



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

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

(Monday the, 16th day of May 2022)

APPEAL No. 588/2019

(Old No. ATA.516(7)2012)

Appellant : M/s. Arakkathara Tourist Home
Palluruthy
Kochi – 682 006

By Adv. M.Gireesh Kumar

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

This case coming up for final hearing on 16.02.2022 and
this Tribunal-cum-Labour Court on 16.05.2022 passed the
following:

ORDER

Present Appeal is filed from order No. KR/KC/27429/
Enf III(8)/2012/369 dated 11.04.2012 under Sec 7A of EPF
and MP Act 1952 (hereinafter referred to as 'the Act')

confirming the coverage of the appellant establishment w.e.f. 01.04.2010.

2. The appellant is a proprietary concern engaged in the field of hotel business. The appellant was employing only two employees. No inmates were staying in the appellant establishment. Due to the said reason, the appellant accumulated huge losses on previous years. The main business conducted under the roof of the establishment is a BAR. The two employees who are working with the appellant were enrolled to Abkari Welfare Fund controlled by Government of Kerala. After the expansion of the business, eleven employees were working in the appellant establishment. On 19.11.2010, an Enforcement Officer attached to the respondent office inspected the appellant establishment and prepared a spot mahazar. The said mahazar is produced and marked as Annexure A1. In the mahazar it is stated that they saw more than 20 persons working in the appellant establishment. It is further stated that on verification of muster roll, for the period from 06/2010 to 11/2010, the appellant had engaged more than

20 persons and they took the muster roll in respect of nine persons. On 23.11.2010, the Enforcement Officer issued a letter for production of the relevant records. Photocopy of the said letter is produced and marked as Annexure A2. The appellant produced the records along with the letter dated 07.01.2011. A copy of the said letter is produced and marked as Annexure A3. The appellant produced the muster roll and wage register for the period from 04/2010 to 12/2010 along with other records demanded in Annexure A2. The photocopy of muster roll and wage register are produced as Annexure A4 and A5 series. At no point of time, the number of employees engaged exceeded 19 and therefore the appellant is not coverable under the provisions of the Act. The Enforcement Officers again visited the appellant establishment on 08.04.2011. They visited the establishment as a squad along with the assistance of police for physical verification of the employment strength. A spot mahazar was prepared, a copy of which is produced and marked as Annexure A6. A copy of the spot mahazar was not served on the representative of the appellant who was present at the

time of visit. The respondent unilaterally issued a code number vide coverage notice dated 27.04.2011. A copy of the said notice is produced and marked as Annexure A7. It is stated that the appellant engaged 27 or more person as on 01.04.2010. The appellant filed a review petition dated 03.05.2011, a copy of the review petition is produced and marked as Annexure A8. The respondent initiated an enquiry under Sec 7A of the Act and the appellant filed his statement of objection. The statement of objection dated 22.9.2011 is produced and marked as Annexure A9. The respondent without considering the statement of objection in a proper perspective confirmed the coverage of the appellant as per the impugned order. The separate list of employees alleged to be working at the time of inspection on 08.04.2011, as per Annexure A5 spot mahazar, is without any basis. None of the alleged employees are working in the appellant establishment. The respondent failed to understand that the casual labourers engaged for the maintenance and repairing of the establishment does not have any separate wage/attendance register. Those persons who were engaged

directly or indirectly for the purpose of running the establishment can be treated as employee of the establishment. The respondent failed to afford an opportunity to cross examine the Enforcement Officer who prepared the mahazar.

3. The respondent filed counter denying the above allegations. A squad of Enforcement Officer on inspection of the establishments on 19.11.2010 reported that the establishment is functioning as a tourist home, restaurant and a bar. The muster roll for the period 06/2010 – 11/2010 was produced before the squad. Since the manager was not willing to give the details of the employees, the squad of inspectors seized a muster roll as per powers confirmed on them under Sec 1(3) of the Act and prepared a spot mahazar. As per the register, the employment strength of the appellant establishment was above 35 for the period from 06/2010 to 11/2010. The Accountant of the establishment forcefully seized the muster roll and ran away. The Enforcement Officer logged a complaint for obstructing the duties with Sub-Inspector of Police, Kochi Kasaba Police Station. In view

of the experience of the 1st squad, the Regional Provident Fund Commissioner formed a bigger squad to inspect the appellant establishment with the help of police. The Enforcement Officer issued a letter directing the appellant to produce the wage register in respect of permanent, temporary, casual and trainees from the date of commencement, books of accounts and IT returns. The appellant gave a written submission stating that the appellant was only engaging two staff on initial stages and they were enrolled under Abkari Welfare Fund Board. After renovation, nine employees were employed and they were covered under the ESI Scheme. He forwarded copies of muster roll in respect of 11 employees and the profit & loss A/c and balance sheet for the year 2009 – 2010 and a copy of the IT return for 2009 – 2010. It was also stated that apart from 11 employees some Bengali and Bihari casual workers were engaged on daily wage basis. The appellant was directed to produce further records. The appellant failed to produce any records. On 08.04.2011, another squad of officers visited the appellant establishment with assistance of

police. The squad of officers found that there were many employees working in the hotel, restaurant and bar other than whose names are reflected in the muster roll. 20 employees put their signatures in the mahazar apart from the employees who left the premises while preparing the mahazar. They obtained their names, signatures, approximate salary and length of service of employees engaged in the establishment. Copy of the mahazar dated 08.04.2011 and the list obtained by the squad are produced and marked as Exhibit R1. On the basis of the evidence, the appellant establishment is covered under the provisions of the Act w.e.f. 01.04.2010. The appellant establishment filed a petition dated 20.06.2011. In view of the dispute raised by the appellant regarding the applicability, an enquiry was initiated under Sec 7A of the Act. A representative of the appellant attended the hearing and produced some records such as wage register, muster roll, wage slip and profit & loss A/c for the year 2009-2010. It was established that the appellant establishment was running under profit as on 31.03.2010 and was not in loss as claimed by the appellant.

Further it was noticed that the business of the appellant cannot be run by eleven employees as claimed by them. The claim of the appellant that the casual labourers cannot be treated as employees is not correct. As per the definition of employees under Sec 2(f) of the Act, any person who is employed for wages in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, including those employed by or through a contractor, is an employee of the appellant establishment.

4. The appellant establishment is engaged in a Hotel Business. The appellant is running a tourist home, restaurant and bar. Initially a Squad of Enforcement Officers visited appellant establishment and seized a muster roll wherein the number of employee is shown as 35 on 6/2010, 36 in 07/2010, 39 in 08/2010, 37 in 09/2010, 39 in 10/2010 and 36 in 11/2010. When the Enforcement Officers were investigating into the matter, the Accountant of the establishment seized the muster roll and ran away. The Enforcement Officer lodged a complaint with the police. In view of the above incident, the respondent organisation

formed a bigger squad of Enforcement Officers and inspected the appellant establishment with the help of the police. The records produced by the appellant only disclosed 11 employees working in the appellant establishment. The squad therefore conducted a spot verification and prepared a mahazar. In the list of employees prepared by the squad, 20 employees who were present in the establishment signed with the details of their employment, address and the period for which they were working etc. It is also reported that 11 employees left the premises when the squad started preparing the mahazar and 5 employees names listed in the mahazar were not available as they were on leave or on official duty elsewhere. Hence according to the squad report, the employment strength of the appellant establishment as on 08.04.2011 was 36. The Enforcement Officers therefore recommended cover of the establishment w.e.f. 01.04.2010 under Sec 1(3)(b) of the Act and the appellant establishment was issued a coverage memo. The appellant disputed the coverage. Hence the respondent initiated an enquiry under Sec 7A which concluded in the impugned order.

5. In the appeal, the learned Counsel for the appellant pleaded that the coverage of the appellant establishment is on the basis of presumptions only and there is no valid documents to support the decision of the respondent that the appellant establishment is coverable under Sec 1(3)(b) of the Act w.e.f. 01.04.2010. The documents produced by the appellant would not support any such conclusion. According to the learned Counsel for the respondent, the coverage is done on the basis of the squad report according to which the employment strength of the appellant as on 08.04.2011 was more than 35, during the physical verification of the employees by the squad of Enforcement Officers. It is seen that the response of the appellant establishment to the statutory inspections is very much wanting. Further the document maintained by the appellant establishment also is not according to the statutory requirements. It is indirectly admitted by the appellant that the casual employees engaged for cleaning etc. are not treated as employees. In the impugned order, the respondent states that he is relying on the report of the Enforcement Officers

based on the spot mahazar prepared by the squad, since the list of employees contain the name and signature of 20 employees. However, it is seen that the squad conducted the inspection on 08.04.2011 and prepared the spot mahazar with regard to the employees working on that date. In the statement some of the employees indicated that they were working for one year or one month with the appellant establishment but that by itself cannot be a basis for coverage of the appellant establishment w.e.f. 01.04.2010. At the best, the spot mahazar dated 08.04.2011 can be relied on for the purpose of coverage from 08.04.2011 only. It is relevant to point out that the earlier squad report is not relied on by the respondent for the purpose of coverage of the appellant establishment. The respondent authority ought to have co-related the wages paid to the employees with the wage register as well as the profit & loss A/c of the appellant establishment for the corresponding period. Any substantial variation would justify the respondent in covering the appellant establishment w.e.f. 08.04.2011 and not from 01.04.2010.

6. Considering the facts circumstances, pleadings and evidences in this appeal, I am not inclined to sustain the impugned order.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to examine the whole issue in relation to the documents available and produced by the appellant. The respondent shall issue notice to the appellant. If the appellant fails to appear or fails to produce the records called for, the respondent is at liberty to decide the matter according to law.

Sd/-
(V.Vijaya Kumar)
Presiding Officer