



सत्यमेव जयते

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

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

(Monday the 3rd day of May, 2021)

APPEAL No.471/2018
(Old No.677(7)2014)

Appellant : The General Manager
Telecom
M/s.Bharat Sanchar Nigam Ltd
BSNL Bhavan
South Bazar
Kannur - 670002

By Adv.Saji Varghese

Respondents : 1. The Regional PF Commissioner(II)
EPFO, Sub Regional Office, Fort Road
Kannur – 670001

By Adv.K.C.Santhosh Kumar

2. Shri.Thilakaraj M.
President
BSNL Workers Union
Thachan House
Post Azhikkal
Kannur - 670009

This case coming up for final hearing on 22.01.2020 and this Tribunal-
cum-Labour Court on 03.05.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KNR/18154/ENF/Circle 1/7A/2014-15/652 dt.28.05.2014 issued U/s 7A of the EPF & MP Act (hereinafter referred to as 'the Act') deciding the eligibility of petty contractors of Telecom District BSNL, Kannur as employees U/s 2(f) of the Act from their respective date of eligibility.

2. The appellant is an unit of Bharat Sanchar Nigam Ltd (BSNL) a Govt. of India enterprise, registered as a limited company under Companies Act, 1956 completely owned by Govt. of India and is functioning under the Ministry of Communications, Govt of India. The appellant is engaged in providing and maintaining telecommunication facilities through fixed and mobile telephones. All the regular employees of BSNL are covered under the provisions of the Act. The appellant is also responsible to ensure all statutory benefits to all workers indirectly engaged by the appellant. The 2nd respondent being President of the BSNL Workers' Union submitted a representation dt.13.06.2011 to the 1st respondent alleging that casual and contract labourers of BSNL, Kannur SSA, Kerala Circle are not enrolled to provident fund. The 1st respondent initiated an enquiry U/s 7A of the Act. After hearing the appellant and also the 2nd respondent, the 1st respondent issued the impugned order dt.28.05.2014 which is produced and marked as

Annexure A1. A copy of the representation is produced and marked as Annexure A2. The appellant has been engaging petty contractors after executing agreements between them and BSNL for assisting telecom mechanics in rectification of cable faults. A copy of the agreement executed by the 2nd respondent is produced and marked as Annexure A3. Annexure A3 is not a wage based contract but is only a work contract. The details of approved item wise rates are annexed as Annexure A4. The engagement of casual workers is banned by BSNL long time back. Workers indirectly engaged through contractors are enrolled to provident fund by contractors. Department of Telecommunication and later BSNL were under heavy pressure to meet the massive need of developing wired network through cables, lines and wires across the country with telephone exchanges having been expanded to the required extend. In Kannur SSA also there were large no of applicants waiting for new telephone lines. To clear this waiting list, the appellant had to erect posts, lines and wires in large quantities. The active wired connections rose from 1.16 lakhs in 1998 to 3.44 lakhs in 2004 recording a growth of 197% in a span of 6 years. To meet this challenge, the appellant required huge labour assistance. Though there was a ban on engagement of casual workers from 1985, the appellant could hire labour for contingent nature of work including repairs of overhead lines,

underground cables etc. This period of engagement was restricted to 100 days vide letter dt.15.06.1999 which is produced and marked as Annexure A5. Accordingly hiring of labour force was resorted to by the appellant. In the first instance these labours were got sponsored through Employment Exchanges. Since the number sponsored by Employment Exchanges was not adequate, the appellant started taking those people who has an employment exchange registration. Payments to these categories of workers were made then and there on completion of each batch of piece-rate work and there existed no employer-employee relationship. The appellant experienced a reverse trend in demand for wired line telephone segment from 2005 onwards. Because of this, the appellant stopped hiring labourers through Employment Exchange and open market since 2004. The system of outsourcing portion of external maintenance related works through tender system was started in the year 2004. Because of the resistance from all sides the tender system could not progress much. Hence the appellant introduced a fully streamlined procedure of petty contract system in November 2004 replacing the then prevailing system of hiring workers through Employment Exchange. Under the petty contract system, work was offered in piece-meal as petty contract at a pre-determined rate with certain agreed terms. All those who were willing to execute the work

were required to sign a contract agreement. They were engaged only intermittently depending upon the occurrence of faults. They are also at liberty to seek job opportunities elsewhere. The petty contract system continued till May 2010. The petty contactors union raised a demand for enrollment under EPF Act. The issue was also raised before Regional Labour Commissioner (Central). As a consequence, the appellant decided to discontinue the petty contract system by resorting to a wage based system instead of piece-rate work based system. The appellant thereafter call open tender for supply of manpower assistance for all the 14 divisions and bids were received for 9 divisions which were finalised and implemented w.e.f. 01.02.2013. Later the wage based system was implemented through out the jurisdiction by the appellant. The copies of the work orders issued are produced as Annexures A6, A7, A8 respectively. Good number of petty contractors opted for the wage system. The union headed by the 2nd respondent preferred to remain as petty contractors. The Enforcement Officer of the 1st respondent sought details vide notice dt.01.12.2011 which is marked as Annexure A10. The appellant sent a reply dt.20.12.2011 to the Enforcement Officer which is produced and marked as Annexure A11. The 1st respondent issued summons to the appellant U/s 7A of the Act to examine the question of enrollment of petty contractors to EPF. The

appellant filed a detailed reply which is produced and marked as Annexure A13. The appellant also attended the hearing through its representative on various dates and filed clarification and rejoinder explaining that the petty contractors cannot be treated as employees as defined U/s 2(f) of EPF Act. The 2nd respondent filed writ petition W.P.(C) no.21404/2012 before the Hon'ble High Court of Kerala pleading among other things a direction to the 1st respondent to complete the enquiry proceeding at the earliest. The Hon'ble High Court directed the 1st respondent to expedite the decision regarding enrollment. A copy of the judgment is produced and marked as Annexure A16. Since the dispute regarding the eligibility to be enrolled under the Act to be resolved under Para 26(b) of EPF Scheme the enquiry was transferred to the Regional Provident Fund Commissioner. After conducting elaborated proceedings and hearing the appellant as well as the 2nd respondent, the 1st respondent issued the impugned order. The proceedings were handled by the Assistant Provident Fund Commissioner initially and by different Commissioners subsequently. None of the officers has gone into the petty contract system as explained by the appellant through various stages. The 1st respondent failed to notice that the petty contractors will not come within the definition of employees U/s 2(f) of the Act. The 1st respondent failed to consider any of the documents

particularly Annexure A43 to A50 with regard to the copies of work orders given to various petty contractors. From the above document it is clear that the amount claimed and paid are not wages but piece-rate amount of contract value. These documents clearly speak of the nature of payments made to the petty contractors. The 2nd respondent failed to prove that they were paid daily or monthly wages for their engagement. The 1st respondent relied on the list of contractors produced by the 2nd respondent which contains the names of 307 petty contractors. However no further details are available in the above statement. The 1st respondent also failed to note that as per Sec 2(b) of the Act, the provident fund can be paid only on basic wages and the petty contractors are not paid any basic wages as defined in the said provision. The 1st respondent failed to notice that the appellant started wage based contract system by floating open tenders since 2012 and all the employees engaged by the contractors are eligible to be enrolled to provident fund. The impugned order issued by the 1st respondent cannot be implemented as details of payments made to the petty contractors for the old periods are not available with the appellant.

3. The 1st respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 01.10.2000. It is admitted that the appellant is having employees

appointed by Department of Telecom and also appointed through its recruitment rules and all such employees are covered under the provisions of the Act. Being the principal employer it is the responsibility of the appellant to extend social security benefits under the Act to all employees contract, casual, temporary or otherwise. The 2nd respondent, the President of BSNL Worker's Union submitted a representation dt.13.06.2011 regarding non enrolment of casual and contract employees. The matter was referred to the area Enforcement Officer for investigation. The Deputy General Manager (Planning) of the appellant vide his letter dt.20.04.2011 informed that the complainant and others were sponsored by Employment Exchange for doing casual work and were engaged for less than 100 days in a year. They were engaged as petty contactors and allotted piece-meal work on contract basis for sporadic period for which payment is being made as per standard and the system is still continued and the work given to them are not of a permanent nature. On the basis of the complaint and on the basis of the reply given by the appellant, an enquiry U/s 7A of the Act was initiated. U/s 2(f) of the Act, a person is an employee if he is employed for wages to perform any work manual or clerical in or in connection with the work of the establishment and he gets wages directly or indirectly from the employer and also includes any person

employed by or through a contractor and also engaged as an apprentice not being an apprentice engaged under the Apprentice Act or the Standing Orders of the establishment. The claim of the appellant that the work was offered in piece-meal as petty contract at a pre-determined rate on some agreed terms and conditions will not take the person outside the definition of 'employee'. In **S.C.S. Corporation Vs RPFC**, 1999 2 LLJ 844(Guj) the Hon'ble High Court of Gujarat held that there cannot be any ambiguity with regard to a person's employment through contractor after the amendment of Sec 2(f) of the Act in 1998. As per the amended Sec 2(f), an employee is defined as a person employed for wages for any work manual or otherwise in connection with the work of the establishment and if he gets his wages directly or indirectly from the employer. In the present case the 2nd respondent represents employees of the appellant employed in regular course of business of the appellant establishment and the appellant establishment is covered under the provisions of the Act. Hence it is the responsibility of the appellant to ensure the enrolment of all the employees engaged by them in the regular course of business of the appellant establishment. Just because piece rate wages are paid to these employees they cannot be excluded from the provisions of the Act. It does not require an employee to be continuously employed and also not

required him to be recruited under some defined set of rules framed by the appellant. The impugned order is a culmination of a series of discussions, hearings and evidence and not a sporadic one as claimed by the appellant. A complaint is received from the 2nd respondent on 13.06.2011. An area Enforcement Officer was deputed to the appellant establishment. He discussed the matter with the Deputy General Manager (Planning) and the Deputy General Manager (Planning) gave a response vide letter dt.20.11.2011 and on the basis of these initial discussions an enquiry U/s 7A was initiated directing the appellant and 2nd respondent to appear before the 1st respondent. The enquiry U/s 7A started on 19.01.2012 and continued on various dates wherein the appellant filed detailed statements and documents and the 2nd respondent also filed reply and also documents required by the 1st respondent. The Hon'ble High Court of Kerala in W.P.(C) no.21404/2012 directed the 1st respondent to finalise the matter at the earliest and after taking into account all the evidence and submissions made by the appellant as well as the 2nd respondent, the 1st respondent finalised the hearing on 12.05.2014. The appellant and the 2nd respondent were directed to produce specific information for finalising the issue. The 2nd respondent furnished the information however the appellant sought time. The 2nd respondent filed reply to the additional written statement filed by

the appellant on 21.01.2014. The appellant further filed an additional statement dt.14.02.2014. After considering all the above representations by both the parties, the 1st respondent issued the impugned order. Hence the appellant cannot plead that the impugned order is issued without application of mind. In **M/s.Sateesh Plastics Vs RPFC**, 1982 (44) FLR 207 (Guj HC.DB) the Hon'ble High Court of Gujarat analysed the definition of employee and laid down the following test to decide the same.

1. Was he doing the work for monetary payment ?
2. Was the work done by him, the work of the establishment and had a nexus with such work ?
3. Was the payment made as wages, in the sense of being remuneration for the physical or mental effort in connection in connection with such work ?
4. Was the work such that it had to be done as directed by the establishment or under any supervision and control to the extent that supervision and control are possible having regard to the specialized nature of work or the skill needed for its performance ?
5. Was the work of such a nature or character that ordinary a master-servant relationship could exist but for the agreement

styling it as a contract, common practice and common sense would suggest a master-servant bond ?

6. Was the relation indicative of master-servant status in substance having regard to the economic realities irrespective of the nomenclature devised by the parties ?
7. Was he restricted to do the work personally without the liberty to get it done through someone else ?

The contention of the appellant that the amount claimed and paid are not wages but piece rate amount of contract value only is not acceptable with reference to the definition of basic wages as per Sec 2(b) of the Act. The information and documents furnished by the 2nd respondent with details of the name and address of petty contractors was collected by the 2nd respondent from the appellant under RTI Act and therefore the appellant cannot deny the correctness of the information furnished by the 2nd respondent.

4. The appellant filed rejoinder denying the allegations in the written statement filed by the 1st respondent. No where in the impugned order it is stated by the 1st respondent that how he came to the conclusion that the petty contractors are eligible to be considered as employees under the Act. Petty contractors were engaged as per willingness and undertaking

submitted by them to work as petty contractors on work contract basis at pre-determined rate for each item of work approved by BSNL from time to time. They are paid on piece rate system and no daily or monthly wages is fixed for petty contractors. Few petty contractors filed a case before Hon'ble CAT at Ernakulam in 2011 and the Hon'ble Court has not declared the status of petty contractors as workers. The copy of the order of Hon'ble CAT has already been produced as Annexure A23. Merely for the reason that the work of petty contractor is part and parcel of the work of the establishment it cannot be held that they are covered by the definition of employees. The appellant is not preserving the records about the work entrusted to the petty contractors their period of work and the amount paid to them each month. Since the liability of the petty contractors lasted till the payment of bills, the whole expenditure are accounted under a single amount under maintenance head and there was no system of station wise, name wise and date wise accounting of payments to petty contractors.

5. The 2nd respondent entered appearance in person and supported the arguments of the 1st respondent. The appellant during the course of hearing produced a copy of the claim statement in ID.33/2013 and a copy of the written statement filed by the appellant in ID.33/2013. These additional documents were taken on record and marked as Annexure A52

and A53 respectively. At the time of hearing of the appeal, the appellant produced a copy of the writ petition W.P.(C) no.3066/2020 filed by the 2nd respondent before the Hon'ble High Court of Kerala against the appellant for non payment of bill amounts due from the appellant. Copy of the writ petition is also taken on record and marked as Annexure A54.

6. The main issue involved in this appeal is whether the petty contractors engaged by the appellant can be treated as employees for the purpose of provident fund deduction U/s 2(f) of the Act. The 1st respondent after elaborate proceedings came to the conclusion that the erstwhile casual workers presently being termed as petty contractors of Telecom District BSNL, Kannur are employees under 2(f) of the Act and they are required to be enrolled under the provisions of the Act from the date of their eligibility. The enquiry U/s 7A of the Act read with Para 26(b) of EPF Scheme was initiated on the basis of Annexure A2 complaint dt.13.06.2011 filed by BSNL Workers' Union. Since there was delay in finalising the enquiry, the BSNL Workers' Union approached the Hon'ble High Court of Kerala in W.P.(C) no.21404/2012 and vide its judgment dt.29.08.2013 directed the 1st respondent to conclude the enquiry initiated U/s 7A as earlier as possible. After hearing the appellant and also respondent no.2 elaborately, the respondent no.1 issued the Annexure A1 order.

7. To appreciate the facts of this appeal, it is appropriate to trace the history of appointment of casual workers and petty contractors in the appellant establishment. According to the learned Counsel for the appellant the engagement of casual labours were banned by Department of Telecom in the year 1985. Later the ban on engagement of casual employees was relaxed and the appellant was permitted to engage casual labours for a period of 15 days at a time and for a maximum period of 60 days per individual during a year. This was further relaxed as per Annexure A5 O.M. dt.15.06.1999 with 30 days engagement of casual labour at a time with a maximum of 100 days. These casual workers were sponsored through Employment Exchanges. Since the number of employees required has exponentially grown, the appellant started taking casual labourers who have registration with Employment Exchange after satisfying their suitability for providing assistance to the regular department staff in the field. The demand for connections increased 197% by 2004. To meet the challenge of providing additional wired connections more number of casual employees were engaged by the appellant. After 2004-05 the demand for wired line telephone segment decreased. Hence the hiring of labourers through Employment Exchange and open market was discontinued. The already engaged work force of contract labours were engaged for

maintenance of the lines and cable network already erected and developed by the appellant. The appellant also tried outsourcing a portion of external maintenance related works through open tender system. The experiment failed due to resistance from various quarters. Hence the appellant continued with the earlier arrangement. Those casual workers who continued with the appellant were later offered work on piece-meal basis as petty contractors at a pre-determined rate with certain agreed terms and conditions. All those who are willing were required to execute an agreement with the appellant. While so the 2nd respondent Union raised a demand for regularisation of their service and also for providing benefits under various social security schemes. To pressurise the management the union abstained from work from 15.06.2010 for a period of 39 days. The appellant establishment has again started wage based contract system wherein the work now handled by the petty contractors are given on tender basis.

8. The appellant establishment was corporatized w.e.f. 01.10.2000 and all the employees recruited by BSNL w.e.f. 01.10.2000 are covered under the provisions of the Act. As already explained above, the system of engaging casual employees to assist the telecom mechanics was prevailing at the time when the appellant establishment was covered under the

provisions of the Act. Hence the question whether the casual workers employed by the appellant through Employment Exchanges and continued in service and doing work in connection with the work of the appellant as on the date of coverage of the appellant establishment will come within the definition of employees and are required to be enrolled to provident fund. It is admitted by the appellant that these casual employees were engaged to do the regular work of the appellant establishment and continued to be engaged thereafter for attending the maintenance work of the installed facility of the appellant establishment. As per Sec 2(f) of the Act,

“employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person;

- (i) Employed by or through a contractor in or in connection with the work of the establishment.
- (ii) Engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the Standing Orders of the establishment

From the above definition of employee, any person who is employed for wages in any kind of work, manual or otherwise in or in connection with the

work of an establishment and who gets his wages directly or indirectly from the employer is an employee. There is no dispute regarding the fact that all the elements of the definition of employee is satisfied in the present case. Hence all the casual employees engaged by the appellant through Employment Exchange and who continued in service as on 01.10.2000 are required to be enrolled to provident fund from their date of eligibility.

9. According to the learned Counsel for the appellant, the appellant establishment stopped the system of engaging casual workers through Employment Exchange in the year 2004. However they continued with the existing casual employees for maintenance of the existing lines. The case of the appellant is that they switched over to petty contract system wherein the casual employees are required to sign an agreement with the appellant establishment. The appellant produced the application for consideration as petty contractors and terms and conditions for petty contractors signed by the 2nd respondent as Annexure A3. Annexure A3 is dt.20.08.2010. The appellant also produced approved rates of maintenance for petty contract works of lines and cables dt.24.07.2010 as Annexure A4. The appellant also produced copy of paid petty contract bill dt.01.11.2013 in respect of Sri.Ajesh K. as Annexure A43 and the bill dt.08.11.2013 of Sri.P. P. Sunil Kumar as Annexure A44 and copy of the work order and paid petty

contract bill dt.26.11.2013 in respect of Sri. P. Mohasan as Annexure A45 and A46 respectively. The appellant further produced a copy of work order and petty contract bill dt.06.11.2013 in respect of Sri.T. Rakheesh as Annexures A47 and A48 and also the copy of work order and petty contact bill dt.06.11.2013 of Sri.K. V. Sreejan as Annexure A49 and A50 respectively. These documents are produced by the appellant to explain how the work is allotted to these so called petty contractors and how the bills are raised and paid on piece-rate basis. It can be seen from the above documents that the system of petty contractors re-designating the earlier casual workers has started only in the year 2010. Because of all these exhibits now produced by the appellant starting from the application for consideration as petty contractors in Annexure A3 from 20.08.2010. Hence it is clear that all these casual employees engaged by the appellant through Employment Exchange continued as such till 2010. Hence all these casual employees who were engaged by the appellant through Employment Exchange can only be treated as employees U/s 2(f) of the Act for the purpose of enrollment under the provisions of the Act.

10. From the documents produced by the appellant, it is seen that the system of petty contractors started from 2010. According to the learned Counsel for the appellant, the petty contractors are paid on piece-

rate basis and no wages are being paid to the petty contractors. It is seen from the documents produced by the appellant that all the materials for the work is supplied by the appellant and the payments made by the appellant to these petty contractors are nothing but wages for the work done by them. It can be seen that the appellant, to suit his convenience has changed the name of these employees from casual employees to that of petty contractors and as rightly pointed out by the Counsel for the 1st respondent that they continued to do the same work from 01.10.2000 till date and the remuneration is being paid by the appellant. Irrespective of the fact whether the employees are paid monthly, daily or piece rate wages it will come within the definition of basic wages and therefore the appellant cannot escape from the liability of enrolling all these employees from their due date of eligibility. The learned Counsel for the appellant further pointed out that the appellant establishment has decided to discontinue the petty contract system and resorted to a wage based system of payment. According to the him the appellant had already called for open tender for supply of man power assistance for all the 14 divisions and about 86 petty contractors has already moved to the contract system. It was also pointed out that in the new wage based system the appellant is ensuring that the employees are provided all social security benefits. The appellant also

produced Annexure A51, wages to contract workers engaged through contractors w.e.f. 01.04.2014 reflecting therein the payment of contribution to provident fund. This further strengthens the case of the 2nd respondent for claiming membership under provident fund from due date of eligibility. The learned Counsel for the appellant relying on Annexure A54 argued that the 2nd respondent also admitted the fact that he is a petty contractor and not an employee. Annexure A54 is a copy of the W.P.(C) No.3066/2020 filed by the 2nd respondent against the appellant before the Hon'ble High Court of Kerala. In this writ petition the claim of the 2nd respondent is that they are petty contractors of the appellant. However in the Exbt.P2 and P3 annexed to the writ petition, it is specifically pointed out that petty contract employees are working without wages for the last 8 months. That apart, if we look at the issue in isolation after the petty contract system was introduced by the appellant, we will not get the clear picture regarding the nature of the employment. The picture will be complete only if analyse the employment of these employees from 01.10.2000 as casual employees through Employment Exchanges and later re-designation into petty contractors. The only issue before the Hon'ble High Court was release the payments of these casual employees/petty contractors for months together. The mere fact that these employees continues to do the work in or in

connection with the work of the appellant establishment for more than 21 years will adequately support the case of the respondents.

11. The 2nd respondent also entered appearance and pleaded that they continued to be employees of the appellant from 01.10.2000 and they are entitled to be enrolled to provident fund membership.

12. Considering all the facts, circumstances, evidence 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