



सत्यमेव जयते

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

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

(Friday the 17th day of September, 2021)

APPEAL No.520/2019
(Old no.490(7)2008)

Appellant : M/s.St.Thomas Residential
Central School
Ezham Mile
Manampuzha P.O.
Kadambanadu South
Kollam - 691553

By Adv.C.M.Stephen

Respondents : 1. The Assistant PF Commissioner
EPFO, Regional Office, Pattom
Trivandrum – 695004

2. Assistant Commissioner
EPFO, Regional Office
Parameswar Nagar
Kollam – 691001

By Adv.Pirappancode V.S.Sudheer &
Adv.Megha A.

This case coming up for final hearing on 14.09.2021 and this Tribunal-cum-Labour Court on 17.09.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/22413/ENF-1(4)/2007/14914 dt.13.12.2007 deciding the applicability and assessing the dues for the period from 05/2004 to 09/2007. The total dues assessed is Rs.6,98,720.60

2. The appellant is a self financed educational institution established for the purpose of secondary education. The appellant is constituted as a society under the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955. A true copy of the registration certificate of the school as a society is produced and marked as Exbt.E2. The school and society are constituted for the purpose of imparting secondary education. The school was inaugurated on 25.01.2005. The appellant received approval w.e.f. 01.04.2005. The school started functioning on 01.04.2005. A true copy of the approval letter issued by the Central Board of Secondary Education is produced and marked as Exbt.E3. The appellant being a society is excluded from coverage as per Sec 16(1)(a) of the Act. As an educational institution, power was not required to be utilized for its operation and the strength of the staff was less than 20. In view of the above the appellant was not liable to be covered under the provisions of the Act. A team of Enforcement Officers inspected the appellant establishment on 07.11.2006 and seized some documents. The seizure was conducted without giving any reason. The seizure of documents by the

Enforcement Officers was without any authority. The Enforcement Officers further insisted for production of few more documents in their office on the next morning. The notice dt.07.11.2006 issued by the Enforcement Officers is produced and marked as Exbt. E4. The appellant produced the documents before the Enforcement Officer and they retained those documents also with them. The 1st respondent thereafter issued a coverage memo covering the appellant establishment w.e.f. 01.05.2004. As per the coverage memo, the staff strength of the appellant establishment was 35 as on 01.05.2004. It may be noted that the appellant establishment started functioning only from 01.04.2005. The coverage notice dt.01.01.2007 is produced and marked as Exbt.E5. The 1st respondent thereafter initiated an enquiry U/s 7A of the Act by issuing a notice dt.02.01.2007. A copy of the notice is produced and marked as Exbt.E6. The appellant was denied an opportunity to contest the coverage as Exbt.E5 and E6 were issued simultaneously. The appellant moved a petition U/s 7(1)(a) before the 1st respondent, a true copy of the said petition dt.02.04.2007 is produced and marked as Exbt.E7. In the petition it was specifically pleaded that the appellant establishment is not coverable under the provisions of the Act and therefore they are disputing the same. The appellant again filed another petition before the 1st respondent disputing the coverage which is marked as Exbt. E8. The appellant further moved the 1st respondent

through another petition seeking an opportunity to cross examine the Enforcement Officers and also for production of the documents seized by them. A true copy of the petition is produced and marked as Exbt.E9. No action is taken by the 1st respondent on the said petition. The 1st respondent did not conduct any further proceedings after filing Exbt.E8 & E9 petitions. The appellant was not aware of any proceeding conducted by 2nd respondent in continuation of the proceedings by the 1st respondent. Hence the proceedings if any, conducted by 2nd respondent is in clear violation of the principles of natural justice. On 24.12.2007 the appellant received the impugned order. The appellant was not aware of the transfer of the case from the 1st respondent to the 2nd respondent. The impugned order is issued by the 2nd respondent without giving notice to the appellant and therefore in clear violation of the principles of natural justice.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 01.05.2004 U/s 1(3)(b) of the Act. The establishment is covered under the provisions of the Act on the basis of the report of the Enforcement Officer. A copy of the report is produced and marked as Exbt.R1. The squad of Enforcement Officers reported that the establishment started functioning w.e.f. 17.05.2003 and the employment strength reached 35 as on 01.05.2004. A copy

of the attendance register for 05/2004 and the Profit & Loss account and Balance Sheet of the establishment for 2004-05 were produced as proof of the employment strength and the fact that the establishment commenced operation in 17.05.2003. The appellant establishment failed to start compliance and therefore an enquiry U/s 7A of the Act was initiated by issuing summons dt.02.01.2007. The enquiry was fixed on 22.01.2007 wherein production of necessary records and appearance in person was insisted upon. On 22.01.2007 an Advocate attended the hearing. Since no records were produced, the enquiry was adjourned to 15.02.2007. Since nobody attended the hearing on 15.02.2007, a daily proceedings was issued to the appellant to appear and produce records on 14.03.2007. On the request of the appellant, the enquiry was adjourned to 09.04.2007 and further to 11.05.2007. None appeared on 11.05.2007 and the matter was adjourned to 08.06.2007 and 03.07.2007. The enquiry was further adjourned to 25.07.2007 and to 21.08.2007 on the request of the Advocate for the appellant. In the meanwhile a Sub Regional office of the Provident Fund Organisation was opened in Kollam and all the enforcement files pertaining to Kollam jurisdiction was transferred from Trivandrum to Kollam. The 2nd respondent, the Assistant Commissioner, Kollam issued summons dt.03.08.2007 fixing the enquiry on 21.08.2007 and the same was acknowledged by the appellant vide acknowledgement card dt.07.08.2007. On 21.08.2007 an

Advocate appeared on behalf of the appellant and filed a memo requesting an adjournment for production of records. The enquiry was adjourned to 04.09.2007. On 04.09.2007, Sri. C.M. Stephen, Advocate appeared on behalf of the appellant. He submitted that he has already filed his version and requested for department version with a copy of the documents. He was directed to produce documents such as copy of admission register, copy of seizure mahazar with its enclosure and he agreed to do the same. Considering the request of the Advocate, the enquiry was adjourned to 17.09.2007. Advocate C.M. Stephen attended the hearing and requested for adjournment and the enquiry was adjourned to 09.10.2007. On 09.10.2007 there was no representation on the part of the appellant. However in the interest of justice the enquiry was adjourned to 23.10.2007. On 23.10.2007 also there was no representation on the part of the appellant. The contention of the Advocate for the appellant was that the appellant is not coverable U/s 1(3)(b) in view of Sec 16(1)(a) of the Act. He also pleaded that the employment strength of the appellant establishment was below 20. The Advocate also requested during the course of hearing that the applicability of the provisions of the Act may be decided U/s 7A(1)(a) before determination of dues. The request was allowed and he was directed to produce records to substantiate his case. As per Sec 16(1)(a) the provisions of the Act will not apply to any establishment registered under Co-operative Societies Act,

1912 or under any law for the time being in force in any State relating to co-operative societies employed less than 50 persons and working without the aid of power. The appellant had no claim that the appellant establishment is registered under Co-operative Societies Act. Therefore the appellant is not entitled for any exclusion U/s 16(1)(a) of the Act. The appellant establishment was covered w.e.f. 01.05.2004 on the basis of the information collected by the Enforcement Officers. As per the information collected, the appellant establishment employed 35 persons in 05/2004 with 22 teaching staff, 3 administrative staff and 10 non teaching staff. Though the appellant disputed the employment strength, the appellant failed to produce any documents to substantiate their case. Since the appellant failed to produce any documents, the dues for the period from 05/2004 to 09/2007 was also assessed on the basis of the report of the Enforcement Officers. Part of the assessed amount was recovered and part of the amount was paid by the appellant establishment which was accounted while issuing the order. Aggrieved by the above order the appellant filed Writ Petition no.1893/2008 before the Hon'ble High Court of Kerala. The Hon'ble High Court dismissed the writ petition vide its order dt.22.02.2017. The appellant establishment started functioning from 17.05.2003 and the employment strength reached 35 on 01.05.2004. The copy of the attendance register for 05/2004 and the copy of Profit & Loss account and

Balance Sheet for the year 2004-05 clearly proves that the appellant establishment started functioning from the financial year 2003-04. An Enforcement Officer appointed U/s 13(1) of the Act can investigate into the correctness of any information furnished with regard to the implementation of the provisions of the Act. As per Sec 13(2)(d) of the Act, any Inspector can make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment and where he has reason to believe that any offence under this Section has been committed by an employer, seize with such assistance as he may think fit, such books, registers or other documents or portions thereof as he may consider relevant. Hence the claim of the appellant that the Enforcement Officers snatched away their documents is devoid of any merit. The claim of the appellant that the appellant establishment is not coverable U/s 1(3)(b) in view of the provisions containing in Sec 16(1)(a) of the Act is not correct. 16(1)(a) is applicable only to establishments registered under Co-operative Societies Act, 1912 or under any other law for the time being in force in any State relating to co-operative societies employing less than 50 persons and working with the aid of power. As per Exbt.E2, the appellant establishment is covered under Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955 and hence the appellant is not entitled for exclusion U/s 16(1)(a) of the Act. The

1st respondent in this appeal is Assistant Provident Fund Commissioner, Regional Office, Employees Provident Fund Organisation, Trivandrum and 2nd respondent is Assistant Provident Fund Organisation, Sub Regional Office, Employees Provident Fund Organisation, Kollam. The enquiry U/s 7A of the Act was started w.e.f. 22.01.2007 by 1st respondent. While the enquiry was pending, Sub Regional Office, Kollam was opened and the jurisdiction of the establishments pertaining to Kollam office were transferred to Sub Regional Office, Kollam. Hence the adjournment notice dt.03.08.2007 was sent to the appellant from Sub Regional Office, Kollam and the acknowledgement card signed by the appellant was received in the office of the 2nd respondent. The enquiry was conducted by the 2nd respondent from 21.08.2007. The contention of the appellant that the 2nd respondent conducted the enquiry without notice to the appellant is totally incorrect. The copies of the notice dt.03.08.2007 and 24.09.2007 and the acknowledgement cards are produced and marked as R3, R4, R5 and R6. The appellant was provided adequate opportunity before finalising the enquiry and issuing the impugned order. As per Sec 7A (3A) of the Act “ where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the

applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record “.

4. The appellant herein is disputing the coverage of the appellant establishment under the provisions of that Act on the ground that the appellant establishment is entitled for exclusion U/s 16(1)(a) of the Act and also on the ground that the employment strength of the appellant establishment never reached 20 as on 05/2004 as claimed by the respondent. As per Sec 16(1)(a)

“ Act not apply to certain establishments :-

(1) This Act shall not apply

a) to any establishment registered under the Co-operative Societies Act, 1912(2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies employing less than 50 persons and working without the aid of power “

From Exbt.E2 produced by the appellant, the appellant establishment is registered under Travancore-Cochin Literary Scientific and Charitable Societies Registration Act. It is clear from the above that the appellant is not entitled to exclusion U/s 16(1)(a) of the Act. The appellant has also claimed that the employment strength of the appellant never reached 20 as on 05/2004. It is seen from the copies of the attendance register produced by the squad of

Enforcement Officers that appellant engaged 35 employees as on 04/2004 and therefore the statutory requirement of coverage of employment of more than 20 employees is satisfied by the appellant establishment. The appellant has also challenged the order on the ground that the appellant establishment was not given any notice by the 2nd respondent, the Assistant Provident Fund Commissioner, Kollam before finalising the matter. However it is seen from Exbt.R3, R4, R5 & R6 that the 2nd respondent after opening of Sub Regional Office of the Employees Provident Fund Organization at Kollam has issued summons and the same were acknowledged by the appellant establishment under their seal and signature. Further it is seen from the impugned order that the learned Counsel who filed the present appeal has attended the hearing on 21.08.2007 through Mr.Syam Sivadas, Advocate and requested for time. Further it is seen that the Advocate who filed this appeal himself appeared before the 2nd respondent authority on 04.09.2007. However the appellant establishment failed to produce any documents to defend the claim of the squad of Enforcement Officers that the appellant establishment is coverable under the provisions of the Act from 05/2004 onwards. After having attended the proceedings before the 2nd respondent, it is unfair on the part of the appellant to come and plead in this appeal that he had no notice regarding the enquiry U/s 7A before the 2nd respondent. The only request made by the appellant before

the 2nd respondent was to decide the question of applicability before determining the dues. The 2nd respondent authority accepted the request and decided the question of applicability before assessing the dues. Another issue pleaded by the appellant in this appeal is that the appellant establishment was not in existence as on 01.05.2004 and the appellant establishment started operation only from 01.04.2005. It is seen from Exbt.E2 that the appellant establishment is registered in the year 2001 and the lease deed dt.28.07.2003 and the sale deed dt.08.07.2003 would clearly confirm the existence of the appellant establishment prior to 2005. The balance sheet and receipt and payment account of the appellant establishment as on 31.03.2005 also shows huge tuition fee and bus fare collection from the students and salary being paid to the employees for the year ending 31.03.2005. This clearly shows the appellant establishment was in existence and was functioning prior to 01.04.2005. It can be seen that the squad of Enforcement Officers substantially proved the question of coverage and applicability of the provisions of the Act w.e.f. 01.05.2004. When the respondent established prima facie through documents that the appellant establishment is coverable w.e.f. 01.05.2004, it is for the appellant to produce documents and disprove the same if the appellant wanted to dispute the coverage from 01.05.2004. Having failed to do so and having failed to avail the numerous opportunities provided

by the 1st and 2nd respondents, the appellant cannot come up in appeal and argue that the appellant establishment is not coverable from 01.05.2004.

5. The appellant also disputed the assessment of dues for the period from 05/2004 to 09/2007. It is seen that the assessment is made on the basis of the records and documents seized by the squad of Enforcement Officers from the appellant establishment. If the appellant had any dispute regarding the quantum, the same should have been contested before the respondent authority by producing documentary evidence. Having failed to avail the opportunity provided to the appellant, the appellant establishment cannot come up in appeal and argue that the assessment is not made on the basis of any proper documents. The proceedings of the inquiry conducted by the 1st and 2nd respondent and elaborated in earlier paras would clearly show that the appellant was given more than adequate opportunity.

6. 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