



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

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

(Monday the, 27<sup>th</sup> day of December 2021)

**APPEAL No. 481/2018**

Appellant

M/s. Kerala Contracting Company  
P2, Royal Park Apartments,  
Chalikkavattom, Vennala,  
Ernakulam – 682 028

By Adv. C.B.Mukundan

Respondent

The Assistant PF Commissioner  
EPFO, Sub Regional Office,  
Bhavishya Nidhi Bhavan,  
Kochi – 682 017

By Adv. S Prasanth

This case coming up for final hearing on 14.09.2021 and this Tribunal-cum-Labour Court on 27.12.2021 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/KCH/24138(7A)/Enf:1(3)/2018/1173 dated 15.10.2018 under Sec 7A of EPF Act and MP Act (hereinafter referred to as the 'Act') assessing dues in respect of non-enrolled employees. The total

dues assessed is Rs. 27,11,425/- (Rupees twenty seven lakh eleven thousand four hundred and twenty five only)

2. The appellant is a proprietorship concern engaged in the business of Civil construction work. The appellant was regular in compliance. A squad of Enforcement Officers visited the construction site of the appellant at Central School, Kadavanthra on 31.07.2015 and thereafter the appellant received an inspection report dated 29.10.2015. As per the report, the Enforcement Officer claimed Rs. 7,97,918/- as additional dues payable by the appellant. A true copy of the report is produced and marked as Annexure A2. The Enforcement Officers prepared the above statements depending on the statements given by the workers. They also prepared a mahasar. All the persons appearing in the mahasar are not workers engaged by the appellant. The respondent authority based on the report of the Enforcement Officer initiated an enquiry under Sec 7A of the Act. The appellant received a notice dated 18.11.2015 from the respondent. The appellant along with the available records attended the enquiry. The representative of the appellant made a request to the respondent to furnish month wise employee wise dues. On

24.10.2017, the appellant submitted the salary statement and audited Balance Sheet for the financial years 2014 – 2015 and 2015 – 2016. As advised by the respondent, the appellant also produced certificates from auditors clarifying the details of direct expenses furnished in the Profit & Loss A/c for the financial year 2014 – 2015 and 2015 – 2016. The true copies of the same are produced and marked as Annexure A3 and Annexure A4 respectively. As directed by the respondent, the details of other projects were also furnished to the respondent. The wage registers produced by the respondent includes all the workers engaged by the appellant in both projects. The monthly wages of all the workers were above the wage ceiling and therefore they come in the excluded category. The rate of wages for unskilled workers were above Rs.650/- per day. Though the workers were paid on daily wage basis, their monthly salary used to be settled on last working day. However all the workers used to be paid advances on every Saturdays in order to meet their expenses. Full settlements were made in the end of the month after deducting the advances already paid to them on weekends. The appellant was advised to produce the documents relating to weekly advance payments on

09.01.2018. There was no sitting on that day and thereafter the appellant received the impugned order which is produced and marked as Annexure A1. The respondent authority has considered the wages paid to the employees without taking into account the weekly advances received by the workers. He has taken into consideration the total wages amount in the direct expenses shown in the balance sheet and Profit & Loss A/c for the years 2014 – 2015 and 2015 – 2016. The appellant failed to offer any clarification on the report of the squad of Enforcement Officers as there was no such direction in the due calculation statements received from the Enforcement Officers. It is a practice in the industry that though the workers are paid on daily wages, the wages are paid on monthly basis and advances are paid every week to meet their day to day expenditure. The specific case Sri. Joseph cited in the impugned order, it can be seen that the monthly salary for the month of September 2014 was Rs. 16,120/- and therefore he is an excluded employee. The respondent authority failed to consider the advance and loss of pay wages while deciding his eligibility to be enrolled to the fund. The construction site workers are exempted from ESI Contribution and therefore there is no deduction in payment of

ESI contribution. The advances paid to the employees will not get reflected in the Balance Sheet and Profit & Loss A/c. The respondent failed to identify the employees against whom the contribution is required to be remitted. There was no effective hearing and the hearing offered to the appellant was only an idle formality. The respondent assessed the dues on the basis of the information's received from the Enforcement Officers. As already pointed out, the respondent authority failed to consider the fact that all the employees engaged in the construction industries will be excluded employees in view of the salary structure prevailing in the state of Kerala. The decision cited by the respondent authority in the impugned order is not relevant to the fact of this case. The respondent authority ought to have decided the question of eligibility of the employees to be enrolled to the fund before quantifying the dues. Government of Kerala has enacted building and other construction workers (Regulation of Employments and Conditions of Services) Act 1996 for the Welfare of construction workers. Since the Act is a special enactment the provisions of EPF and MP Act will not be applicable to construction workers.

3. Respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f 2.11.2007. An enquiry under Sec 7A of the Act was initiated on the basis of the report of the Enforcement Officers who are inspectors appointed under Sec 13 of the Act. They visited the construction site of the appellant at Kendriya Vidhyalaya, Kadavanthra on 31.07.2015. Since the appellant failed to produce any records, the squad of inspectors prepared a detailed mahasar of workers, staff duly obtaining their signatures. The appellant produced certain records before the Enforcement Officers in response to the notice issued by them. They noticed that none of the workers were enrolled to the fund under the guise that they were all excluded employees. The Form 11 of the employees did not bear date and seal. As per the attendance register produced, the employees were paid salary above Rs.15000/-. The appellant did not produce the Balance Sheet or other books of accounts. Since the appellant failed to remit the contribution as directed by the squad of Enforcement Officers, an enquiry under Sec 7A of the Act was initiated vide summons dated 18.11.2015. Thereafter the appellant was given 11 opportunities to produce records and

explain the issues raised by the Enforcement Officers in their reports as well as the clarifications sought by the respondent authority. Ministry of Labour and Employment, Government of India vide notification dated, 22.08.2014 enhanced the wage ceiling limit from Rs.6,500/- to Rs.15,000/- from 01.09.2014. As per the wage register submitted by the employer, it is clear that the net salary in respect of majority of the employees are within the wage ceiling. It is clear from the wages register that the appellant has paid advance to almost all his employees. For example; for the month of September 2014, Sri. Joseph, Barbender was paid a salary of Rs.16,120/- and his advance deduction is shown as Rs. 6000/-. After deduction of advance of Rs.6000/-, Sri. Joseph becomes eligible to be enrolled to the fund. The inspection report by the squad of Enforcement Officers was issued to the appellant on 29.10.2015 and the enquiry was initiated on 21.12.2015. As per the salary register submitted by the appellant on 24.10.2017, the abstract of salary furnished from 2014–2015 wages is Rs 1,52,46,462/-, salaries Rs.12,59,007/- and total is Rs.1,65,05,469/-. The salary of Rs.12,59,007/- is furnished under the head Salaries and Allowances in the Profit & Loss A/c. But wages are not

reflected in the Profit & Loss A/c. Though the appellant claimed that the advances are not a component of Profit & Loss A/c, it is seen that, in schedule 7 of the Balance Sheet, the advances are reflected. The appellant never requested for month wise, employee wise dues at the time of the enquiry. Hence the appellant cannot raise this issue for the first time at the appellate stage. The impugned order is issued after considering all the submissions made by the appellant during the course of the enquiry. The appellant sought the basis of the enquiry which was provided by the respondent authority. The appellant was given 11 opportunities for producing the records and also for placing the arguments. The appellant never disputed the eligibility of the employees to be enrolled to the fund and therefore there was no necessity for deciding the eligibility of the employees to be enrolled under Para 26B of EPF Scheme. The Division Bench of Hon'ble High Court of Kerala in ***Hymavathy Vs Special Deputy Thahsildar***, 2008 (3) KLT 807, and ***Unni Mammu Haji Vs State of Kerala*** 1989 (1)KLT 729 held that Welfare Fund Act passed by the state legislature applies only to such establishment to which the Central Act does not apply. Further the Division Bench of Hon'ble High



Court of Kerala in ***Kottayam Dist Co operative Hospital Vs RPFC*** WP(C) No.1225/2009 held that the provisions of EPF Act, which is a central Act will have the overriding effect over the Kerala Cooperative Societies Act.

4. The appellant establishment is engaged in construction industry. The squad of Enforcement officers of the respondent organisation during their inspection in Kendiriya Vidyalaya, Kadavnathra on 31.07.2015 found that the appellant establishment is engaged in construction and the employees and workers available at the work site were not enrolled to the fund. The Enforcement Officers therefore issued a notice to the appellant along with a copy of the report to comply with their directions. Since the appellant failed to comply, the respondent initiated an enquiry under Sec 7A of the Act. The appellant was provided 11 opportunities to produce records and also clarify the issues raised by the respondent authority. After considering the report of squad of Enforcement Officers and the documents produced by the appellant during the course of enquiry, the respondent issued the impugned order.

5. In this appeal, the learned Counsel for the appellant raised three issues. The first issue is based on factual evidence. The learned Counsel for the appellant submitted that all the employees engaged by the appellant at the construction site are drawing a salary beyond the statutory limit of Rs. 15000/- and are therefore excluded. According to the learned Counsel for the appellant, as a practice in the industry, the employees are given a weekly advance and the salary is settled at the end of the month after deducting the weekly advances paid by the employers to their employees. The respondent authority failed to consider this practice followed in the industry and ignored the advance component and arrived at the net amount paid to the employees to come to the conclusion that they are eligible to be enrolled to the fund since the net amount received by the employees are below the statutory limit of Rs.15000/-. According to the Counsel for the appellant, he was directed to produce the relevant details and explanation regarding the advances paid to the employees on 09.01.2018 and the appellant was present on the said day with all the relevant records and the explanation required by the respondent authority. However there was no sitting on that day and no

further opportunity was given by the respondent authority to produce the records and explain the system of paying advance to the employees. According to the learned Counsel for the respondent, there was sitting on 09.01.2018 and there was no representation from the side of the appellant nor they sought any adjournment for production of the records. On a perusal of the impugned order in the proceedings dated 14.12.2017, it is stated “regarding non enrolment of eligible employees, the undersigned observed that each employee is paid advance which is deducted from the monthly wages. After such deduction, most of the employees fall within the statutory limit. Employer was directed to submit explanation for the same along with proof/evidence of advance. The enquiry was adjourned to 09.01.2018”. In the proceedings dated 09.01.2018, it is recorded that none appeared, as adequate and reasonable opportunity was given to the employer to present his case, the personnel enquiry in the hearing was closed. Hence it is clear from the impugned order that the issue regarding advances which is quite relevant in deciding the eligibility of the employees to be enrolled to the fund, was not decided on the basis of any evidence. The case of the learned Counsel for the

appellant that weekly advances are paid which is adjusted at the end of the month when the wages are paid is relevant in deciding the matter. The respondent authority arrived at the conclusion that there is subterfuge in payment of wages in the salary register on the basis of some unexplained entries in the Balance Sheet and Profit & Loss A/c. It is felt that the respondent authority will have to examine the advance component of the wages on the basis of the records available with the appellant establishment and decide whether the employees are eligible to be enrolled to provident fund membership. The salary advance, if any, paid to the employees will have considered as wages. Form 11 of the respective employees is also a relevance document which is required to be examined while deciding the issue.

6. The learned Counsel for the appellant also raised an issue that the eligibility of the employees to be enrolled to the fund ought to have been decided by the respondent authority under Para 26B of EPF Scheme. It is clarified that there is no dispute between the employer and employees to be resolved under Para 26B by the RPFC in this case.

7. The learned Counsel for the appellant further raised an issue that since the construction workers come under Building and Other Construction Workers Regulations of Employment and Condition of Workers Act 1996, the construction workers are excluded from seeking membership under the EPF and MP Act. The learned Counsel for the respondent pointed out that the question whether the Welfare Fund Act passed by the state legislature applies to the establishments covered under the provisions of the Act was considered by the Division Bench of Hon'ble High Court of Kerala in ***Hymavathi Vs Special Deputy Tahsildar (Supra)*** and held that the Welfare Fund Act passed by the state legislature applies only to such establishments to which the Central Act does not apply. Article 254 of the Constitution of India deals with inconsistency between the laws made by the Parliament and laws made by the legislatures of the state. As per Article 254, where law made by the legislatures of the state with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of the earlier law made by the Parliament or an existing law with respect to the matter, then the law made by

the legislature of such state shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that state. The learned Counsel for the appellant has no case that the Welfare Fund Act is reserved for the consent of President of India and got the consent. Therefore the claim of the learned Counsel for the appellant has no basis in law.

8. In view of the above finding, the only issue that is required to be re-examined is the claim of the appellant regarding the weekly advance payments given to its employees. If the weekly advance payments are genuine and those employees were not members of Provident Fund earlier, such employees are entitled for exemption from enrolment under the provisions of the Act.

9. Considering the facts, pleadings and arguments in this appeal, I am not inclined to uphold the impugned order.

10. Hence the appeal is allowed the impugned order is set aside and the matter is remitted back to the respondent to re-examine the issue regarding the advance payments made to the employees by the appellant and decide the question eligibility of employees to be enrolled to the Fund before

assessing the dues, within a period of six months after issuing notice to the appellant. If the appellant fails to appear or produce the documents called for, the respondent is at liberty to decide the matter according to law. The pre deposit made by the appellant under Sec 7(O) of the Act as per the direction of this Tribunal shall be adjusted or refunded after conclusion of the enquiry.

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