



सत्यमेव जयते

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

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

(Thursday the 3rd day of December, 2020)

APPEAL No.552/2019
(Old No.296(7)2010)

Appellant : M/s.CSI College of Education
LMS Compound
Parassala
Trivandrum - 695502

By Adv.Jogy Scaria

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

By Adv.Nita N. S.

This case coming up for final hearing on 10.11.2020 and this Tribunal-cum-Labour Court on 03.12.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/26015/ENF-I(3)/2010/304A dt.08.04.2010 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 01/1996 to 03/2009. The total dues assessed is Rs.23,74,390.10.

2. The appellant is an educational institution owned and controlled by a charitable society registered under Charitable Societies Act, 1955. The society is established under the supervision of CSI South Kerala Diocese. The appellant is a self financing educational institution functioning on its own funds. The appellant started compliance voluntarily w.e.f. 01.04.2009. The respondent issued a notice covering the establishment U/s 2A of the Act from 01/1996. The ground taken by the respondent is that appellant is also an institution managed by CSI South Kerala Diocese. The respondent also took a view that since the institution started in the year 1996, it should be under the provisions of the Act from 01/1996. However a separate code number is allotted to the appellant for administrative convenience. In annexure A1 coverage notice, the respondent also pointed out that Sr.Elisabeth Joy CSI English Medium School, Attingal, managed by CSI South Kerala Diocese is already covered under the Act and therefore the appellant also should start compliance from the date of commencement as a branch unit U/s 2A of the Act. E.J. CSI English Medium School, Attingal is owned and managed by CSI Women Fellowship and is another independent organisation and it has got nothing to do with the appellant establishment. In response to the coverage notice, appellant submitted a detailed statement along with documents explaining the legal and factual position and submitted that the coverage notice is materially erroneous. The

appellant society is registered under the Charitable Societies Act and has an independent status. The society do neither own, manage or control any other self financing educational institutions. The society is managing the institution on the income generated by the society. The employees are employed by the society every appointment made by the society is subject to the sanction and approval from NCTE and the University. The employees are the employees of the society and not hired or exchanged from any other establishment. The approval to run the college was granted by the University to the society and not to the Diocese. The society pays the administration fee to the University. The application for affiliation was submitted by the society to the University. The society maintained independent accounts and the financial statements are audited by the society every year. The appellant also pointed out that some of the teachers are drawing more than Rs.6500/- per month at the time of joining the service of the appellant establishment and are therefore excluded employees. A copy of the written statement dt.02.12.2009 filed before the respondent is produced and marked Annexure A2. During the course of 7A also the appellant produced all the above documents before the respondent to substantiate the claim that the educational institution is run by the society and not by the Diocese. The true copy of the following documents are produced and marked as Annexure A3(Colly)

1. True copy of the registration of the society for higher education
2. Letter regarding affiliation issued by the University of Kerala to the society in 1995.
3. Letter demanding administration fee issued by the University of Kerala dt. 08.05.1996.
4. Order no.AC B1/377/95 dt. 04.12.1996 issued by the University on affiliation.
5. Letter demand guarantee to the society issued by the University dt.02.08.1997.
6. The memorandum of association and article of association
7. The details of employees of staff of the institution

Without considering any of the above documents the respondent issued the impugned order. From the impugned order, it is not clear with which establishment the appellant is clubbed. The respondent has no case that the society owns or manages any other institution. Even in case of single ownership, the functional integrity test is to be applied. The respondent ought to have establish that there is financial, administrative and employee wise integrity before deciding to club the appellant U/s 2A of the Act. The articles of association was registered in the year 1977 and the institution stands establish

in the year 1996. The management of the society is vested in the Governing Council and its General Body.

3. The respondent filed counter affidavit denying the above allegations. M/s.CSI College of Education is covered U/s 2A of the Act treating it as a branch unit of another educational institution run by South Kerala Diocese of Church of South India. The appellant challenged the coverage on the ground that the appellant institution is an independent entity and therefore cannot be clubbed with any other institution run by the Diocese. It was also pointed out that the appellant establishment never employed 20 employees for the purpose of coverage under the Act. Hence an enquiry U/s 7A was initiated. During the enquiry, the appellant submitted a written statement. The appellant was given adequate opportunity and considering all the documents produced by the appellant and also on behalf of the respondent, the impugned order was issued. The respondent found that the management of CSI College of Education is vested with the management of Church of South India. It was also seen that the concurrence of Govt regarding the starting of the new unaided training college in the private sector was given to the Church of South India. This is evident from the letter no.12004/B3/95/H.Edn submitted by the establishment. The evidence produced before the respondent authority clearly proves that the Society for Higher Education for S.I.U.C. community is totally

under the control of Diocese of Church of South India. The land and property of the institution is also owned by Church of South India of South Kerala Diocese. Hence the appellant establishment is dependent on Church of South India in all sense at the time of starting and later for the management of the college.

4. According to the appellant, the CSI College of Education is run by a society by name Society for Higher Education for S.I.U.C. community. The appellant generates its own funds, appoints its own staff and manages its own affairs. It has no link with any other institution run by the Diocese of Church of South India. According to the respondent, as per the Memorandum of Association produced by the appellant, the ownership and management of the society and all its assets shall vest in the South Kerala Diocese of the Church of South India and the appellant establishment is liable to be covered U/s 2A of the Act as a branch unit. According to the appellant, it is not even clear from the impugned order with which establishment the appellant is clubbed for the purpose of coverage. It is seen that the claim of the respondent that the South Kerala Diocese of the Church of South India is having its control on the society has some basis. The respondent has also established that the property of the appellant establishment also belong to the South Kerala Diocese. But the question is whether the ownership of property and general management of the society will satisfy the test for the purpose of clubbing an establishment

with another establishment run by the South Kerala Diocese. The appellant produced adequate documents to establish their independent status. However the respondent failed to prove the financial integrity of the appellant with the Diocese. As rightly pointed out by the appellant, it is also not established that there is transferability of the employees either between the Diocese and the appellant or between the other educational institutions. The only other possible claim that can be made is with regard to a single management running different educational institutions. It is a settled legal position that if a society or a management is running different educational institutions, the society itself can be covered and all other educational institutions can be clubbed U/s 2A of the Act. However there is no adequate evidence to support such a claim. Hence it is rather difficult to accept the plea of the respondent that the clubbing is done on the ground that the ownership and management of society and all its assets belong to the South Kerala Diocese.

5. It was also pointed out that the respondent has not taken into account the pleading of the appellant that some of the employees were excluded employees from the very commencement of the institution, as they were drawing the salary beyond statutory limit of Rs.6500/-. The respondent has not answered this issue neither in the impugned order nor in the counter affidavit filed by them.

6. Considering all the facts, evidence, pleadings and arguments in this case, I am inclined to hold that the impugned order cannot be sustained under law.

Hence the appeal is allowed, the impugned order is set-aside and the matter remitted back to the respondent to re-examine the clubbing and also the assessment within a period of 3 months after issuing notice to the appellant. The pre-deposit already made by the appellant shall be adjusted or refunded after finalisation of the enquiry.

Sd/-
(V. Vijaya Kumar)
Presiding Officer