



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Monday the 20th day of December 2021)

APPEAL No. 118/2019

(Old No. ATA 1045 (7) 2014)

Appellant : M/s. Alphonsa Cashew Industries
Puthoor.P.O.
Kollam -691 507

By Adv.K.Y.Johnson

Respondent : The AssistantPFCommissioner
EPFO,Sub Regional Office
Pattom,
Trivandrum – 695 004

By Adv. Ajoy P.B.

This case coming up for final hearing on 12.08.2021and
this Tribunal-cum-Labour Court on 20.12.2021 passed the
following:

ORDER

Present appeal is filed from order No.KR/3148B/Enf
II(4)/2014/4135 dated 02.09.2014assessing damages under
Section 7A of EPF and MP Act 1952 on non-enrolled employees
for the period from 04/2004 to 02/2007. The total dues

assessed is Rs.5,17,242/-(Rupees five lakh seventeen thousand two hundred and forty two only).

2. The appellant is running several cashew factories in the state of Kerala, Tamil Nadu etc. One Sri. Ramankutty Nair filed a complaint against the appellant alleging that there was evasion in provident fund contribution. The respondent authority initiated an enquiry under Sec 7A of the Act. The appellant approached the Hon'ble High Court of Kerala in W.P.(C)No. 11716/2008 and the Hon'ble High Court quashed the proceedings with a liberty to the respondent to conduct an independent enquiry. A copy of the judgement dated 30.12.2013 is produced as Item No 1. As per the judgement, the respondent authority will have to conduct a proper enquiry under Sec 7A unconnected with the complaint of Mr. Ramankutty Nair and the non-enrolled employees are required to be identified. Since the factories of the appellant establishment are situated in the jurisdiction of different Sub Regional Offices, RPFC-1, Trivandrum took a decision that the enquiry shall be conducted by the respective Commissioners relating to the factories within their territorial jurisdiction. The respondent authority therefore

confined the enquiry with regard to one establishment, KR/3148.B functioning in his territorial jurisdiction. The respondent authority deputed Enforcement Officer to investigate and submit a report. The Enforcement Officer vide his report dated 23.08.2013 found that all employees were not covered during 2004-2005, 2005-2006 and 2006-2007. 121 employees were covered belatedly and 6 employees were not covered at all. The Enforcement Officer also found that 22 employees out of 127 had already left services of the appellant. The investigation was in respect to the period 2004-2005 to 2006-2007 and by that time many of the employees had already left the service of the appellant and therefore the appellant was prejudicially affected on account of delay in initiating the process. After submission of the report, the appellant fully co-operated with the enquiry. The complainant, Mr. Ramankutty Nair alleged bias against the respondent authority and send threatening letters. The respondent authority after prolonged proceedings issued the impugned order mechanically copying the report of the Enforcement Officer. The impugned order is in conflict with the judgement of the Hon'ble High Court. The impugned order did not identify the beneficiary employees. The appellant was not

given effective opportunity to test the correctness of the report of the Enforcement Officer by subjecting him to cross examination. The respondent authority also summoned the trade union leaders representing the appellant establishment and they confirmed that there is no evasion from 2007-2008 onwards.

3. The respondent filed counter denying the above allegations. The appellant (presently known as M/s. Bethanya Cashew Company) is covered under the provisions of the Act w.e.f. 01.06.1997. Sri. M Ramankutty Nair, the President of Cashew Processors Association filed a complaint against the appellant regarding non-enrolment of employees and evasion in payment of provident fund dues. According to the complaint, the appellant was showing lesser wages in wages register and other returns furnished before the EPF authorities than the wages shown in trading Profit and Loss A/c furnished before the IT authorities. Based on the complaint, an enquiry was initiated by RPFC-1. The appellant approached the Hon'ble High Court of Kerala in W.P.(C)No.11716/2008 and the enquiry was stayed vide order dated 23/05/2008. The Hon'ble High Court vide judgement dated 13.02.2013 finally disposed of the matter

quashing the enquiry proceedings initiated by the respondent with a liberty to the respondent authorities to initiate fresh proceedings after conducting an enquiry under Sec 7A of the Act. Consequently a fresh enquiry was initiated. Due to administrative convenience, it was decided to conduct separate enquiry in respect of the units by respective Provident Fund commissioners. Accordingly the present enquiry is confined to one unit of the appellant covered in the jurisdiction of Regional Office, Trivandrum. An Enforcement Officer was directed to investigate into the complaints and submit his report. After receipt of the report, an enquiry under Sec 7A was initiating directing to the parties to appear before the respondent on 07.10.2014. A copy of the report of the Enforcement Officer was handed over to the appellant as well as to the complainant. The complainant submitted an order dated 28.05.2010 from ESI Corporation wherein the wages shown was not tallying with the EPF contribution remitted by the employer. The complaint was directed to file the details of non-enrolled employees and wages given to them. The appellant and the complainant produced records to substantiate the respective contentions. The appellant failed to attend the enquiry on 04.03.2014, 25.03.2014 and

27.05.2014. The complainant failed to attend the hearing on 27.05.2014 and on his request, the enquiry was adjourned to 25.06.2014. The complainant appeared on 25.06.2014 and filed his statement of objection with regard to the report of Enforcement Officer. The complainant did not attend the hearing on 30.07.2014. A squad of Enforcement Officers was directed to examine the report of the Enforcement Officer in view of the proceedings and statements filed by the respective parties. The squad of Enforcement Officers inspected the appellant establishment, verified the books maintained by the appellant establishment and also collected statements from the trade unions representing the employees of the appellant. The squad examined Balance Sheet, ESI returns, Profit and Loss account of the appellant establishment and came to the conclusion that there was non-enrolment for the period 2004-2005 to 2006-2007 and confirmed the earlier report of the Enforcement Officer. However they confirmed that there is no non-enrolment after 2008. On the basis of the report of the squad of Enforcement Officers, there were six non enrolled employees and evasion of Provident Fund dues arising out of delay in enrolment of employees. Accordingly the respondent issued the impugned

order. The respondent authority conducted the enquiry investigating the complaint and also relying on the documents maintained and produced by the appellant and also the complainant. The enquiry authority also summoned and took evidence from the trade union leaders before concluding the enquiry. There is no basis in the claim of the appellant that they were prejudicially affected by the delay in initiating the enquiry. The evasion of dues and non-enrolment were detected by the Enforcement Officer based on the records maintained by the appellant establishment. The appellant was given more than adequate opportunity to produce evidence and also to cross examine the Enforcement Officer who conducted the investigation. The appellant never wanted to cross examine the Enforcement Officer during the course of the 7A enquiry.

4. The respondent authority received a complaint from one Sri. Ramankutty Nair, President of Kerala Cashew Processors Association alleging that there is evasion with respect to wages reported by the appellant and also there is non-enrolment. The respondent authority on the basis of the complaint initiated an enquiry under Sec 7A of the Act. The appellant approached the

Hon'ble High Court of Kerala in W.P.(C)No. 11716/2008. The Hon'ble High Court vide its judgement dated 13.02.2013 quashed the proceedings and directed the respondent authority to conduct independent investigation and enquiry into the matter. The Regional PF Commissioner in charge of Kerala decided that, for administrative convenience the enquiry shall be conducted by the respective Commissioners in respect of units of the appellant situated in their jurisdiction. The respondent authority therefore confined its enquiry to one unit of the appellant situated in his jurisdiction. An Enforcement Officer was deputed to investigate into the complaint. On receipt of the report of the Enforcement Officer, the respondent authority initiated the enquiry, issuing summons to the appellant as well as the complainant. The appellant and the complainant entered appearance and filed documents to substantiate their respective claims. The respondent authority deputed a squad of Enforcement Officer to confirm the correctness of the report of the Enforcement Officer who conducted the investigation in the first instance. The squad of Enforcement Officers inspected the appellant establishment, verified the documents maintained by the appellant, discussed the issue of non-enrolment and evasion

with the trade unions representing the employees and finally concluded that during the period 2004-2005, to 2006-2007 there was non-enrolment and also evasion as reported by the Enforcement Officer and from 2007 onwards there is no non-enrolment. The respondent authority summoned the trade union leaders also in the enquiry and they also confirmed the stand of the squad of Enforcement Officer that there is no evasion of membership from 2007-2008 onwards. On the basis of the evidence such as the documents produced by the appellant and the complainant and also on the basis of the report of the Enforcement Officer and the squad of Enforcement Officers, the respondent authority issued the impugned order.

5. The learned Counsel for the appellant challenged the impugned order on various grounds. According to him initiating an enquiry on the basis of complaints filed by Sri. Ramankutty Nair itself is not correct. He also argued that there was inordinate delay in initiating the enquiry which caused prejudice to the appellant as many of the employees who handled the records had already left the service of the appellant establishment. The learned Counsel for the appellant also

pointed out that the respondent authority has mechanically copied the report of the Enforcement Officer without any application of mind. He also argued that the respondent failed to identify the employees against whom non-remittance or delayed remittance are alleged.

6. The basic allegation of the learned Counsel for the appellant is that the impugned order is issued in defiance of the judgement of the Hon'ble High Court. The Hon'ble High Court of Kerala in W.P.(C)No.11716/2008 filed by the appellant vide its order dated 13/02/2013 held that

“Para 6 : The learned Standing Council fairly submits that an independent enquiry will be conducted and in respect of whom default in payment of amount is made shall be identified and the employer shall cooperate with the proceedings. It is open to the department to take such evidence as required under law and come to a conclusion as to whether the petitioner is liable to pay higher contribution in respect of the employees who have been omitted by the employer. Accordingly, the impugned proceedings are quashed with liberty to Provident Fund

*authority to initiate fresh proceedings after conducting such an enquiry as contemplated under Sec 7A of the Act. The learned Counsel for the respondent has relied upon the decision reported in 1994 III LLJ (Suppl) 1136, **Food Corporation of India Vs Provident Fund Commissioner and Others** the ratio of the said decision shall also be taken into consideration while deciding the issue”.*

What is contemplated as per the direction of the Hon’ble High Court is that the respondent authority shall take all the evidence as required under law before coming to a conclusion regarding the evasion of contribution and membership. The Hon’ble High Court also directed that the ratio in **Food Corporation of India case (Supra)** shall also be taken into consideration while deciding the issue. Now the question is whether the respondent authority complied with the above directions while issuing the impugned order. On a perusal of the impugned order, it is seen that the respondent authority has complied with the directions of the Hon’ble High Court in letter and spirit. He deputed an Enforcement Officer to investigate the allegations in the

complaint. The Enforcement Officer in turn verified all the records maintained by the appellant establishment and came to the conclusion that six employees employed by the appellant were not enrolled to the fund and 121 employees were enrolled from a later date. He also provided some provisional assessments on the basis of the records produced by the appellant establishment. During the course of enquiry, the appellant as well as the complainant produced the relevant records to substantiate their respective contentions. The complainant raised certain doubts regarding the reports of the Enforcement Officer. The respondent authority therefore deputed a squad of Enforcement Officers to further verify the report of the Enforcement Officer and the squad of Enforcement Officers confirmed the first report submitted by the Enforcement Officer. On the basis of these exercises done by the respondent authority and also on the basis of the records available to him, the respondent authority came to the conclusion that there were some non-enrolment and evasion and therefore quantified the dues. The facts in respect of ***Food Corporation of India case (Supra)*** is slightly different. In the above case, the Provident Fund Commissioner proceeded to assess the dues in respect of

contract employers on the basis of the payments made to the contractors. Food Corporation of India specifically requested the Commissioner to summon the contractors as the list of employees and wages paid to them are maintained by the contractors. The Commissioner did not summon the contractors or the list of employees from them. In such a context, the Hon'ble Supreme Court observed that "The question in our opinion is not whether one has failed to produce evidence. The question is whether the Commissioner who is the statutory authority has exercised powers vested in him to collect the relevant evidence before determining the amount payable under the said Act". The Hon'ble Supreme Court therefore concluded that the Commissioner shall exercise all his powers to collect all evidence and collect all materials before coming into proper conclusion. It would be a failure to exercise the jurisdiction, particularly when a party to the proceedings requested for summoning evidence from a particular person. In this particular case, there was no such contingency. The appellant produced the relevant records before the Enforcement Officer, the squad of Enforcement Officers and also before the respondent authority. The respondent authority also collected evidence from the

complainant and also the trade union leaders representing the employees of the appellant. Hence the claim of the learned Counsel for the appellant that the respondent authority failed to comply with the direction of the Hon'ble High Court of Kerala is not correct.

7. Another contention taken by the learned Counsel for the appellant is that the respondent authority failed to identify the employees who were required to be enrolled to the fund or the employees who are belatedly enrolled to the fund. There is a specific finding in the impugned order by the respondent authority. As per the impugned order

“The squad of Enforcement Officers had examined all these documents and came to the conclusion that there are non-enrolment for the period from 2004–2005, 2005–2006 and 2006–2007. The squad has also identified the employees who are not enrolled and for the period for which the dues are outstanding. The names of employees are also made available.”

From the above findings by the respondent authority it is clear that the 6 employees not enrolled to the fund and 121 employees

who were enrolled belatedly were clearly identified for extending the benefits of social security to them.

8. The learned Counsel for the appellant also submitted that the delay in initiating the proceedings has caused serious prejudice to the appellant establishment as the records and documents were not traceable and many of the employees handling these matters had already left the appellant establishment. The alleged non enrolment and delayed enrolment is for the period from 2004 – 2005 to 2006 – 2007. The enquiry under Sec 7A was initiated through summons dated 22.08.2007 and it is not correct to allege that there was undue delay in initiating the process. There is no limitation as far as EPF and MP Act is concerned, in initiating the enquiry under Sec 7A. As already pointed out, the claim of the appellant that there was undue delay cannot be accepted in this case as the default was upto 02/2007 and the enquiry was initiated on 22.08.2007. Further the appellant produced all the relevant records for inspection by the Enforcement Officer and the squad of Enforcement Officers. They produced the records before the respondent authority also at the time of the enquiry. Hence the

claim of delay has no basis in the facts and circumstances of this case.

9. The learned Counsel for the appellant also pointed out that the monthly salary of six employees is taken as more than 78,000/- rupees. The learned Counsel for the respondent pointed out that the wages are taken from the record of the appellant establishment and the wages includes not only the wages of six employees but also 121 employees who were enrolled belatedly to the fund.

10. The learned Counsel for the appellant pointed out that the appellant establishment has already remitted the contribution as per the impugned order, under protest. The learned Counsel for the respondent submitted that the amount now assessed as per the impugned order relates to the assessments in respect of non-enrolled employees and employees enrolled belatedly and there is no infirmity in the impugned order. As already pointed out, the assessment as per impugned order is for the period 04/2004 to 02/2007. The appellant shall facilitate the extension of the social security benefits to the surviving beneficiaries.

11. Considering the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer