



सत्यमेव जयते

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

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

(Tuesday the 2nd day of November, 2021)

APPEAL No.680/2019

(Old no.395(7)2012)

Appellant

: M/s.City Theatres Pvt Ltd
Thampanoor
Trivandrum – 695001

By Adv.M.S.Vijayachandra Babu

Respondents

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

By Adv.Ajoy P.B.

2. M/s.Ex-servicemen Industrial
Security Agency
Rani Bhavan, T.C. 28/2361
Chettikulangara
Trivandrum - 695035

By Adv.K.B.Arunkumar

3. M/s.Ex-Army Protective Security
T.C. 38/1596, Thenguvila veedu
Behind Attukal Temple
Attukal, Manacaud
Trivandrum – 695009

This case coming up for final hearing on 03.08.2021 and this Industrial Tribunal-cum-Labour Court on 02.11.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/1033/ENF-1(2)/2012/14320 dt.02.03.2012 assessing dues U/s 7A of EPF & MP Act (hereinafter referred to as 'the Act') against non enrolled employees for the period from 07/2009 to 07/2011. The total dues assessed is Rs.1,60,072/-.

2. Appellant is a company registered under Companies Act. It is covered under the provisions of the Act. An Enforcement Officer conducted an inspection and issued an inspection report dt.12.01.2011 directing the appellant to remit contribution in respect of 15 non enrolled employees. The name of the employees, date of joining, wages paid are also mentioned in the inspection report. A copy of the inspection report is produced and marked as Annexure A1. Based on the report of the Enforcement Officer, the Assistant Provident Fund Commissioner initiated action U/s 7A of the Act. The appellant filed objection dt.28.12.2011, a copy of which is produced and marked as Annexure A2. On the request of the appellant, the 1st respondent authority impleaded Ex-Army Protective Security, Trivandrum and Ex-servicemen Industrial Security Agency as additional parties. Those two agencies executed an agreement with the appellant for supply of security persons. Copies of the agreement with the security agencies are produced and marked as Annexure A3 and A4. Sample bill and vouchers of Ex-Army Protective Security for the months of April, May and

June are produced and marked as Annexure A5 series. Sample bill and vouchers of Ex-servicemen Industrial Security Agency for the months of May, June and July are produced and marked as Annexure A6 series. Without considering the representation and written statement of the appellant, the respondent issued the impugned order which is produced and marked as Annexure A7. The 1st respondent authority ought to have conducted an enquiry under Para 26B of EPF Scheme for deciding whether the non enrolled employees are eligible to be enrolled to provident fund membership. The appellant is not liable to remit the contribution in respect of the contract employees because as per the agreement between the contractors' it is their liability to pay provident fund contribution in respect of the employees engaged by them. Though the respondent authority summoned the security agencies, only Ex-servicemen Industrial Security Agency was represented in the proceedings. Out of the 15 employees, 11 employees are deployed by security agencies. The identity of the employees deployed by the security agencies are not known to the appellant. Sri.Lakshmanan is attending accounts work of the establishment. He is also attending the account work of other establishments. The accounting charges were paid to Sri.Lakshmanan is not wages. Sri.Ganapathy is not an employee of the appellant and is an employee of an outdoor unit of a production house. He has already attained the age of 60 years. Sri.Balachandran is a retired employee of a

Corporation under the State Govt. The eligibility of these persons are required to be decided under Para 26B of EPF Scheme. The 1st respondent authority excluded one person Sri.Govindan on the ground that he is a retired employee and took his provident fund settlement from the respondent organisation. The contractors are establishments covered under the provisions of the Act and they remitted the contribution in respect of the employees deployed in the appellant establishment.

3. The respondent filed counter denying the allegations. The appellant establishment is covered under the provisions of the Act. The enquiry U/s 7A was initiated on the basis of a report of the Enforcement Officer. The Enforcement Officer listed out 15 non enrolled employees including their name, date of joining, monthly wages etc. The list of non enrolled employees is produced and marked as Exbt.R1. During the enquiry, the appellant took a stand that these employees are engaged through contractors. However it is seen that the contractors are also not remitting contribution in respect of employees deployed at the appellant establishment. It is a statutory duty cast upon the principal employer to deduct and remit provident fund contribution in respect of the contract employees engaged by them as per Para 30 of EPF Scheme. Sec 8A of the Act empowers the principal employer to deduct the

contributions paid from the contract amount. None of the grounds pleaded by the appellant in this appeal are legally sustainable.

4. Notice was issued to all the parties to the proceedings. The 1st and 2nd respondent entered appearance and 3rd respondent remained ex-parte.

5. The issue involved in this appeal is with regard to non enrollment of 15 employees by the appellant establishment. According to the appellant, 11 employees are engaged through 2nd and 3rd respondent contractors and 4 employees are not eligible to be enrolled to the fund. The appellant therefore felt that the question of eligibility of these employees to be enrolled to provident fund ought to have been decided under Para 26B of EPF Scheme. Para 26B of EPF Scheme can be invoked when there is a dispute between the employer and employees regarding the eligibility to be enrolled and the decision of the Regional Provident Fund Commissioner shall be final. In this case there is no dispute between the employer and employee and therefore the eligibility dispute if any, is required to be resolved U/s 7A of the Act itself. According to the appellant, 11 persons are engaged through two security agencies and it is their responsibility as per the agreement to extend the benefit of provident fund to the employees engaged by them in the appellant establishment. According to the learned Counsel for the 1st respondent, the statutory provisions makes it mandatory for the principal employer to ensure

extension of provident fund benefits to the employees engaged through contractors also. According to him, the definition of employee U/s 2(f) of the Act takes into its fold employees employed by or through a contractor in or in connection with the work of the establishment. Para 30 of EPF Scheme makes the principal employer responsible to remit the contribution in respect of contract employees also in the first instance. Sec 8A of the Act empowers the principal employer to remit the contribution in respect of contract employees and recover the same from the contract amount. Hence the appellant cannot escape the liability in respect of provident fund contribution of employees engaged through contractors. The 1st respondent authority also considered the eligibility of other 4 persons who were not enrolled to the fund. According to him all the employees except Sri.Govindan are liable to be enrolled to the fund by the appellant. Sri.Govindan is an excluded employee in view of the fact that he was already covered under the provisions of the Act and took his provident fund settlement on his retirement from the respondent organisation. In view of the above finding, I find no infirmity in the impugned order issued by the 1st respondent.

5. The 2nd respondent entered appearance through its Counsel and pointed out that the 2nd respondent never deployed any person in the

appellant establishment during the relevant point of time. According to him the documents produced by the appellant in this appeal are fabricated.

6. The learned Counsel for the 1st respondent also pointed out that the appellant establishment has already remitted the dues as per the impugned order and therefore the appeal has become infructuous.

Considering the facts, circumstances and pleadings, I am not inclined to interfere with the impugned order .

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer