सत्यमेव जयते

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

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

(Wednesday the 10th day of March, 2021)

APPEAL No.222/2018
(Old No.A/KL-10/2017)

Appellant : M/s.Thiruvalla Municipality
Thiruvalla P.O.
Pathanamthitta - 689101

By M/s.Menon & Pai

Respondent : The Assistant PF Commissioner
EPFO, Regional Office, Pattom
Trivandrum -695004

By Adv. S. Sujin

This case coming up for final hearing on 20.01.2021 and this Tribunal-cum-Labour Court on 10.03.2021 passed the following:

O R D E R

Present appeal is filed from order no.KR/26536/ENF-2(5)/2016/6401 dt.31.10.2016 assessing regular dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 01/2011 to 04/2013. The total dues assessed is Rs.3,06,638/-.

2. The appellant is an establishment functioning under the Kerala Municipalities Act. The regular employees of the appellant are governed by Kerala Municipal Employees Provident Fund. The appellant is complying with the provisions of the Act in respect of its regular employees. The Central Govt by notification dt.08.01.2011 extended the provisions of the Act to the employees working in Municipalities excluding the employees who are getting the benefit of provident fund and pension according to the State Govt rules. The appellant was therefore directed to cover all categories of employees such as permanent, casual, piece rated, contract and daily wages who are not entitled to the benefit of contributory provident fund or old age pension in accordance with the scheme or rule framed by the State Govt. A copy of the letter dt.21.02.2011 issued by the respondent is produced and marked as Annexure A. The respondent vide letter dt.21.12.2011 informed the appellant that as per notification dt.08.01.2011 the appellant will have to comply with the provisions of the Act, a copy of the said letter is produced and marked as Annexure B. The appellant was directed to cover all categories of employees other than regular employees. An Enforcement Officer of the respondent conducted an inspection of the appellant establishment and prepared a list of employees entitled to be enrolled from 01/2011 to 02/2016. The list was based on the records maintained by the appellant. A true copy of the inspection report is produced and marked as

Annexure C. From the list prepared by the Enforcement Officer, it is clear that the appellant has not engaged 20 or more employees during the period 01/2011 to 05/2013. The matter was placed before the Municipal Council and it was decided on 22.03.2013 to extend the benefits to all eligible employees. The respondent initiated an enquiry U/s 7A and quantified the dues for the period from 01/2011 to 04/2013. The appellant never employed 20 employees during the period 01/2011 to 04/2013 and as such the provisions of the Act cannot be extended to the appellant. During the course of 7A enquiry, the appellant pointed out that the whereabouts of 7 employees are not known now. The assessment of dues in respect of employees who left the service cannot be legally accepted.

3. The respondent filed counter denying the above allegations. The provisions of the Act was extended to the appellant w.e.f. 08.01.2011. The respondent issued a code number to the appellant establishment for complying with the provisions of the Act. The appellant was also subjected to an inspection by the Enforcement Officer. Subsequently an enquiry U/s 7A of the Act was initiated for determining the dues payable by the appellant. The respondent assessed the dues on the basis of records produced by the appellant and also on the basis of the report submitted by the Enforcement Officer. The appellant is liable to remit contribution in respect of all the employees excluding the regular

employees who are otherwise entitled to provident fund and pension benefits. The inspection report of the Enforcement Officer shows only the number of employees enrolled and not the total number of employees of the appellant. For the purpose of coverage, all the employees working with the appellant establishment including the excluded employees are taken into account. However the appellant is required to extend the benefits under the Act only to those employees who are eligible to be enrolled as per the provisions of the Act and Schemes. EPF & MP Act will act on its own force and hence the decision of Municipal Council on 22.03.2013 to extend coverage has no relevance or legal validity. The claim of the appellant that for the purpose of coverage they needs to employ 20 or more employees other than their regular employees is not legally correct. The appellant never raised the issue of applicability before the respondent authority during the hearing. The appellant's contention that the respondent authority cannot assess the dues in respect of employs who left employment has no basis in law. All eligible employees have a statutory right to the benefits under the Act for the duration of his employment. The Annexure C dues statement was prepared by the appellant himself and countersigned by the Enforcement Officer after verifying the records of the appellant. It is clear from the above that the employees who are beneficiaries of the Act and Scheme provisions are clearly identifiable by the appellant.

4. The learned Counsel for the appellant raised two contentions. One is with regard to the date of applicability of the Act to the appellant establishment and the other issue is with regard to extention of provident fund benefits to 7 employees who left the service of the appellant. The 1st issue regarding the applicability of the Act is strongly contested by the learned Counsel for the respondent. According to the appellant, the provisions of the Act can be extended to the appellant establishment only when they employ more than 19 eligible employees. According to the learned Counsel for the respondent, the total employment strength including the regular employees will be taken for the purpose of coverage under the Act. The learned Counsel for the respondent also pointed out that this issue was not raised before the respondent authority at the time of hearing U/s 7A. It is true that such issue is not raised during the hearing U/s 7A and therefore there is no finding on the said issue. However in the reply filed, the respondent has taken a stand that the total employment strength will be taken for the purpose of coverage under the provisions of the Act. As per 1(3);

" Subject to the provisions contained in Sec 16, it applies

a. ---- ----

b. To any other establishment **employing 20 or more persons** or class of such establishment which the Central Govt may, by notification in the official gazette specify in this behalf. "

It can be seen from the above that for coverage U/s 1(3)b of the Act, the establishment shall be **employing 20 or more persons.** It is to be noted that the provision is very clear that it is not using the word 'employees' here when it comes to the purpose of coverage under the Act. Hence any establishment which employs 20 or more persons will come within the provisions of the Act. The learned Counsel for the appellant argued that the persons mentioned in the Sec 1(3)b of the Act shall be taken as employing 20 or more employees. The legislative intention of this provision is very clear that an establishment to be covered under the provisions of the Act need only 20 or more persons and not employees. In **Bankam Chandra Chakravarty Vs RPFC**, 1958 AIR 314 the Division Bench of Patna High Court held that all the employees including excluded employees can be counted for the purpose of coverage under the provisions of the Act. In **RPFC Vs Lakshmi Rattan Engineering Works Ltd**, 1962 AIR 507 (Punjab D.B) the Division Bench of the Hon'ble High Court of Punjab also held that all the employees will have to be considered for the purpose of coverage under the provisions of the Act. The Hon'ble High Court of Karnataka in **Mysore State Co-operative Printing Works Ltd Vs RPFC**, 1976 (2) LLJ 300 also took the view that all the employees including excluded employees will be considered for the purpose of coverage of an establishment under the provisions of the Act.

Hence the contentions of the appellant that the provisions of the Act and Scheme will be applicable to the appellant establishment only from 05/2013 when the number of contract employees reached 20 is not legally correct.

5. Another contention raised by the learned Counsel for the appellant is with regard to identification of employees who left the service of the appellant. According to the learned Counsel for the appellant there were 17 contract/casual employees working with the appellant establishment for the period from 01/2011 to 04/2013. According to the learned Counsel for the appellant, 7 out of 17 employees left the service of the appellant establishment and those employees cannot be identified. It is seen that this issue was raised during the course of 7A before the respondent authority and the respondent authority has taken a view that these employees who left the service of the respondent were working with the appellant during the relevant point of time. It is seen that the respondent has taken a view that all those employees will have to be enrolled and contributions remitted by the appellant. It is a settled legal position that the respondent authority while conducting an enquiry U/s 7A shall make all attempts to identify the employees failing which the contributions cannot be accounted against the concerned employees. It is seen that the respondent has not made any attempt to see whether the employees can be identified. In **Food Corporation of India Vs RPFC**, 1990 SCC (L & S) 1 the Hon'ble

Supreme Court pointed out that the authority U/s 7A has all the powers to call for the records and see the details of employees before the assessment is made. If those employees were engaged through contractors, the contractor can be directed to furnish the details of employees. If they are casual employees directly engaged by the appellant establishment, they cannot escape the liability simply stating that the employees left the service and therefore they are not identifiable. It is felt that the impugned order is lacking in this exercise to get the details of employees and atleast an effort to ensure that the benefits reaches the targeted employees.

6. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to accept the assessment made by the respondent authority.

Hence the appeal is partially allowed, the coverage of the appellant from 01/2011 is confirmed and the assessment of dues is set aside. The respondent is directed to re-assess the dues within a period of 3 months of receipt of this order after issuing notice to the appellant.

Sd/-

(V. Vijaya Kumar)
Presiding Officer