned order dt.30.11.2018 is produced and marked as Annexure A4. The respondent ought to have found that the appellant was not the employer as defined U/s 2(e) of the Act during the period from 01/2016 to 06/2018 and therefore the appellant is not liable to remit contribution in respect of the said period. The respondent ought to have noticed that the ultimate control of affairs of the establishment is the relevant factor and not the ownership and licence. The report of the Enforcement Officer did not disclose how the amount was arrived at.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act. The appellant establishment failed to pay provident fund contributions as proved under Para 30 of the EPF Scheme from the wage month 01/2016 to 06/2018. Accordingly the appellant was summoned U/s 7A vide notice dt.24.09.2018 fixing the enquiry on 25.10.2018. A representative of the appellant attended the hearing and sought adjournment. The enquiry was adjourned to 27.11.2018 and on 27.11.2018 the appellant attended and filed a written objection. The contention of the appellant is that he has given the theatre on lease to another

person but he has not changed the license. The Enforcement Officer submitted his report on the basis of the records maintained by the appellant establishment. Accordingly the appellant was directed to remit the contributions. Though the appellant contended that the theatre was given on lease during the relevant period it is noticed that the licence continued to be in the name of the appellant and the lease agreement now produced is not registered. The impugned order is issued after affording adequate opportunity to the appellant and therefore there is no violation of natural justice. In **Maharashtra State Co-operative Bank Ltd Vs APFC**, 2009 (10) SCC 123 the Hon'ble Supreme Court held that since the Act is a social welfare legislation intended to protect the interest of weaker section of the society, that is, the workers employed in factories and the establishments, it is imperative of the Courts to give a purposive interpretation to the provisions contained therein keeping in view the directive principles of State policy embodied in Articles 38 and 43 of the Constitution of India.

4. The only issue involved in this appeal is with regard to the liability of the appellant to remit the contribution in respect of the employees engaged during the period when the appellant establishment was given on lease. According to the learned Counsel for the appellant, the appellant establishment was given on lease to one Sri. Sri.P.S.Natarajan for the period from 18.02.2012-

23.12.2017 and to one Abdul Rasak T.T for a further period of 6 months. Therefore the liability to pay provident fund contribution in respect of employees engaged by the lessees will lie with the lessee only. The learned Counsel for the appellant also pleaded that as per the definition of employer U/s 2(e) of the Act, a person who had ultimate control of the affairs of the establishment shall be held responsible to remit the contribution and since Sri.P.S.Natarajan and Sri.Abdul Rasak T.T as lessees were having ultimate control over the affairs of the appellant establishment, the appellant cannot be held responsible for the same. According to the learned Counsel for the respondent the lease agreement alleged to have been made between the appellant and Sri.P.S.Natarajan is not a registered document and therefore the validity of the same cannot be accepted. The learned Counsel for the respondent also argued that during the relevant period, the license of the theatre was in the name of the appellant and therefore he cannot escape the liability under the provisions of the Act.

5. The liability of an employer in case of transfer of the establishment is covered by Sec 17B of the Act. According to Sec 17B

“ Liability in case of transfer of establishment : –

Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in

any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, in respect the period upto the date of such transfer.

Provided that liability of the transferee shall be limited to the value of assets obtained by him by such transfer “.

From the above provisions it is very clear that the appellant cannot escape the liability to remit the contribution in respect of the employees engaged by him in the event of failure by lessee to remit the contribution. Since the liability of the appellant to remit the contribution in respect of the employees engaged in the appellant establishment during the lease period is covered by Sec 17B, the appellant cannot escape the liability to pay contribution when the establishment was given on lease.

Considering the facts, circumstances, pleadings 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