



सत्यमेव जयते

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

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

(Tuesday the 19th day of October, 2021)

APPEAL No.514/2019
(Old no.626(7)2008)

Appellant : M/s.Hotel Ruby Arena
Medical College P.O.
Trivandrum - 695011

By Adv.C. M. Stephen

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

By Adv. Ajoy P.B.

This case coming up for hearing on 14.07.2021 and this Industrial Tribunal-cum-Labour Court on 19.10.2021 passed the following:

ORDER

Present appeal is filed against order no.KR/22236/ENF-1(4)/ 2008/1857 dt.06.06.2008 assessing dues U/s 7A of the EPF & MP Act, 1952 (hereinafter referred to as 'the Act') in respect of non enrolled employees for the period from 03/2006 to 05/2007 and in respect of contract employees for the period from 04/2006 to 05/2007. Total dues assessed is Rs.4,76,306.30. The

contractor M/s.Cavalier Detective and Security Services is directed to remit the contribution in respect of the contract employees engaged by them in the appellant establishment failing which the appellant is held responsible to remit the same.

2. The appellant is a three star hotel. It is registered under Indian Partnership Act, 1932. A true copy of the registration is produced and marked as Enclosure E2. The appellant establishment came into existence on 17.03.2006 and they started trial based operation. Upto 30.06.2006 the operation was partial. On 21.06.2006 they received permission to function as three star hotel. Hence the actual commencement of business was w.e.f. 01.07.2006. A true copy of the invitation card for inaugural ceremony is produced and marked as Enclosure E3. A true copy of the Star Classification order is produced as Enclosure E4. The respondent covered the appellant establishment under the provisions of the Act w.e.f. 28.07.2006. A copy of the said order is produced and marked as Enclosure E5. The respondent thereafter preponed the coverage w.e.f. 01.04.2006 for which there is no justification. The appellant however complied with the directions and started compliance from 01.04.2006. The respondent found that there are 6 contract employees engaged through M/s.Cavalier Detective and Security Services. The contractor is already covered under the provisions of the Act and therefore the contractor

is liable to remit the contributions in respect of the employees deployed by them in the appellant establishment. A copy of the communication issued by the M/s.Cavaliar Detective and Security Services regarding the membership of contract employees is produced and marked as Enclosure E10. The allegation of the respondent authority that the appellant engaged trainees in the appellant establishment is not correct. The so called trainees were students of a recognized educational institution and they were deployed by educational institution for practical exposure. A true copy of the request letter issued by the Kerala Institute of Management Studies is produced and marked as Enclosure E11. The respondent authority has recovered maximum amount by using its powers of recovery U/s 8F of the Act. The communication of the appellant's Bank informing the attachment of bank account by the respondent is produced as Enclosure E13.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 01.04.2006. The appellant establishment failed to comply from the date of coverage and also failed to enroll certain employees on the ground that they are trainees. The Enforcement Officer who conducted the inspection reported that the appellant establishment engaged 6 contract employees and provident fund is not remitted on the full wages paid to them. Further it was reported

that the appellant failed to enroll certain employees on the ground that they are trainees. During the enquiry a representative of the appellant attended the proceedings. The appellant was directed to produce evidence regarding employment of trainees but he failed to produce any proof on the ground that the institute which was providing training was not functioning. It is seen from the records that the trainees were paid remuneration and therefore they will come within the definition of employees U/s 2(f) of the Act. The respondent authority therefore found that the appellant is liable to pay contribution in respect of trainees. The respondent authority also found that the appellant is liable to pay the contribution in respect of contract employees if the contractor failed to remit the contribution in respect of its employees. After considering all the relevant facts and evidence placed before it, the respondent authority came to the conclusion that the appellant is liable to pay contribution in respect of its employees. A representative of the appellant attended the hearing on many days of posting and there was no requirement from the representative with regard to the cross examination of the Enforcement Officer. The claim of the appellant that the appellant cannot prepone the coverage is not correct. The appellant establishment was covered under the provisions of the Act w.e.f. 01.04.2006. A copy of the notice dt.28.06.2006 is issued to the appellant establishment is produced and marked as Exbt.R1. The coverage was

based on the documentary evidence produced by the appellant. The appellant has clearly stated in the proforma for coverage that the date of set up of the appellant establishment is 01.04.2006. Copy of the proforma for coverage submitted by the appellant is produced and marked as Exbt.R2. The appellant has also furnished the date of commencement of appellant establishment as 01.04.2006 in the return of ownership of Form 5A submitted. A copy of the Form 5A is produced and marked as Exbt.R3. It is evident from the list of staff that all the 24 employees joined the establishment on 01.04.2006. The list of staff members submitted by the appellant is produced and marked as Exbt.R4. The details of salary paid to the employees for the month of 04/2006 is produced and marked as Exbt.R5. Hence it is absolutely clear that the respondent rightly covered the establishment w.e.f. 01.04.2006. Para 30 of EPF Scheme specifies that the principle employer is liable to contribute the provident fund in respect of its contract employees also. Hence the appellant is cannot escape the provident fund liability in respect of contract employees engaged by him if the appellant fails to remit the contribution.

4. The appellant has raised 3 issues in this appeal. The 1st issue is regarding the date of coverage. According to the appellant the establishment is liable to be covered only from 01.07.2006 where as the appellant has been covered from 01.04.2006. It is seen from documents produced by the appellant

such as Exbt.R2 proforma for coverage, Exbt.R3 a copy of the Form 5A, Exbt.R4, the list of staff members submitted by the appellant and Exbt.R5 the details of salary paid to the employees for the month of 04/2006, that the appellant establishment is liable to be covered w.e.f. 01.04.2006. It is relevant to point out that all the above documents were produced by the appellant before the respondent authority. Further Enclosure E5 relied on by the appellant also shows that the appellant establishment is covered under the provisions of the Act from 01.04.2006. Hence the coverage of the appellant establishment w.e.f. 01.04.2006 is absolutely in order. The 2nd issue raised by the appellant is with regard to the trainees. According to the appellant the trainees are deployed by an institute and they are not liable to be enrolled to provident fund. The learned Counsel for the respondent pointed out that only trainees who are appointed under Apprentice Act, 1961 and trainees appointed under the Standing Orders of the establishment are excluded from provident fund membership as per Sec 2(f) of the Act. The learned Counsel for the respondent also pointed out that the trainees were paid remuneration during the training period and therefore they are liable to be enrolled to provident fund. The 3rd issue raised by the appellant is with regard to the contract employees engaged through M/s.Cavaliar Detective and Security Services. Admittedly there were 6 employees deployed by them in the appellant establishment. As per

Enclosure E10 all these 6 employees are enrolled to provident fund. The case of the respondent is that the contractor failed to remit contribution on full wages and therefore he proceeded to assess the dues. However as per the impugned order M/s.Cavaliar Detective and Security Services covered under code no.KR/16665 is liable to remit the contribution. Only in the event of failure by the contractor, the appellant will be liable to remit the same. Para 30 of EPF Scheme and Sec 8A of EPF Act make the principal employer liable for the contribution in respect of contract employees engaged through contractors. Hence the liability of the appellant will remain, if the contractor fails to remit the contribution.

5. 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