



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

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.  
(Friday the 30<sup>th</sup> day of July, 2021)

**APPEAL No.192/2018**

Appellant : M/s. Kerala Food House & Catering  
Co-operative Ltd.,  
Pariyaram Medical College P.O  
Pariyaram,  
Kannur – 670 503.

By Adv. R.P. Ramesan

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office, Fort Building  
V.K. Complex , Fort Road  
Kannur – 670 001

By Adv. K.C. Santhosh Kumar

This case coming up for final hearing on 24.03.2021  
and this Tribunal-cum-Labour Court on 30.07.2021  
passed the following:

**ORDER**

Present appeal is filed from order No. KR/KNR/  
18338/Enf- 1(3)/7A/2018-19/594 dt. 03/07/2018 assessing

dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act'.) in respect of non- enrolled employees for the period from 05/2016 to 09/2017. The total dues assessed is Rs. 5,96,180/-.

2. The appellant is a Co-operative Society registered under the Co-operative Societies Act. In the initial stages, there was only one unit and later 2 units at Thaliparamba and Parashinikkadavu were established. The unit at Thaliparamba started from 22/5/2016. Majority of the workers engaged in Thaliparamba branch were inter-state workers and they never continued for long period. None of these employees were willing to be enrolled to provident fund. The unit at Thaliparamba was closed on 19/11/2017 for want of employees. The appellant enrolled all other employees except that of Thaliparamba unit. On 6/10/2017 an Enforcement Officer of the respondent organization inspected the Thaliparamba unit and directed the appellant to produce certain documents vide notice dt. 06/10/2017. The said notice is produced and marked as Annexure 1. The appellant

produced all the required documents for verification by the Enforcement Officer. On 20/10/2017 the Enforcement Officer issued an inspection report which is produced and marked as Annexure 2. On the basis of the report, the respondent authority initiated action U/s 7A of the Act. The notice dt. 03/11/2017 is produced and marked as Annexure A3. The appellant appeared before the respondent authority on 27/11/2017 and filed a written statement explaining the factual situation. The wages register and profit and loss account etc were also produced for verification. After verification of the records the respondent directed the appellant to produce few complainants in the complaint that was received by the respondent authority. By that time the unit is closed and the appellant could not produce any of the employees before the respondent authority. Most of the employees in that unit were migrant labourers. However the complaint received by the respondent was in Malayalam. A copy of the complaint is produced and marked as Annexure 4. Without considering the submission made by the appellant respondent issued the impugned order. The respondent ought

to have noticed that the appellant enrolled all the employees except the employees in Thaliparamba unit. Many of the employees left the service of the appellant establishment when they were compelled to furnish details to enroll in provident fund.

3. The respondent filed counter denying the above allegations. An Enforcement officer of the respondent organization conducted an inspection of the appellant establishment on 06/10/2017. It was reported that the employees working in Thaliparamba branch of the appellant establishment are not extended the benefit of social security. The appellant establishment had head office at Pariyaram and branches at Thaliparamba and Parashinikkadavu. It is reported that 31 employees working at Thaliparamba branch was not enrolled to the fund. Accordingly an enquiry U/s 7A of the Act was initiated and a notice dt. 03/11/2017 was issued to the appellant directing him to appear before the respondent authority on 27/11/2017. An Advocate appeared and sought adjournment. Accordingly the hearing was adjourned to

04/01/2018. On 04/01/2018 the Counsel for the appellant appeared and submitted that all the employees employed in Thaliparamba branch were inter-state workers and they left the service within a few months and new employees joined in their place. Hence there was difficulty in enrolling these employees to provident fund. The enquiry was further adjourned to 02.02.2018. The appellant appeared and filed copy of wage register for 04/2017 to 11/2017 and profit and loss account for 2016-17. Since the complainant employees were also made party to the enquiry, the appellant was directed to produce any of the two complainants on the next date of hearing on 16/02/2018. On 16/02/2018 the appellant appeared and submitted that complainants are no more working in the establishment and the enquiry finally adjourned to 26/06/2016. The Secretary of the appellant appeared and submitted that since the employees are migrant workers he is not in a position to enrol them, in the provident fund account as he is not in a position to get adhaar details to register them. Accordingly the enquiry is concluded and impugned order was issued on the basis of the available

records. An employee as defined U/s 2(f) of the Act, means any person who is employed for wages in any kind of work, manual or otherwise in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer. In view of the above definition all the employees employed by the appellant are employees as defined U/s 2(f) of the Act and all the employees are required to be enrolled to the fund. As regards contention of the appellant that the address and other details were not given to the appellant by the employees, it is the responsibility of the appellant to obtain the documents before these employees are employed by the appellant. Non-collection of the identification details before employment is in violation of the instructions issued by the Government. The appellant being a co-operative society, it is not acceptable that the employees were engaged without proper identification. There was no dispute by the appellant before the respondent authority that these employees were not engaged by them. The only dispute is with regard to the fact that majority of the workers are inter-state workers and they worked only for few months with the

appellant establishment. The appellant never disputed that they engaged these workers and the wages were paid to them as reported by the Enforcement officer.

4. It is seen that the respondent authority received a complaint stating that the 31 employees working in the Thaliparamba branch of the appellant establishment was not extended the benefit of social security under the provisions of the Act . An Enforcement Officer was deputed to conduct inspection. The Enforcement Officer vide Annexure 2 report, reported that 31 employees working with the appellant establishment were not enrolled to the fund from 05/2016 to 09/2017. The Enforcement Officer in his report clearly identified the 31 employees, the wages paid and also the liability under the provisions of the Act. Since the appellant failed to comply with the directions an enquiry U/s 7A of the Act was initiated. In the enquiry the appellant took a stand that all the employees working in the head office and also Parashinikkadavu branch were enrolled to the fund. However none of the employees employed at Thaliparamba branch is

enrolled to the fund. The main reason given by the appellant before the respondent authority and also in this appeal is that majority of the employees are migrant labourers and they work only for few months. The appellant also took a stand that it was difficult to get the identity of the migrant labour to enroll them to the fund. On a perusal of the names of employees reflected in the Annexure 2 inspection report, Annexure 4 withdrawal of complaint by some of the employees and impugned order it is clear that majority of the employees are from within this state and the claim of the appellant that majority of them are migrant labour is totally incorrect. As rightly pointed out by the learned Counsel for the respondent, the appellant being a co-operative society cannot engage 31 employees without any proper identification. The respondent during the course of 7A also directed the appellant to produce any two employees working in the appellant establishment whose names are reflected in the complaint. But the appellant failed to produce the employees stating that none of the complainants are working with the appellant at that point of time. This is the clear case where the appellant failed to enroll



31 employees working at Thaliparamba branch who are entitled to enrolled the provident fund. Since there is no dispute regarding the employees and wages paid to the employees and the quantum of dues assessed it is not a fit case where in the Tribunal shall interfere. The learned Counsel for the appellant relied on the decision of Hon'ble Supreme Court of India in **Food Corporation of India Vs. Provident Fund Commissioner** , 1990 SCC (1) 68 to argue that the respondent authority ought to have taken action to identify the employees before quantifying the dues. The facts of the case are entirely different. The above case pertained to assessment of dues in respect of contract employees engaged by Food Corporation of India through contractors and the assessment order is issued without issuing notice to the contractors and identifying the employees. In this case, as already stated, the 31 non-enrolled employees are clearly identified by name and wages paid to them. Hence the dictum laid down by the Hon'ble Supreme Court in the above case is not applicable to the facts of the present case.

5. Considering the facts, circumstances and pleadings in this appeal, there is no reason warranting interference with the impugned order

Hence the appeal is dismissed.

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