



सत्यमेव जयते

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

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

(Friday the 21<sup>st</sup> day of December 2021)

**APPEAL No. 91/2019**

(Old No. ATA 792 (7) 2014)

Appellant : M/s. Annapoorna Vegetarian Restaurant  
Bye Pass Junction  
Calicut Road,  
Perinthalmanna,  
Malappuram – 679 322

By Adv.C.B.Mukundan

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Eranhipalam  
Kozhikode – 673 006

By Adv.(Dr)Abraham P Meachinkara

This case coming up for final hearing on 26.07.2021 and this Tribunal-cum-Labour Court on 21.12.2021 passed the following:

**ORDER**

Present appeal is filed from order No.KR/KK/28516/Enf 3 (5)/2014/1000dated 12.05.2014assessing dues under Section 7A of EPF and MP Act 1952 (hereinafter referred to as ‘the Act’)

for the period from 06/2012 to 03/2014. The total dues assessed is Rs.5,92,061/- (Rupees five lakh ninety two thousand sixty one only)

2. The appellant is a restaurant. The employment strength of the appellant never reached 20 and therefore the appellant is not coverable under the provisions of the Act. The maximum number of employees engaged by the appellant used to be around 10 to 16. A team of Enforcement Officers of the respondent organisation conducted a surprise visit on 12.06.2012 and conducted an inspection. At the time of the visit, no responsible persons were available. The staff members produced the attendance register and wage register of employees. The Enforcement Officer prepared a list of 20 persons and prepared a mahasar. The list of employees is produced and marked as Annexure A2 and copy of the mahasar is produced and marked as Annexure A3. Out of the 23 names in the list, only 11 were the employees of the appellant. The Assistant Labour Officer inspected the appellant establishment and signed all the original documents. The list of employees does not contain the signatures of the employees which is

inviolation of the judgements of the Hon'ble High Courts. Out of the names of the employees in the list, Sri. Kiran Augustin and Sri. Arun Augustin are the sons of one of the partners namely, Mrs. Beena Augustine. A copy of the partnership deed is produced and marked as Annexure A4. Sri. Arun Augustine was a student of Aalfa Institute of Management Studies, Thalassery. He was undergoing regular course in the college during 2010 – 2013. Sri. Balasubramanion was a friend of Mr. Kiran Augustine. Sri. Kiran Augustine, Sri. Arun Augustine and Sri. Balasubramanion visited the appellant establishment to meet Smt. Beena Augustine. The Enforcement Officers entered their names in the list and also obtained their signatures. Sri. Sabeel is the son of another partner. Sri. Sabeel is running an independent textile shop. The appellant was not aware of the other persons shown in the list. The respondent authority initiated an enquiry under Sec 7A and the representative of the appellant attended the hearing and explained the facts. They also produced the relevant records. The records would clearly show that the appellant never employed 20 persons. The respondent authority therefore send another team of officers to conduct an inspection of the

appellant establishment. The appellant thereafter received the impugned order. The appellant disputed the coverage before the respondent authority. However there is no finding regarding the same in the impugned order. In the second inspection conducted by a squad of Enforcement Officers on 04.12.2013, the squad found that the number of employees were only 16. A copy of the said report is produced and marked as Annexure A5. Though the report dated 04.12.2013 is part of the enquiry proceedings, the respondent authority ignored the same and proceeded to assess the dues.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act w.e.f. 01.06.2012. The appellant failed to comply in respect of regular employees from 06/2012. An enquiry under Sec 7A of the Act was initiated to assess the dues and notice dated 14.08.2012 was issued to the appellant to appear before the respondent authority on 06.09.2012 and to produce the necessary records. Appellant acknowledged the receipt of summons but failed to attend the enquiry on 06.09.2012. The enquiry was adjourned to 22.10.2012.

Sri.Kiran Augustine attended the enquiry and informed that the appellant establishment is a partnership firm and the employment strength is only 11 persons. The squad of Enforcement Officers who visited the appellant establishment, prepared a mahasar based on which the appellant establishment was covered under the provisions of the Act. Copy of the mahasar and other details were served on the appellant and acknowledgement obtained from them. Another squad of Enforcement Officers inspected the appellant establishment and submitted its report dated 04.12.2013 along with a mahasar duly signed by the appellant. Since the appellant failed to attend the enquiry on many days. Finally on 21.04.2014 the respondent issued the impugned order on the basis of the report of the squad of Enforcement Officer dated 04.12.2013. The appellant establishment was covered under the provisions of the Act, on the basis of a mahasar and report submitted by a squad of Enforcement Officers on 12.06.2012. According to the report, 23 employees were engaged by the appellant establishment as on 01.06.2012. The Enforcement Officers are Inspectors notified under Sec 13 of the Act and as per Sec 13(2) of the Act, the Enforcement Officers are

empowered to visit any appellant establishment without any notice to see whether the provisions of the Act and Schemes are violated and compliance is proper. The Enforcement Officers who visited the appellant establishment on 12.06.2012 also directed the appellant to produce the records before them on 14.06.2012 in Sub Regional Office, Calicut. The squad of Enforcement Officers furnished the names of all 23 employees with their date of joining and the salary drawn by them. While covering the appellant under the provisions of the Act, all the persons present and working in the appellant establishment are taken into account. In ***Associated Industries (Private) Ltd. Vs Regional Provident Fund Commissioner***, 1963 (II) LLJ 652, the Hon'ble High Court of Kerala held that the employers are under legal obligation to deposit the contribution within the time prescribed, the moment the Act and Scheme becomes applicable to them. No intimation or notice of any kind in that respect was necessary to be issued by the concerned authorities. The Hon'ble High Court of Punjab and Haryana in ***P.F. Inspector Vs Ram Kumar***, 1983 Lab IC 717 (P & H) held that the Act comes into operation by its own vigour and its

operation is not dependant on any decision taken by the authority under the Act.

4. The appellant establishment was covered under the provisions of the Act on the basis of a squad report dated 12.06.2012 along with a list of 23 employees who were working in the appellant establishment on the date of inspection. The appellant failed to produce any documents before the inspecting Enforcement Officers and therefore they prepared a mahasar and got it signed by few of the employees present in the appellant establishment. According to the learned Counsel for the appellant, out of the 23 names, only 11 were their employees and two persons who signed the mahasar were the sons of one of the partners who were otherwise students studying in different institutes. According to him, Sri. Arun Augustine and Sri. Kiran Augustine are sons of one of the partners namely Mrs. Beena Augustine and Sri. Balasubramanion is a friend of Mr. Kiran Augustine. He also submitted that another name in the list of employees is that of Mr. Sabeel, owner of a textile shop nearby. Since there was no compliance, the respondent authority initiated an enquiry

under Sec 7A of the Act to assess the dues. It is seen that though the appellant acknowledged the summons, largely failed to attend the proceedings. Finally Sri. Kiran Augustine attended the hearing and produced copies of attendance register, wage register, service records, ledger, cash book and balance sheet from 01.04.2012 to 06/2012. On his request, the enquiry was adjourned again on 01.11.2012. Sri. Arun Augustine attended the hearing and he informed that many of the employees left the service of the appellant establishment. Later, an Advocate appeared and on his request a copy of the inspection report was provided to him. The respondent authority deputed another squad to the appellant establishment to quantify the dues since the appellant failed to produce the complete records before the respondent authority. The respondent authority concluded the enquiry and issued the impugned order assessing the dues for the period from 06/2012, ie from the date of coverage to 03/2014 on the basis of the report of the squad dated 10.12.2013.

5. In this appeal, the learned Counsel for the appellant took a specific plea that the appellant establishment is not



coverable under the provisions of the Act. He has also narrated some specific cases to argue that some of the so called employees shown in the list of employees by the squad are the sons of a partner and their friend. He also pleaded that Sri. Sabeel is an owner of another textile shop nearby. According to him, the employment strength never reached 20 and the appellant establishment is not coverable under the provisions of the Act. He relied on the subsequent reports of the squad of Enforcement Officers dated 04.12.2013 to argue that the mahasar prepared by the second squad clearly shows that the employment strength of the appellant establishment was only 16 as on 04.12.2013. The learned Counsel for the respondent pointed out that Sri. Kiran Augustine who is alleged to be a student only attended the enquiry on 22.10.2012. Further he also pointed out that Sri. Arun Augustine attended the enquiry on 01.11.2012. Hence the learned Counsel for the respondent pointed out that Sri. Kiran and Sri. Arun are students and they don't have anything to do with the appellant establishment is not correct. The learned Counsel for the appellant pointed out that the respondent authority relied on the report of the squad of Enforcement Officers dated

04.12.2013 while finalising the enquiry, but ignored the fact that as per the said report, the employment strength of the appellant was only 16. He also pointed out some mismatches in the date of joining of some of the employees as per the squad report dated 12.06.2012 and 04.12.2013.

6. It is seen that the appellant disputed the coverage under the provisions of the Act. When there is a dispute regarding the applicability of the provisions of the Act, it is incumbent on the respondent authority to decide the applicability and thereafter assess the dues. It is seen from the impugned order that the respondent authority assumed coverage and assessed the dues without deciding the applicability of the provisions of the Act to the appellant establishment. As per Sec 7A of the Act

*“Determination of moneys due from the employers*

*1. The Central Provident Fund Commissioner any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or Assistant Provident Fund Commissioner may by order;*

a) *In a case where the dispute arises regarding the applicability of this Act to an establishment, decide such disputed; and*

b) *Determine the amount due from any employer under any provisions of this Act, the Scheme or the Pension Scheme or the Insurance Scheme as the case may be,*

*and for any of the aforesaid purposes may conduct such enquiry as he may deem necessary”*

From the above provisions, it is very clear that the respondent authority will have to decide the question of applicability in an enquiry under Sec 7A before assessing the dues when there is a dispute regarding applicability. In this case, the respondent authority proceeded to assess the dues inspite of the fact that there was a dispute regarding the applicability. In view of the above legal infirmity in the impugned order, all other issues raised by the appellant is left open to be decided by the respondent authority.

7. Considering the facts, circumstances, pleadings and evidences in this appeal, I am not inclined to uphold the finding in the impugned order.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-decide the applicability and assess the dues within a period of 6 months after issuing notice to the appellant. If the appellant fails to appear or produce the records called for, the respondent authority is at liberty to decide the matter according to law.

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