



सत्यमेव जयते

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

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

(Tuesday the 17th day of November, 2020)

Appeal No.295/2019

Appellant : M/s. Geevarghese Yohannan
Charitable Trust
Margregorious Memorial Public
School,
Kakkanad,
Ernakulam – 682305

By. Adv. Ajith S Nair

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Kochi- 682017

By Adv.S Prasanth

This appeal came up for hearing on
27/10/2020 and this Industrial Tribunal cum Labour
Court issued the following order on 17/11/2020.

ORDER

Present appeal is filed from order No. KR/KCH/1028068 (7A)/Enf 3(1) /2018/9715 dt. 06/03/2019 assessing dues U/s 7A of EPF and MP Act 1952 (hereinafter referred to as ‘ the Act’) and deciding the date of coverage and assessing the dues for the period from 06/2011 to 05/2014. The assessed dues is Rs. 10,50,876/-.

2. The appellant is a Charitable Trust registered with the objective of serving general public by providing quality education at various places. The appellant started a school at Kakkanad Kochi during 2011. Initially the employment strength was below 20 and therefore the school was not covered under the purview of the Act. The strength of the employees exceeded 20 during the academic session 2014-15 and therefore they approached the respondent for coverage under the provision of the Act. The appellant was covered and was complying regularly. An Enforcement Officer of the respondent inspected the records of the

appellant during May 2015. The Enforcement Officer vide his letter dt. 28/12/2016 sent his inspection observations, which is marked as Annexure A2. There after the respondent initiated an enquiry U/s 7A of the Act vide notice dt.19/07/2017. The appellant was directed to be present before the respondent on 30/08/2017. The enquiry was adjourned to 26/11/2019. A representative of the appellant appeared before the respondent and filed a detailed representation disputing the proposed assessment of the dues by the respondent. The copy of the representation is produced and marked as Annexure A4. The appellant received the impugned order dt. 06/03/2019 holding that the coverage of school has been advanced to 01/06/2011 and assessing dues for the period 06/2011 to 05/2014. The Enforcement Officer has proposed the dues of Rs.14,42,848/- whereas the respondent has determined the dues to the extend of Rs.10,50,876 only. It is not correct to say that the report of the Enforcement Officer was not disputed by the appellant. The assessment of dues was disputed by the appellant through the Annexure A4

representation. The school established by the appellant is an independent establishment and is no way connected with the school at Thiruvananthapuram. The school at Kakkanad cannot be considered as a department or branch of a school or the trust at Thiruvananthapuram U/s 2A of the Act. The respondent failed to consider the fact that majority of the employee were drawing more than the statutory limit of Rs. 6500/- and were therefore excluded. Though the respondent produced the required documents there is no whisper in the order with respect to the contention of the excluded employees.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered U/s 2A of the Act, w.e.f 01/06/2011. The appellant obtained code number through online portal U/s 1(3)(b) erroneously when the establishment should have been covered U/s 2A of the Act as a branch unit of KR/TVM/22665, which is another school run by the appellant trust. The Enforcement Officer who inspected

the establishment filed his report which is marked as Exbt R1. An enquiry U/s 7A was initiated on the basis of report of the Enforcement Officer, which stated that the appellant is running a school at Trivandrum and therefore the present school, at Kakkanad is to be covered U/s 2A of the Act. The representative of the appellant did not raise any dispute regarding the report of the Enforcement Officer nor the dues statement submitted by the Enforcement Officer. The Annexure A4 statement filed by the appellant before the respondent has not raised any dispute regarding the applicability of the Act and Schemes from 06/2011 onwards. The proceedings of the enquiry dt. 26/09/2017, which is produced and marked as Exbt R2, would clearly show that the appellant has not disputed the date of coverage as on 01/06/2011 and also that the appellant himself submitted the details of wage paid to the employees. The impugned order is issued on the basis of the above proceedings.

4. The appellant has disputed the impugned order on two grounds : The first one is with regard to the coverage the appellant establishment w.e.f 01/06/2011. According to the learned Counsel for the respondent the appellant has taken the code number for coverage under the Act through online process, claiming the coverage U/s 1 (3)(b) of the Act. Later during the inspection of the appellant establishment, the Enforcement Officer noticed that the trust is running another school at Trivandrum which is already covered under the provisions of the Act, from 2010. The Enforcement Officer therefore recommended that the present unit at Kakkanad is required to be covered U/s 2A, as a branch unit. The Enforcement Officer also gave the provisional assessment of dues for the period 06/2011 to 5/2014. The enquiry U/s 7A was initiated for finalizing the date of coverage as well as to assess the dues from date of coverage till 2014. A representative of the appellant attended the 7A and filed Annexure A4 representation. In the Annexure A4 statement dt. 26/07/2019, the appellant admitted its

liability to be covered under the provisions of the Act from 06/2011. The appellant also furnished the EPF liability for the period from 06/2011 to 05/2014 as Rs. 2,09,854/- after excluding the excluded employees U/s 2(f) Act. Since the Appellant admitted the liability to be covered under the Act from 06/2011 onwards the respondent has not gone into the details of clubbing U/s 2A of the Act. Hence the appellant cannot dispute the liability to be covered from 06/2011 onwards in this appeal. The respondent also pointed out that from Exbt R2 series of documents produced by the appellant before the 7A authority, it can be seen that there were 21 employees from June 2011 onwards. Hence, even if, it is assumed that there is no inter dependency between the Kakkanad School and the Trivandrum school, the school at Kakkanad is liable to be covered from 06/2011 onwards. The learned Counsel for the respondent also argued that the Hon'ble High Court of Karnataka in **E Gajendran Vs RPFC**, 1997 (2) CLR 1193 held that the schools and its branches having a common control is

required to be covered U/s 2A of the Act. In view of the above position, the appellant cannot claim that the school is not statutorily coverable from 06/2011 onwards. Another issue raised by the appellant is with regard to the assessment of dues for the period from 06/2011 to 05/2014. According to the learned Counsel for the respondent the representative who appeared before the respondent, admitted the assessment given by the Enforcement Officer. But it is seen from Annexure A4 that the report of the Enforcement Officer with regard to assessment of dues was strongly disputed by the appellant. It was also pointed out that majority of the employees were excluded employees as they were drawing salary beyond Rs. 6500/-. The appellant also quantified the dues as Rs. 2,09,854/-. As per the report of the Enforcement Officer, the proposed dues worked out to Rs.14,42,848/-. Though the Enforcement Officer proposed Rs.14,42,848/- the dues assessed by the respondent in the impugned order is Rs.10,50,876/-. As rightly pointed out by the appellant it is not clear from the

impugned order whether the respondent has taken into account the excluded employees at the time of assessment. It can be seen from Exbt R2 that a few employees, 06 out of 21 employees were drawing more than Rs.6500/-. If they were not members of provident fund earlier, the appellant can claim exclusion those employees from enrollment. The impugned order is not clear about the above aspect.

5. Hence, it is appropriate that the matter is remitted back to the respondent to examine the matter in detail and issue an appropriate order.

In view of the above, the appeal is partially allowed and the date of coverage of the appellant establishment under the Act is confirmed as 06/2011. The assessment of

dues is set aside and the matter is remitted back to the respondent to re-assess the dues within a period of three months after issuing notice to the appellant. The pre-deposit amount remitted by the appellant as per the direction of this Tribunal will be adjusted after finalization of the assessment.

Sd/-

(V. Vijaya Kumar)
Presiding Officer