



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

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

(Thursday the, 21<sup>st</sup> day of April 2022)

**APPEAL No. 606/2019**

(Old No. ATA. 365(7)2013)

Appellant : District Tourism Promotion Council  
Palace Road,  
Thrissur – 680 020

By M/s. Menon & Pai

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

By Adv. Sajeew Kumar K Gopal

This case coming up for final hearing on 29.12.2021 and this Tribunal-cum-Labour Court on 21.04.2022 passed the following:

**ORDER**

Present Appeal is filed from order No. KR/KC/27935/Enf II(2)2013/15654 dated 20.02.2013 assessing regular dues under Section 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act') for the period from 09/2005 to 10/2012. The total dues

assessed is Rs. 30,79,822/-(Rupees Thirty lakh seventy nine thousand eight hundred and twenty two only).

2. Government of Kerala vide order dated 28.07.1988 decided to set up Tourism Promotion Councils in all the districts in the state and the Councils are registered under Travancore Cochin Literary Scientific and Charitable Society's Registration Act 1860. The objective of the Council shall be promotion of travel, tourism and leisure activities in the district. True copy of the Government order dated 27.08.1988 is produced and marked as Annexure A1. Subsequently in the year 2009, the Government issued order dated 22.01.2009 to constitute Destination Management Councils at each tourist centres. True copy of the order dated 22.01.2009 is produced and marked as Annexure A2. The tourism centres in Trichur district are Vilangankunnu, Peechi, Thumboormuzhy, Vazhani and Snehatheeram. These centres are independently managed by the concerned managers. Every centre has separate accounts and every centre has its own employees. In all respects, these units are separate establishments. An Enforcement Officer inspected the appellant establishment and verified the records. The

appellant explained that all the five units are different and appellant could not be considered as a single unit for the purpose of coverage under the Act. None of the units engaged 20 persons independently. The activity of the appellant will not come within any of the scheduled heads. Ignoring the contentions of the appellant, the respondent issued the impugned order, a copy of which is produced and marked as Annexure A3. The appellant filed a review petition under Sec 7B of the Act wherein the appellant disputed the number of employees at every centre and also contended that the units cannot be clubbed for the purpose of coverage. Later the review petition was withdrawn and it was decided to file the present appeal. The respondent initiated action for recovery vide Annexure A4 order. The appellant challenged the said order before the Hon'ble High Court of Kerala in WP(C) No. 9941 of 2013. The Hon'ble High Court vide judgement dated 08.04.2013 directed the respondent to consider the review application. The respondent authority issued separate orders attaching the bank A/c maintained by the different units. Hence the respondent was aware that the different units of the appellant are maintaining different bank accounts. As per the

Government order, District Tourism Promotion Council is headed by the District collector and is therefore part of Government activities. The activities of the appellant will not come within the notified activity under the Act and therefore is not coverable under the provisions of the Act. The respondent also failed to consider that the different units mentioned in Annexure A3 orders are separate and are managed by Destination Management Councils and therefore these units cannot be clubbed for the purpose of coverage under the Act. None of the units independently engaged more than 20 employees and therefore none of the units are coverable under the Act. In the absence of functional integrality, common accounts, common management inter transferability of employees etc., the units of the appellant establishment cannot be clubbed for the purpose of coverage.

3. The respondent filed counter denying the above allegations. District Tourism Promotion Council is covered under the provisions of the Act w.e.f. 19.09.2005. The establishment is engaged in tourism promotion and started functioning from the year 1998. Based on the complaint from District Tourism

Promotion Council Employees Association, Trichur regarding non-extension of provident fund benefits, an Enforcement Officer was deputed to investigate the complaint. The Enforcement Officer recommended coverage of the establishment under Sec 1(3)(b) under the head "Societies" as the establishment is registered under the Travancore-Cochin Literary Scientific and Charitable Societies Act 1955. Since the appellant failed to start compliance under the Act, an enquiry under Sec 7A of the Act was initiated. A representative of the appellant attended the enquiry and produced some records, a written statement and also the dues statement unitwise from 2009. The appellant also requested that the dues may be assessed unitwise. The representative of the appellant did not raise any dispute regarding the dues, name and salary of the employees. The respondent authority therefore assessed the dues on the basis of the records produced by the appellant establishment and also the report of the Enforcement Officer. Since the appellant failed to comply with the Sec 7A order, the respondent initiated action under Sec 8F of the Act for recovery of the amount. In the meanwhile the appellant filed a review application under Sec 7B

of the Act. The respondent initiated an enquiry under Sec 7B and it was noticed that the appellant had already filed appeal before the EPF Appellate Tribunal, New Delhi against the order under Sec 7(I) and the Tribunal vide its order dated 10.06.2013 stayed the operation of the order subject to submission of a bank guarantee for 10 lakhs with the Tribunal. The respondent therefore closed the enquiry under Sec 7B on 17.07.2017. The appellant filed WP(C) No.9941 of 2013 against the recovery action taken by the respondent. The Hon'ble High Court vide its judgement dated 08.04.2013 disposed the Writ Petition directing the respondent to keep in abeyance the recovery proceedings and also directed the respondent to dispose of the Sec 7B review application within a period of six weeks. The appellant establishment is rightly covered under Sec 1(3)(b) under the schedule heads "Societies". All the units of the establishment are under the control and management of District Tourism Promotion Council, Trissur. The appellant has branches at Peechi, Vazhani, Snehatheeram, Amalanagar and Thumboormuzhy. The employment strength reached 20 on 19.09.2005 and accordingly the appellant establishment is

covered under the provisions of the Act from September 2005. An authorised representative of the appellant attended the enquiry. However the appellant failed to take any ground taken in this appeal before the respondent authority. The Hon'ble High Court of Rajasthan in ***Ess Dee Carpet Enterprises Vs Union of India***, 1985 LIC 1116, held that a question of fact not raised before the Regional Provident Fund Commissioner in the enquiry under Sec 7A cannot be raised before the appellant authority. The Hon'ble High Court of Karnataka in ***E Gajendran Vs Regional Provident Fund Commissioner***, 1998 (2) LLJ 1082, held that "The school and its branches are one and the same as facts show that there is common control over its branches, functional integrity and interdependence between them". The Destination Management Councils were formed in 2009 and the Secretary of DTPC is the Chief Executive and therefore there is a common control over the branches.

4. Government of Kerala vide Annexure A1 order dated 28.07.1988 directed all the districts to form Tourism Promotion Councils. Accordingly, the appellant Tourism Promotion Council is formed for Trichur district. Subsequently the Government

issued order dated 22.01.2009, Annexure A2, to constitute the Destination Management Councils in each important tourist centres. Accordingly five Destination Management Councils were formed in Trichur district. The respondent received a complaint from DTPC Employees' Association, Trichur with regard to non-extension of provident fund to the employees of DTPC as well as the Destination Management Centres. The respondent deputed an Enforcement Officer to investigate the complaint. The Enforcement Officer reported that the appellant establishment is registered under Travancore Cochin Literary Scientific and Charitable Societies Registration Act and the employment strength of the appellant establishment crossed 20 in September 2005 and therefore coverable under the provisions of the Act from September 2005. The appellant establishment was therefore covered w.e.f. September 2005. Since the appellant failed to start compliance, the respondent initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the hearing and filed a written statement. The representative of the appellant requested that the assessment of dues may be done. The Destination Management Councils wise



and also produced the statement of dues in respect of those divisions. The respondent therefore issued the impugned order assessing the dues unitwise. The appellant filed a review application under Sec 7B of the Act. The first hearing of the review application was held on 29.04.2013 and subsequently it was informed by the appellant that they have already filed the present appeal before the EPF Appellate Tribunal and therefore they are not pressing the review application. In the meanwhile the EPF Appellate Tribunal admitted the appeal and issued an order of stay against the impugned order subject to furnishing of a bank guarantee for Rs.10,00,000/- with the Tribunal. The appellant filed the bank guarantee before the EPF Appellate Tribunal, New Delhi. In the meanwhile the respondent initiated action for recovery of assessed dues. The appellant approached the Hon'ble High Court of Kerala in WP(C) No.9941 of 2013 and the Hon'ble High Court vide order dated 08.04.2013 directed the respondent to keep the recovery action in abeyance and also to consider the review application under Sec 7B of the Act. Since the appellant has already approached the EPF Appellate Tribunal

and the Appellate Tribunal had stayed the impugned order, the appellant did not pursue the Sec 7B review application.

5. In this appeal, the learned Counsel for the appellant raised two preliminary issues. The first issue is that the appellant establishment is not involved in any activity included in the schedule head. The second issue is that the Destination Management Councils formed vide Annexure 2 order dated 22.01.2009, are independent and therefore cannot be clubbed for the purpose of coverage under the Act. According to the learned Counsel for the appellant, none of the units independently employed more than 20 employees and therefore the appellant establishment cannot be covered under the provisions of the Act. According to the learned Counsel for the respondent, these issues were not raised before the respondent authority at the time of the Sec 7A enquiry and therefore the same cannot be raised in this appeal. It is seen that the multiplicity of legal proceeding before the respondent authority under Sec 7B, the appeal before EPF Appellate Tribunal, New Delhi and also the Writ Petition before the Hon'ble High Court of Kerala has created the present situation. Even as per the pleadings of the appellant, the issue

regarding the coverage under the Act was raised before the respondent authority in the review application under Sec 7B of the Act which was later withdrawn since the appellant had already filed the appeal under Sec 7(I) of the Act. It is seen that the issues now raised by the appellant need to be answered as the coverage of the appellant establishment under the provisions of the Act itself is being challenged. The jurisdiction of the respondent authority to assess and recover dues depends on the finding on the preliminary issues and therefore I am of the considered view that the above issues will have to be decided before quantifying the dues against the appellant establishment. The Hon'ble Supreme Court of India and also various High Courts have laid down various tests depending upon the facts of each case to decide the preliminary issues of clubbing of establishments and schedule head raised by the learned Counsel for the appellant. It is therefore felt that the respondent authority shall decide the preliminary issues in the first instance and thereafter proceed with the assessment of dues.

6. Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent authority

to decide the question of clubbing and schedule head before quantifying the dues. The respondent shall issue notice to the appellant as well as the complainant union before deciding the matter. If the appellant fails to appear or produce records called for, the respondent is at liberty to decide the matter according to law. It is seen that the bank guarantee produced by the appellant before EPF Appellate Tribunal had already expired.

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