सत्यमेव जयते

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

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

(Thursday the 4th day of November, 2021)

APPEAL No.652/2019

(Old no.162(7)2013)

Appellant : M/s.Central Travancore Specialists Hospital Pvt Ltd
Mulakuzha
Chengannur
Alappuzha – 689505

By Adv.C.B.Mukundan

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office, Kaloor
Kochi – 682017

By Adv.Sajeevkumar K. Gopal

This case coming up for final hearing on 28.06.2021 and this Industrial Tribunal-cum-Labour Court on 04.11.2021 passed the following:

O R D E R

Present appeal is filed from order no. KR/KC/19227/ENF-2(5)/2012/13399 dt.04.01.2013 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') in respect of contract employees engaged by the appellant

during the period from 01/2011 to 01/2012. The total dues assessed is Rs.5,32,842/-.

2. The appellant is a hospital and is covered under the provisions of the Act. An Enforcement Officer of the respondent authority visited the appellant establishment on 13.03.2012 and submitted a report. The respondent authority thereafter issued a summons dt.23.04.2012 U/s 7A of the Act fixing 04.05.2012 as the date of enquiry. An authorized representative of the appellant attended the enquiry with relevant records. During the course of the proceedings, the appellant produced two DDs for Rs.23,319 and Rs.52,568/- being dues of the canteen employees. Thereafter the respondent issued the impugned order without even considering the remittance made by the appellant during the course of 7A enquiry. The respondent authority claimed the amount in respect of two contractors, namely, M/s.Royal Securities, Kottayam and M/s.Omkar Security Services, Karunagapilly. Both the contractors are independently covered under EPF Act. They were complying in respect of employees deputed by them with the appellant. However the respondent failed to take into account the payment made by the contactors while assessing dues through the impugned order. The finding of the respondent authority that the contractors are paying less than minimum wages is not correct and is not within the competence of the respondent authority. Another ground taken

by the respondent authority is that the wages paid by the principal employer is not accounted by the contractors while remitting contribution in respect of their employees. The respondent authority passed the impugned order on the basis of the report of the Enforcement Officer. However a copy of the report of the Enforcement Officer was not provided to the appellant. The respondent failed to implead the contractors before the impugned orders are issued.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 31.03.2000. A squad of two Enforcement Officers inspected the appellant establishment on 13.03.2012 and reported the dues payable by the appellant establishment for the period from 04/2008 to 01/2012. According to the report, the principal employer failed to extend the benefit of social security to the employees of M/s.Royal Securities and M/s.Omkar Security Services. Since the appellant failed to remit the contribution as directed by the Enforcement Officer, the respondent initiated an enquiry U/s 7A of the Act. On 22.05.2012 the representative of the appellant produced 2 Demand Drafts for Rs.52,568/- towards dues in respect of 15 canteen employees for the period from 02/2012 to 04/2012 and Rs.23,319/- toward dues in respect of non enrolled employees for the period from 11/2011 to 01/2012. The representative of the appellant

was directed to file the statutory returns in Form 3A and 6A for the year 2011-12. In the meanwhile the respondent procured the dues and remittance details and copies of Form 3A for 2011-12 in respect of contract employees engaged through contractors from the respective provident fund offices. From the documents received, the respondent authority noticed that the wages reflected in Form 3A in respect of the employees engaged through both the contractors were found to be less than minimum wages and provident fund contribution were made lesser than that paid to the agency by the principal employer. Non enrollment of 8 canteen employees was also noticed. The respondent authority therefore calculated the dues in respect of 39 house keeping staff and 8 canteen employees engaged through M/s.Royal Securities on the basis of the monthly salary furnished in the contract agreement between the hospital and the contractor. The dues in respect of 20 security guards deployed by M/s.Omkar Security Services was also calculated taking into account the monthly salary furnished in the agreement deed. The appellant is a habitual defaulter and several assessment orders issued are pending before the Hon'ble High Court and also this Tribunal. The amounts remitted during the course of hearing was accounted by the respondent. Para 30(1) of EPF Scheme mandates that " The employer shall, in the first instance, pay both the contribution payable by himself and also, on behalf of the member employed by

him directly or by or through a contractor, the contribution payable by such member ". The principal employer also violated Para 30(3) of the EPF Scheme according to which the responsibility of the payment of contribution in respect of contract employees is with the principal employer. The appellant being the principal employer, cannot evade the responsibilities cast upon him by passing the liabilities to the contractors. As per Sec 23 of The Indian Contract Act, the consideration or object of the agreement is lawful, unless it is forbidden by law. Every agreement of which the object or consideration is unlawful is void. The Hon'ble Supreme Court of India in **People's Union for Democratic Rights Vs UOI**, 1982 AIR 1473 held that if the contractor fails to fulfil its duties under the Act, then the principal employer shall be under an obligation to provide all amenities and benefits prescribed under the law to contract labour deployed at its establishment. It is seen that monthly wages paid as per From 3A for the year 2011-12 is Rs.1800/-, the salary/wages is negligible and the provident fund contribution is paid on lesser wages. In **Regional PF Commissioner Vs Vivekananda Vidyamandir & Others**, 2019 KHC 6257 the Hon'ble Supreme Court of India held that the crucial test to be applied for inclusion of allowances as basic wages is universality i.e. all allowances paid uniformly, universally, necessarily and ordinarily to all employees would form part of basic wages. In **J & J Dechane Vs RPFC and another**, 1960 (1) LLJ 765 (A.P.H.C.-DB) the Division

Bench of the Andhra Pradesh High Court held that there is no harm in relying upon the report of the Enforcement Officer as the Enforcement Officer is a notified Inspector U/s 13 of the Act. The appellant never claimed a copy of the inspection report during the course of 7A and the same cannot be a ground for appeal.

4. A squad of Enforcement Officers of the respondent authority inspected the appellant establishment and found that 39 house keeping staff and 8 canteen employees engaged through M/s.Royal Securities, Kottayam and 20 securities engaged through M/s.Omkar Security Services were not properly enrolled to the fund. The respondent authority therefore initiated an enquiry U/s 7A of the Act, summoned the appellant, the principal employer and quantified the dues. During the course of hearing, the respondent also found that both these agencies are covered independently under the provisions of the Act and they are remitting contribution in respective jurisdictions of the Employees Provident Fund Organization. So the respondent authority collected that statutory return in Form 3A and 6A from the respective offices of provident fund and found that the contractors remitted contribution on very low wages and not on the basis of the agreement entered into between the appellant and the contractors. The respondent therefore assessed the contribution on the basis of the actual wages agreed in the agreement by the

contractors and directed the appellant to remit the same. According to the learned Counsel for the appellant, the contractors are independently covered and they ought to have been made party to the proceedings. The learned Counsel for the appellant also pointed out that the contribution paid by the contractors in respect of these employees deployed in the premises of the appellant was also not considered by the respondent authority. According to the learned Counsel for the respondent, the provisions of the Act and the Schemes make the principal employer liable, in the event of default by the contractor, even if, it is independently covered. Sec 2(f) of the Act defines an employee as a person employed in or in connection with the work of the establishment and who gets its wages directly or indirectly from the employer and includes persons employed by or through a contractor. Para 30(1) of the Scheme mandates that the employer shall, in the first instance pay both the contributions on behalf of the members employed by him directly or by or through a contractor. Sec 8A of the Act also empowers the principal employer to recover the contribution in respect of the employees employed by a contractor from the contract amount. According to the learned Counsel for the respondent, the above provisions makes it abundantly clear that the principal employer is responsible for the contribution in respect of the contract employees deployed by the contractors. The learned Counsel for the appellant

raised two issues which is relevant for deciding this matter. The first issue is with regard to the nonjoinder of the contractors in the proceedings. As rightly pointed out by the learned Counsel for the respondent, the principal employer is responsible and liable to ensure that the provident fund contribution in respect of the contract employees are correctly remitted by the contractor. In this proceedings it is seen that the respondent authority obtained the statutory returns in Form 3A and 6A from the respective provident fund offices where the contractors are covered and found that the wages reported in those returns does not tally with the agreement entered into between the appellant and the contractors. Therefore he assessed the dues on the basis of the wages reflected in the agreement. The respondent authority also found that the contribution paid by the contractors are on wages which are less than minimum wages. The learned Counsel for the appellant argued that the respondent authority is not the competent authority to decide the minimum wages of contract employees. However it is seen that the respondent authority has only made a passing reference that the contribution paid by the contractors are on a wages which is much less than the minimum wages and not on the wages as per the agreement between the contractor and the appellant. When independent code numbers are allotted to contractors, it is clear that the contractor is doing work or supplying manpower

to various agencies. In such a contingency it is appropriate that the concerned contractors are also summoned in the enquiry U/s 7A before an assessment order issued against the employees deployed by them with the principle employer. The law in this regard is settled. Only the contractor will be in a position to explain the difference in wages and therefore the difference in contributions.

5. The second issue raised by the learned Counsel for the appellant is that the report of the Enforcement Officer on the basis of which the enquiry was initiated was not provided to the appellant. According to the learned Counsel for the respondent, the appellant never requested for a copy of the report during the course of 7A enquiry and he was aware of the purpose of the enquiry as the inspection report was based on the records maintained by the appellant. It is always appropriate that in cases like this, where 3rd party contractors are involved and the assessment is being proposed against the principal employer, a copy of the inspection report is provided to the employer so that he will be aware of the purpose for which the enquiry U/s 7A is initiated. In this case as already pointed out, the statutory returns filed by the contractors were collected from the respective provident fund offices and the same is used against the principal employer for quantifying the dues in respect of the contract employees. In such cases it is mandatory that the report of the

Enforcement Officer shall be provided to the employer along with the summons for a fair and proper conduct of the enquiry.

6. The appellant contended that the contractors remitted the contribution in respect of the employees deployed by them with the appellant establishment in the respective provident fund offices and filed the returns. It is not clear from the impugned order whether the remittances made by the contractors in the respective provident fund offices were accounted while issuing the impugned order. If the contribution paid are not accounted, the calculation of contribution in the impugned order is likely to go wrong. It is better that the independently covered contractors are primarily made responsible for remitting contribution in respect of the contract employees deployed by them with the principal employer. In case the contractors failed, the liability of the principal employer under the Act remains and the principal employer will be liable to remit the difference in contribution to the respondent organization.

7. In view of the above findings, it is not possible to sustain the impugned order.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-decide the matter within 6 months after issuing fresh notice to the appellant and the contractors. If the parties fail to appear or fail to produce documents called for, the respondent is at liberty to decide according to law.

Sd/-

(V. Vijaya Kumar)
Presiding Officer