



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

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

(Friday the, 15th day of July 2022)

APPEAL No. 176/2018

Appellant : M/s Udupi Hotel
West Fort
Thiruvananthapuram – 695 023

By Adv. Ajith S Nair

Respondent : The Assistant PF Commissioner
EPFO, Regional Office,
Pattom
Thiruvananthapuram – 695 004

By Adv. Nita.N.S.

This case coming up for final hearing on 13.07.2022 and this Tribunal-cum-Labour Court on 15.07.2022 passed the following:

ORDER

Present Appeal is filed from order No.KR/TVM/Udupi Hotel/Enf.1(4)/2018-19/272 dated 16.04.2018 under Sec 7A of EPF and MP Act 1952 (hereinafter referred to as ‘the Act’) on clubbing

and confirming the coverage of the appellant establishment w.e.f. 26.07.2016.

2. The appellant establishment is a small vegetarian hotel and is employing only 6 employees. The appellant and his mother is also working in the establishment. The wife of the appellant, Smt. Priya is running a snack shop about 100 meters away from the hotel run by the appellant by name Samskritha Bojanalaya (Sri Udupi Initiative). Though the licence was taken in the name of the appellant, the same was subsequently changed to the name of Smt.P.Priya. The Enforcement Officer of the respondent conducted an inspection of the appellant establishment. He informed that the inspection is conducted based on a complaint. He obtained the signature of the appellant in some paper. A copy of the Mahazar was also provided to the appellant. Subsequently the appellant received a letter dated 06.03.2017 directing the appellant to register the establishments. A copy of the said letter is produced and marked as Annexure A2. The appellant received a notice under Sec 7A of the Act. A copy of the report of the Enforcement Officer was also enclosed. A copy of the said notice along with the enclosure is produced and

marked as Annexure A3. The appellant attended the hearing and filed a statement stating that the appellant establishment cannot be clubbed together for the purpose of coverage. Even if the establishments are covered, the list of employees include the name of the appellant and his mother in the list of employees provided under Udupi Hotel and that of his wife, who is running Udupi Initiative, in the list of employees provided for Udupi Initiative. The appellant, his wife and mother cannot be considered as an employee and if those names are excluded, the total number of employees will only be 17. A copy of the statement filed is produced and marked as Annexure A4. The appellant also filed an affidavit in tune with the statement filed. A copy of the affidavit is produced and marked as Annexure A5. Along with Annexure A5, the appellant also produced a copy of the ration card to establish that the name of Smt.Gangammal and Smt.P.Priya mentioned in the list of employees are his mother and wife. A copy of the ration card is produced and marked as Annexure A6. In the comments provided by the Enforcement Officer before the respondent, on the written statement filed by the appellant, he has not refused the fact that

the name of the mother and wife of the appellant are reflected in the list of employees. However he stated that there is no provision in the Act to exclude a person considering the relationship with the employer. With regard to the name of the appellant, appearing in the list of employees, the Enforcement Officer commented that the employee furnished in Sl.No. 17 cannot be the proprietor, as the period of service is only one year. A copy of the comment given by the Enforcement Officer is produced and marked as Annexure A7. Without considering the submissions made by the appellant and only relying on the Mahazar, the respondent authority issued the impugned order.

3. The respondent filed counter denying the above allegations. The respondent received a complaint from one Sri.Vincent stating that the employees of M/s.Udupi Hotel and Udupi Initiative are denied EPF benefits. An Enforcement Officer was deputed to investigate the complaint. The Enforcement Officer found that both the units come under the class of establishments 'hotels and restaurants'. He further found that the two units are owned by the same person Sri.Krishnakumar. The appellant was not maintaining any records relating to the

employees and payment of wages. The Enforcement Officer further found that the employment strength of the appellant establishments touched 20 and therefore it is coverable under the provisions of the Act. Accordingly the appellant was advised to register on online portal vide letter dated 06.03.2017. Since the appellant failed to comply, a notice dated 05.06.2017 was issued under Sec 7A of the Act. The enquiry was posted on 16.06.2017 and subsequently adjourned to 17.07.2017, 17.08.2017, 30.11.2017, 04.01.2018, 21.02.2018 and 21.03.2018. The appellant did not appear on any of the above dates. On 25.07.2017, an Advocate attended the hearing and submitted a statement of objection stating that both the hotels are separately owned by husband and wife having separate licences. From the records, it is seen that both these units are owned by S.Krishnakumar with same PAN number and as per the report of the Enforcement Officer, the two units are situated within a distance of 50 feet and there is movement of employees and cooked food between the establishments. The Enforcement Officer in his report also furnished the name of 20 employees prepared in the presence of the appellant. The appellant also

acknowledged the receipt of the Mahazar. The PAN card copy of the appellant, Form C of the two units, Tax receipt of Trivandrum Corporation related to two units, self-attested by the appellant are taken on record as evidence. The appellant's wife's name was included in the list as she was working as an employee. There is no provision in the Act to exclude persons considering the relationship with the employer. Since both the units are owned by S.Krishnakumar as proprietor and they are in the same line of business and since the combined employment strength was 20, the appellant establishment was covered under Sec 1(3)(b) of the Act w.e.f. 26.07.2016.

4. According to the learned Counsel for the appellant, it is clear from Annexure A3 that the Enforcement Officer of the respondent prepared the list of employees including the appellant, his wife and mother as employees. If these three names are taken out of the list, the employment strength is less than 20 and the appellant is not coverable under the provisions of the Act. The learned Counsel for the appellant also contented that there is no finding on functional integrality which is a prime test to determine the clubbing of two establishments. He relied

on the decision of Hon'ble High Court of Kerala in **Central Board of Trustees Vs Krishnan Nair and Sons Jewellers**, 2017 (4) KLT 894 and also the decision of the Hon'ble Supreme Court in **RPFC Vs Rajs Continental Exports Pvt. Ltd.**, 2007 (2) LLJ 553. The learned Counsel for the respondent argued that there is no prohibition of the relative of the proprietor working in an establishment and therefore treated as employees for the purpose of coverage. He further pointed out that the clubbing of the units is correct since both the units are owned by the same person and they are in the same line of business.

5. As per Sec 1(3) (b) of the Act, "Subject to the provisions contained in Sec16, it applies

a)

b) To any other establishments employing 20 or more persons or class of such establishment which Central Government may, by notification in the official gazette specify on this behalf.

It may be relevant to point out that the word used in sec 1(3)(b) is 'employing 20 or more persons'. Hence for the purpose of

coverage under the Act, the requirement is employing 20 or more persons and not 20 or more employees as defined under Sec 2(f) of the Act. However in this case, it is an admitted fact that the name of the employees as per the mahazar prepared by the Enforcement Officer includes name of the proprietor, the name of his wife and that of his mother. The appellant produced a copy of the ration card as Annexure A6 to substantiate his claim. The name of Sri.S.Krishnakumar, Smt.P.Priya and Smt.Gangammal appearing in the Mahazar are the names of the appellant, his wife and his mother respectively. It is difficult to accept the contention of the learned Counsel for the respondent that there is no prohibition under law to treat a relative as an employee and therefore can be counted for the purpose of coverage. The respondent will have to independently establish that the appellant employed 20 persons.

6. The learned Counsel for the appellant also raised a question of clubbing. He also relied on the decision of the Hon'ble Supreme Court and that of the Hon'ble High Court of Kerala to argue that functional integrality is the prime test to determine the clubbing of two units. The clubbing of units

depends on the facts of each case. In some cases functional integrity will be the test whereas in other case it may be the financial integrity and administrative control and transferability of the employees. In this particular case, except for common ownership and the observation of the Enforcement Officer in the Mahazar that there is 'movement of the employees and cooked food between the units' there is no other evidence to substantiate the claim of clubbing.

7. Considering the facts, circumstances, pleadings and evidences in this appeal, it is not possible to sustain the impugned order.

Hence the appeal is allowed and the impugned order is set aside.

Sd/-
(V.Vijaya Kumar)
Presiding Officer