



सत्यमेव जयते

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

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

(Thursday the, 20<sup>th</sup> day of January 2022)

**APPEAL No. 130/2019**

(Old No. ATA.960(7)2014)

Appellant : M/s. Popular Industries  
(Pynadath Crusher)  
Door No. 1/534, Kuzhiyampadam,  
Manjapra.P.O.  
Ernakulam – 683 581

By Adv. Paulson C Varghese

Respondent : 1. The Regional PF Commissioner  
EPFO, Sub Regional Office,  
Bhavishyanidhi Bhavan,  
Kaloor, Kochi – 682 017

2. The Assistant PF Commissioner  
EPFO, Sub Regional Office,  
Bhavishyanidhi Bhavan,  
Kaloor, Kochi – 682 017

By Adv. Thomas Mathew Nellimoottil

This case coming up for final hearing on 31.08.2021 and this  
Tribunal-cum-Labour Court on 20.01.2022 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/KC/27627/Enf.3 (7)/2014/4673 dated 23.07.2014 and order dated KR/KC/27627/Enf.3(7)2012/13821 dated 28.01.2013 deciding the applicability and assessing the dues from 04/2011 – 03/2013 under Sec 7A of EPF and MP Act (hereinafter referred to as 'the Act'). The total dues assessed is Rs.3,55,728/- (Rupees Three Lakh fifty five thousand seven hundred and twenty eight only)

2. The appellant is a metal crusher unit. The operations of the appellant establishment is managed with the help of highly sophisticated machinery. The total labour strength of appellant factory never touched 20 ever since the date of its inception. The normal wage pattern of the employees is ranging from Rs. 7500 to 15000. On 18.11.2010, an Enforcement Officer of the respondent organisation visited the unit and prepared a spot mahazar. True copy of the same is produced and marked as Annexure A1. According to Annexure A1 mahazar, the employee strength as on that day was 19 persons. Some of the drivers and customers who came to pick up the products were also included in the head count by the Enforcement Officer. The labour strength of the appellant

establishment never crossed 17. The Enforcement Officer thereafter vide his communication dated 01.12.2010 directed the appellant to produce certain details. The appellant filed an objection dated 30.03.2011 stating that the actual number of workers are less than 17 and their salary is more than the statutory limit of Rs.6500/-. The true copy of the objection dated 30.03.2011 is produced and marked as Annexure A2. The Enforcement Officer played an unfair game, mislead the employer and managed to obtain a proforma from the employer after giving false promises. The Enforcement Officer also convinced the appellant to furnish the names of 21 employees. The appellant without knowing the implications, signed the list of employees showing 21 names and also the proforma stating that 21 employees were working in the appellant establishment. True copy of the proforma and the list of employees given by the appellant is produced and marked as Annexure A3. The details of salary was also furnished as stated by the Enforcement Officer. The 1<sup>st</sup> respondent without considering the Annexure A2 objection, issued an order confirming the coverage with a direction to remit the contribution for the period from 04/2011 – 08/2011. A true

copy of the order dated 04.10.2011 is produced and marked as Annexure A4. The appellant filed an objection before the 1<sup>st</sup> respondent and copy of the objection dated 21.08.2012 is produced and marked as Annexure A5. The appellant also submitted copies of the relevant records including Muster Roll, wage register, vouchers signed by the employees and ledgers of salary accounts for the year 2011 – 2012 of the employees. The appellant personally appeared before the 1<sup>st</sup> respondent on 21.08.2012 and challenged the order to cover the establishment under the EPF Scheme. The Enforcement Officer issued a communication dated 10.09.2012 wherein he wanted to peruse the records for issuing the assessment order. The true copy of the communication issued by the Enforcement Officer is produced and marked as Annexure A6. Since the objections regarding coverage was not considered by the 1<sup>st</sup> respondent, the appellant was constrained to approach the Hon'ble High Court of Kerala by filing W.P.(C) No. 21544/2012. The true copy of the statement filed by the first respondent before the Hon'ble High Court of Kerala is produced and marked as Annexure A7. The respondent took a stand that the appellant themselves had given a list of employees

which exceeded 20 workers and hence the appellant is bound by the provisions of the Act. The Hon'ble High Court of Kerala after considering the objection filed by the appellant directed the 1<sup>st</sup> respondent to consider the Annexure A5 objection filed under Sec 7A of the Act. True copy of the judgement dated 24.09.2012 is produced and marked as Annexure A8. The respondent initiated an enquiry under Sec 7A of the Act. A true copy of the argument note submitted on behalf of the appellant is produced and marked as Annexure A9. The 1<sup>st</sup> respondent without verifying the records and considering their own mahazar in Annexure A1 and without verifying the Muster Roll produced by the appellant and relying on the Annexure A3 proforma held that the unit will come under the purview of the Act. A wrong admission against the statute will not entitle the appellant to challenge an action. The respondent authority issued order dated 28.01.2013 confirming the coverage of the appellant establishment. A copy of which is produced and marked as Annexure A10. Since there was no proper adjudication under Sec 7A, the appellant preferred another Writ Petition, W.P.(C) No.7471/2013 before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala after considering the contentions

held that the appellant can challenge the findings of Annexure A10 order in appeal under Sec 7(I) of the Act. A true copy of the judgement dated 18.03.2013 is produced and marked as Annexure A11. The 2<sup>nd</sup> respondent without considering the submissions of the appellant passed an order dated 23.07.2014, a copy of which is produced and marked as Annexure A12. The Annexure A10 and Annexure A12 orders are issued in clear violation of the Principles of natural justice.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 01.04.2011. The appellant disputed the applicability of the provisions of the Act to the appellant establishment. An Enforcement Officer inspected the appellant establishment on 10.08.2011 and reported that she noticed a muster roll with names of 21 employees. Later it was confirmed that the muster roll pertains to March 2011. As per the coverage proforma, the employee strength reached more than 19 on 01.04.2011 and the appellant counter signed the same. Based on the above details, the Enforcement Officer recommended coverage of the appellant establishment under Sec 1(3)(b) of the Act. The

Enforcement Officer also reported that the appellant during the inspection confirmed that all the employees were drawing salary less than Rs. 6500/- and the wage particulars of the employees were also provided by the appellant in the coverage proforma. But as per the salary register, later submitted by the appellant, all the employees were drawing salary above Rs.6,500/-. The Enforcement Officer vide her note dated 10.05.2013 stated that during her visit to the appellant establishment, she obtained the salary register for the period from February 2011 to March 2013 except August 2012 and attendance register from September 2012 and balance sheet for the period 2011 – 2012. The Enforcement Officer pointed out that the details submitted by the appellant at the time of coverage is not tallying with the registers. At the time of coverage, the appellant establishment did not submit the salary registers, but only furnished the information regarding wages in the proforma for coverage. The coverage proforma contains the names of 21 employees with their monthly wages. The proforma for coverage identified 21 employees and confirmed the same as on 01.04.2011. The verification part of the proforma was also signed by the appellant. On the basis of the information, the

Enforcement Officer recommended coverage w.e.f. 01.04.2011 and the same was covered accordingly. The main contention in Annexure A2 objection dated 30.03.2011 was that the appellant establishment never employed 20 people. The appellant establishment is covered on the basis of the request of the appellant furnishing the details of 21 employees and their wages in the coverage proforma itself. The proforma for coverage contain 21 identified employees and the wages of all these employees. As on 09.08.2011, the appellant establishment was engaging 27 employees and all these employees were drawing salary below Rs.6500/. The salary details for the month of July for 27 employees, counter signed by the appellant furnishing the name and wages of the employees is produced and marked as Exhibit R1. On verification of the muster roll which is unsigned, the employee strength as on March 2011 was 21. The allegation that the Enforcement Officer mislead the appellant is not correct. The appellant himself requested for coverage of the appellant establishment and furnished the name, fathers name and date of joining of 21 employees and also confirmed that these 21 employees were working w.e.f. 01.04.2011. Along with the



request, the appellant had filed Form 5(A) providing the ownership details and also filed a host of other documents such as partnership deed, licence of establishment etc. It is unfair on the part of the appellant to plead that the Enforcement Officer obtained all these details by misleading the appellant. In their proforma, the appellant has affirmed that “it is verified that the details furnished above are correct to the best of our knowledge and belief. It is clearly understood that we are liable for coverage from a date antecedent to the date of set up furnished above and other legal consequences in the event of furnishing false information”. The coverage of the appellant establishment was intimated to the employer vide coverage notice dated 04.10.2011. The 1<sup>st</sup> respondent issued Annexure A4 order dated 04.10.2011 based on the muster roll for March 2011 and coverage proforma which is duly signed by the appellant in which the details of 21 employees were furnished. The Enforcement Officer also submitted that the salary details of 27 employees as on 09.08.2011. The salary details of 27 employees were also attested by the Managing Partner of the appellant establishment. In the wage register for the period from April 2011 – March 2012, the total wages is

Rs.6,05,309/- whereas in the Profit and loss A/c, it is shown as Rs.28,76,529/-. Thus there is a difference of Rs.22,71,200/-. In spite of specific enquiry, the appellant could not explain the difference in the books of accounts. In the proforma for coverage, the appellant furnished the name, fathers name and date of joining of 21 employees. The proforma is signed by the appellant himself. In addition to that, the appellant submitted a list of 27 employees as on 09.08.2011 along with the application for coverage. But as the per wage register for August 2011, there are only two employees in the month of August 2011. The appellant could not clarify the above anomaly. Annexure A6 order dated 10.09.2012 is issued on the basis of the records and documents available before the authority. As per Sec 13 of the Act, every establishment which is a factory engaged in any industry specified in schedule 1 in which 20 or more persons are employed are coverable under the provisions of the Act. As per Sec 2(f), an employee means any person who is employed for wages in or in connection with the work of establishment and who gets his wages directly or indirectly from the employer. Para 2(f)(ii) of EPF Scheme 1952 defines an excluded employee as an employee whose

pay at the time he is otherwise entitled to become a member of the fund exceeds Rs.6500/- per month. The salary register which was not produced at the time of coverage but later submitted during the course of the enquiry is not tallying with the details given in the coverage proforma. In the salary register produced during the enquiry, the salary of the employees are shown above Rs.6500/- but it is less than Rs. 6500/- in the coverage proforma. The appellant never disputed the authenticity of the documents.

4. The appellant establishment is covered under the provisions of the Act, on the basis of the employment strength as on 03/2011 in the muster roll and the proforma information counter signed and certified by the appellant with the name, fathers name and date of joining of 21 employees working as on 01.04.2011. The appellant later disputed the coverage stating that the Enforcement Officer who conducted the inspection mislead the appellant and obtained the above information. The appellant filed an objection before the respondent disputing the coverage. When the dispute was pending, the Enforcement Officer initiated action for recovery of dues from the appellant establishment w.e.f. 04.04.2011. The appellant moved the Hon'ble High Court of

Kerala in W.P.(C) No.21544/2012 and the Hon'ble High Court of Kerala vide its judgement dated 24.09.2012 directed the respondent to consider the objection and pass appropriate orders within a period of three months after affording an opportunity of being heard to the appellant. The Hon'ble High Court also directed that the recovery proceedings shall be kept in abeyance till the issue is finally decided. The respondent authority initiated an enquiry under Sec 7A and issued Annexure A10 order dated 02.11.2012 confirming the coverage of appellant establishment w.e.f. 01.04.2011. The respondent also initiated further action to confirm the coverage and quantifying the dues. After hearing the appellant and also perusing the records produced by the appellant and also the Enforcement Officer, the respondent issued the impugned order confirming the coverage w.e.f. 01.04.2011 and also quantifying the dues. The appellant approached the Hon'ble High Court of Kerala in W.P.(C) No.7471/2013 and the Hon'ble High Court of Kerala vide its order dated 18.3.2013 directed the appellant to approach the Tribunal under Sec 7(I) to challenge the consolidated order passed under sec 7A (a) and (b) of the Act.

5. In this appeal, the contention of the learned Counsel for the appellant is that the appellant establishment is not coverable under the provisions of the Act since they never employed more than 19 employees at any point of time. It was also argued that most of the employees are excluded employees as they were drawing salary beyond Rs.6500/- as on the date of coverage. The learned Counsel for the respondent argued that the appellant establishment is covered under the provisions of the Act as per the request and data made available by him. According to him, the wage register for the month of March 2011 shows employment strength of 21 employees and the appellant himself has given in the proforma for coverage the employment strength as 21 employees. Further he has also furnished the list of employees with their name, fathers name, date of joining and wages as on the date of coverage. The Enforcement Officer who inspected the appellant establishment recommended coverage on the basis of the above information's and accordingly the appellant establishment was covered w.e.f. 01.04.2011. The learned Counsel for the appellant relied on Annexure A1 spot mahazar dated 18.11.2010 by the Enforcement Officer wherein the employment strength as on

that date was furnished as 19. The Annexure A1 mahazar indicates that “the manager gave a list of 19 persons who are working today and assured to produce all the records as and when required”. According to the spot mahazar, it is clear that the Enforcement Officer did not verify any records and reported the employment strength only on the basis of the list of employees given by the manager as on 18.11.2010. The appellant himself has declared the employment strength as 21 as on 01.04.2011. The appellant not only declared the number of employees, he has also furnished the name of the employees with their name, fathers name, date of joining and also the wage particulars. Further the appellant under his seal and signature has furnished the names of 27 employees and their wages as on July 2011 which is produced as Exhibit R1. In the report submitted by the Enforcement Officer, it is further reported that the appellant has one administrative office at Vyapar Bhavan, Angamaly and three employees are working there and the names of these employees are not reflected in the register. In the above circumstances it is not possible to believe the stand of the learned Counsel for the appellant that the appellant furnished the details of employment strength in the

coverage proforma mislead by the Enforcement Officer. Even if we assume that the appellant signed the proforma information without knowing the consequences, the appellant will have to explain the details of the employment strength furnished along with the proforma and also subsequently in the Exhibit R1 salary details for the month of July 2011. In the enquiry under Sec 7A, the appellant produced a set of documents including the Muster roll, Salary register and also the Balance sheet for the year 2011-2012. In the attendance register and wage register the employment strength is shown below 19 and in the wage register the wages are shown beyond Rs. 7500/-. According to the learned Counsel for the respondent, as per the wage register, the salary for 04/2011 – 03/2012 is shown as Rs. 6,05,309/- where as in the Profit and Loss A/c, the wages are shown as Rs.28,76,529/-, a difference of Rs. 22,71,200/-. According to the learned Counsel, the appellant failed to explain such a huge variation in the two records maintained by the appellant. The appellant also failed to produce the Professional Tax details sought by the respondent authority. As per exhibit R1, wage register extract for the month of July 2011, there were 27 employees but as per the wage register

now produced during the course of 7A, there were only two employees for the relevant period. From the above discussion, it is very clear that the documents now produced by the appellant before the respondent authority are all fabricated by the appellant for the sake of claiming exclusion from the provisions of the Act. The learned Counsel for the appellant also made an attempt to argue that majority of the employees were excluded employees and therefore the provisions of the Act is not applicable to the appellant establishment. As per Sec 1(3)(b), subject to the provisions contained in Sec 16, the provisions of the Act applies to any other establishments employing 20 or more persons. It may be noted that the criteria for coverage is not the number of employees as defined under the Act but the number of persons employed which will include the excluded employees also. **For the purpose of coverage under the Act, the number of person employed is the criteria and for extending the benefits a person should be qualified to be an employee under the provisions of the Act.** It is seen that the appellant establishment withheld the valid statutory registers in the first instance and later produced fabricated documents before the respondent authority. However



when the documents are fabricated, it will be difficult for a party to link all the documents properly. In this case, the appellant furnished the details of 21 employees under his seal and signature as on 01.04.2011 and also furnished the details of 27 employees as on July 2011 with their wage particulars. Further the wage register for the month of March 2011 also supported the case of the respondent. The Hon'ble Supreme Court of India considered a similar situation in the case of **Panther security services Pvt. Ltd, Vs EPF Organisation and Another**, Civil appeal number 4434 – 4435/2010. The Hon'ble Supreme Court vide its judgement dated 02.12.2020 held that

*“In fact, we have no hesitation in holding that it actually withheld the relevant papers. This coupled with letter dated 03.04.2001 written by the appellant, the appellants Balance sheet seized for the financial year 2003-2004, 2004-2005, 2005-2006 and 2006-2007 showing payment of wages running into lakh necessarily and only leads to the irresistible conclusion that the appellant has more than 20 employees on its roles. The provision of the Act therefore necessarily apply to it”.*

6. In this case, as already discussed, the coverage is made on the basis of the declaration given by the appellant in the first instance but later disputed on the basis of manipulated records. However the appellant had no explanation regarding the wage details furnished in the balance sheet and also the wage register subsequently produced by the appellant establishment. The appellant also failed to explain the employment of 27 employees and the wage particulars provided as on 09.08.2011 and also the employment strength of two shown in the wage register subsequently produced by the appellant during the course of 7A enquiry.

7. Considering the facts, circumstances, pleadings and arguments in this appeal, I have no hesitation in holding that the appellant establishment is coverable under the provisions of the Act w.e.f. 01.04.2011 and therefore uphold the assessment of dues on the basis of the wage particulars provided by the appellant.

Hence the appeal is dismissed.

Sd/-  
**(V.Vijaya Kumar)**  
Presiding Officer