



सत्यमेव जयते

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

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

(Friday the 19th day of March, 2020)

Appeal No.113/2018

(Old No. A/KL-74/2016)

Appellant

M/s. Sakthi Steel Industries
Mavelippady, Koovappady Post
Perumbavoor,
Ernakulam - 683544

By Adv. C.B. Mukundan &
Adv. Binitha C Mukundan

Respondent

The Assistant PF Commissioner
EPFO, Kaloor
Kochi- 682017

By Adv. Sajeev Kumar K Gopal

This case coming up for admission on 07/02/2020
and this Industrial Tribunal-cum-Labour Court on
19/03/2020 passed the following:

ORDER

Present appeal is filed from Order No. KR / KCH
Sakthi Steel Industries/Enf 5(4) 2016/3440 dt.
20/6/2016. Issued U/s 7A of the EPF & MP Act, 1952
(hereinafter referred to as 'the Act') confirming the

coverage of the appellant establishment w.e.f 01/06/2014.

2. The appellant is a proprietary concern manufacturing Saree Stands, TV stands etc. The appellant's father was looking after the affairs of the establishment till 21/08/2015. The employment strength of appellant's establishment had never reached 20 and when employment strength was 10, the appellant establishment brought itself covered under ESI Act. The ordinary strength of employees in the appellant establishment was less than 8. While so an Enforcement Officer of the respondent visited the establishment on 04/07/2014 to investigate the complaint submitted by one Mr. Nissam. The appellant never employed such a person in his unit. The copy of the report of the Enforcement Officer was marked as Annexure A2. The Enforcement Officer who conducted the inspection could see only 4-5 non Keralites working in this establishment. Another report of the Enforcement Officer is marked as Annexure A3. The Enforcement Officer conducted a surprise inspection and on both the occasions neither the appellant nor his father were available and hence the records could

not be produced before the Enforcement Officer for inspection. On the basis of the report of the Enforcement Officer respondent initiated an enquiry u/s 7A of the Act. The records produced by the appellant were not accepted by the respondent since the records do not tally with the report given by the Enforcement Officer. After the death of his father the appellant himself appeared before the respondent on 15/04/2016. He could not produce any documents, thereafter the appellant received the impugned order. The appellant is in dark about the 15 names reflected in the impugned order. Only 5 names in the list are the employees of the appellant.

3. The respondent filed counter denying the allegations in appeal memorandum. The employment strength of the appellant establishment reached 20 in the month of June 2014 and hence the appellant is coverable under provisions of the Act. The appellant received a complaint alleging that the appellant is not extending social security benefit to its employees. Hence an Enforcement Officer was deputed for conducting the inspection and she submitted Annexure A2 report stating that as per available report the appellant establishment is

statutorily coverable w.e.f 01/06/2014. The Enforcement Officer also submitted the list of 20 employees engaged by the appellant. On the basis of the report an enquiry U/s 7A of the Act was initiated. The father of the appellant attended the hearing and submitted that they never engaged 20 employees but no records were produced. Hence the enquiry was adjourned to 16/12/2014, 10/2/2015, 18/3/2015 and 05/05/2015. On 05/05/2015 the representative appeared within a Written Statement according to which they engaged only 5 permanent employees and they are engaging more people depending on the demand from other states. Since the appellant failed to produce any records, the case was adjourned to 16/06/2015. The appellant did not produce any records and hence the enquiry was further adjourned to 11/8/2015, 18/11/2015, 05/01/2016 & 15/04/2016. However no records were produced as directed in the proceedings. Hence the impugned order is issued on the basis of the report submitted by the Enforcement Officer. The claim of the appellant that they engaged several employees periodically, for short durations of 3 months will sufficiently indicate that the appellant is not interested

in extending social security to its employees. Para 26 of EPF Scheme provides that every employee employed in and in connection with the work of the factory or establishment to which EPF scheme applies other than excluded employees shall be entitled and required to become member of provident fund from the date of joining the establishment. An employee engaged even for a day in connection with regular work of the establishment is treated as an employee for the purpose of the Act.

4. It is seen that the appellant is given more than adequate opportunity to prove his case that the appellant never employed 20 persons. The respondent through his Enforcement Officer could prima facie establishment that the appellant engaged 20 persons as on 01/06/2014. It was up to the appellant to prove before the respondent through his records that he never employed 20 persons for statutory coverage under the Act. In **M/s. LN Gadodia & Sons and Another Vs RPFC**, Delhi 2011 (4) LLJ 503 the Hon'ble Supreme Court held that when any fact is especially within the knowledge of any person the burden of proving that, lies on him. The principle is that the party who is having the best evidence shall produce the same

before the authority concerned, failing which the authority cannot be faulted for drawing an adverse inference. In this particular case it is seen that the appellant was given adequate opportunity to produce the necessary records before the respondent authority. Having failed to avail the innumerable opportunities, the appellant cannot blame respondent for having decided the matter on the basis of the available information.

5. Considering all the above facts, 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