



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Wednesday the 1st day of December 2021)

APPEAL No.202/2019
(Old.No. ATA 562(7)2015)

Appellant : M/s. Kerala Feeds Limited
Kallettumkara
Thrissur – 680 683

By M/s. Thomas & Thomas

Respondent : The Regional PF Commissioner
EPFO, Sub Regional Office
Kaloor
Kochi – 682 017

By Adv. Thomas Mathew Nellimoottil

This case coming up for final hearing on 10.09.2021 and this Tribunal-cum-Labour Court on 01.12.2021 passed the following:

ORDER

Present appeal is filed from order No.KR/KC/15984-A/ Enf.IV(6),RBNo.328/1/2014/1695 dated 06.05.2015 assessing dues under Section 7A of EPF and MP Act 1952 (hereinafter referred to as ‘the Act’) on evaded wages of contract employees

for the period from 09/2010 to 08/2012. Total dues assessed is Rs. 82,98,137/- (Rupees eighty two lakh ninety eight thousand one hundred and thirty seven only).

2. The appellant is a company under the Government of Kerala and is covered under the provisions of the Act. An Enforcement Officer of the respondent organisation inspected the appellant establishment on 17.09.2012 and submitted a report. On the basis of the report, the respondent authority initiated an enquiry under Sec 7A of the Act. The representative of the appellant attended the hearing and filed two written statements dated 22.07.2014 and 01.04.2015. Copies of the said replies are produced and marked as Annexure A2 and A3. The appellant is engaging around 500 regular employees. The appellant is also engaging employees through various independent agencies. The appellant requested the respondent authority to summon the contractors in the proceedings before assessing the dues in respect of contract employees. The impugned order is a non-speaking order without disclosing the details of employees against whom is assessment is made. The respondent

authority failed to follow the procedure required to be followed under Sec 7A of the Act. The appellant requested respondent to furnish copy of the inspection report on basis of which the respondent initiated the proceedings. The appellant was not allowed to cross examine the Enforcement Officer who inspected the appellant establishment. The contractors are not impleaded in the proceedings.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f. 01.03.2004. The Enforcement Officer who conducted the inspection of the appellant establishment reported that the appellant establishment is not remitting contribution on actual wages for the period 09/2010 to 08/2012. It was also reported that the appellant establishment was not maintaining wage register and attendance register of contract employees engaged in the establishment through contractors. The establishment produced wage registers for one or two months. Since the information was not complete, the Enforcement Officer verified the ledgers for the period 09/2010 to 08/2012 and calculated

the dues on evaded wages. The Enforcement Officer also reported non enrolment of workers by contractors. The Enforcement Officer therefore prepared his report, calculated the difference in dues and submitted the same to the appellant establishment for compliance. Since the appellant failed to comply, the respondent authority initiated an enquiry under Sec 7A of the Act. The appellant establishment was directed to produce the records on 08.11.2013. Representative of the appellant attended the hearing and produced annual reports for 2010-2011 and 2011-2012. The contract employees engaged by the appellant establishment were paid very low wages, though they are enrolled to Provident Fund. Provident Fund contribution is paid only on a small portion of the actual wages. Appellant establishment has not taken any effort to ensure that contributions are paid on actual wages to the contract employees by the contractors. The non-payment of contribution on actual wages will reduce the old age benefits whether it is Provident Fund or retirement pension. The appellant approached the Hon'ble High Court of Kerala in Writ Petition No.34678/2011. The Hon'ble High Court dismissed the Writ Petition holding that if the petitioner has got any case

that the quantum of difference determined on the basis of materials available with the Enforcement Officer is not correct, it is not a matter which can be agitated before the court in a proceeding under Article 226 of the Constitution. The appellant never requested for the copy of the Inspection Report or requested for cross examining the Enforcement Officer during the course of the enquiry under Sec 7A of the Act. The contention of the appellant that contractors are not impleaded in the proceeding and therefore the proceedings are vitiated has no legal basis. The Hon'ble High Court of Kerala in its judgement in W.P.(C)No. 34628/2011 held that mere request for impleading contractors need not be considered as the contractors are not statutory employers for the purpose of payment of EPF contribution. Hence it cannot be held that non-impleadment of contractors or non-summoning of them for the purpose of taking any evidence had in any manner vitiated the impugned order. Sec 8A of the Act and Para 30 of EPF Scheme makes the principle employer liable for the contribution payable by the contract employees. An agreement entered between the principle employer and contractor which is contrary to or inconsistent with the

statutory provision cannot have any bearing on the liability of the principle employer under the Act. There is no prohibition under Sec 7A to issue interim orders. The respondent authority during the course of enquiry found that the calculation of dues for 04/2011, 07/2011, 08/2011, 10/2011, 01/2012 and 04/2012 were not properly done and therefore excluded the assessment for those periods. However to safeguard the interest of the employees, an interim order was issued.

4. An Enforcement Officer of the respondent during his inspection of the appellant establishment on 17.09.2012 found that there is evasion of wages in the contribution paid by the appellant establishment. Since the appellant establishment failed to produce the wage register and attendance register of the contract employees, the Enforcement Officer verified the ledgers to arrive at the correct wages paid to those employees. The Enforcement Officer also provided a copy of the report to the appellant establishment and directed them to comply as per the directions in the report. Since the appellant failed to comply, the respondent initiated enquiry under Sec 7A of the

Act. Though the appellant was directed to produce the records, they failed to produce the complete documents called for by the respondent authority. The respondent authority also noticed that there are many issues on which clarification is required from the appellant establishment and it is a time consuming process. Hence the respondent authority issued an interim order which is challenged in this appeal. The interim order is confined to the assessment of evaded wages of the employees for the purpose of Provident Fund contribution. The learned Counsel for the appellant argued that if the assessment is with regard to contract employees only, then the contractors also ought to have been summoned in the enquiry. The learned Counsel for the respondent submitted that the issue regarding the liability of the principle employer and the issue regarding the non-summoning of contractors were concluded by the decision of Hon'ble High Court of Kerala in ***M/s. Kerala Feeds Ltd. Vs RPFC***, W.P.(C)No.34628/2011. The Hon'ble High Court in the above writ petition considered a previous assessment in respect of evaded wages of contract employees of the appellant for the period from 01/2006 to 08/2010. After considering all the submissions made by the

appellant as well as the respondent, the Hon'ble High Court of Kerala held that, being the principle employer it is the responsibility of the petitioner to ensure that all eligible benefit under EPF is extended to the employees. Therefore the contentions based on non-impleadment of the contractors has no relevance. The Hon'ble High Court further held that,

“Mere request for impleading those contractors need not be considered, as the contractors are not statutory employers for the purpose of payment of EPF contribution. Hence it cannot be held that non-impleadment of contractors or non-summoning of them for the purpose of taking any evidence had in any manner vitiated the impugned order”.

The learned counsel for the appellant submitted that the appellant establishment filed Writ Appeal from the above said judgement and final order, if any, in this regard, will be produced before this Tribunal. However the appellant failed to produce any such order modifying or reversing the above finding by the single bench.

5. The learned Counsel for the respondent pointed out that there was an earlier proceedings under Sec 7A of the Act culminating in assessment of dues in respect of contract employees against the appellant establishment for the period from 01/2006 – 08/2010. The appellant challenged the assessment and also finding by the respondent authority before the Hon'ble High Court of Kerala in W.P.(C) No.34628/2011 and the Hon'ble High Court vide its order dated 03.10.2013 dismissed the writ petition holding that the appellant/principle employer is liable to remit contribution in respect of all contract employers and there was no requirement to summon the contract employers in the 7A proceedings. In the present proceedings the respondent authority had only assessed the dues in respect of contract employees for the period from 09/2010 – 08/2012. The learned Counsel for the respondent argued that since the other issues have already become final as per the judgement of the Hon'ble High Court in the above referred writ petition, this Tribunal may not interfere with the impugned order. On perusal of the impugned order, it is seen that the present proceedings under Sec 7A is only a continuation of the earlier

proceedings which has become final by the judgement of the Hon'ble High Court of Kerala in W.P.(C)No.34628/2011. During the course of 7A proceedings the respondent authority flagged many other issues but did not pursue it in the impugned order and that is the reason why the present order is categorised as an interim order. The respondent authority felt that the other issues may take time and the benefits which are required to be extended to the contract employees shall not be delayed due to examination of the other issues which is time consuming. The respondent authority collected the required information regarding the wages paid to the contract employees from the ledgers maintained by the appellant establishment and probably for that reason the appellant did not seriously challenge the quantum of dues assessed in respect of the contract employees of the appellant. If at all there was any dispute regarding the quantum of dues, it was upto the appellant to produce the documents before the respondent authority or in this appeal, to discredit the report of the Enforcement Officer or the finding of the respondent authority. As already pointed out, the learned Counsel for the appellant submitted during the course of hearing that the

judgement of Hon'ble High Court of Kerala in W.P.(C) No.34628/2011 was challenged in appeal before the division bench. However he failed to produce any judgement reversing the finding of the single bench which has become final. In the absence of any serious challenge regarding the quantification of dues and in view of the fact that the other issues raised in this appeal had already been decided by the Hon'ble High Court of Kerala, no other issues remain in this appeal to be adjudicated.

6. Considering the facts, circumstances, pleadings, arguments 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