



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

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

(Wednesday the 21<sup>st</sup> day of October, 2020)

**Appeal No.175/2018**

Appellant : M/s. Southern Transport Company,  
7/151, Thaikattukara P.O  
Kalamassery,  
Ernakulam - 683 106

By Adv. Saju . J. Panicker

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

By Adv. S. Prasanth

This appeal came up for hearing on 02/03/2020 and this Industrial Tribunal cum Labour Court issued the following order on 21/10/2020.

**ORDER**

Present appeal is filed from order No. KR/KCH//24164/(7A) /Enf 1 (5) 2017 / 3799 dt. 06/06/2018 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 03/2013 to 08/2016. The total dues assessed is Rs.16,17,945/-

2. The appellant is a registered partnership firm functioning as the consignment agent of Vishakhapatanam Steel Plant, a Government of India Enterprise. The above firm is the main supplier of iron and steel for all construction and infrastructure projects in Kerala. M/s. Kalamassery Labour Service Society is another establishment independently covered by the provisions of the Act. It is a labour society employing its own members and undertaking the work on contract basis. The appellant has been providing the works of shifting, de-coiling, straightening, bending, binding and cutting of wire rod coils and rebars of various lengths to that society. True copy of the agreement between the appellant and society dt. 14/08/2014 is produced and marked as Annexure A1. As per Clause 9 of the agreement the society is the employer of its workers and the

responsibility of meeting the statutory liabilities such as EPF, ESI etc are on the society only. The society defaulted in remittance of PF contribution. The respondent through its Enforcement Officer, contacted the appellant regarding the default of the society. It was clarified to the Enforcement Officer that as per Annexure A1 agreement the liability of paying PF Contribution of the employees of the society is with the society only. However the Enforcement Officer in his inspection report, marked as Annexure 2, directed the appellant to remit the contribution in respect of the employees of the society, without conducting any hearing U/s 7A of the Act. Hence the appellant filed Writ Petition No. 25282/2017 before the Hon'ble High Court of Kerala. The Hon'ble High Court by order dt. 25.08.2017 disposed of the Writ Petition holding that the appellant can take all his contentions before the authority U/s 7A of the Act. The respondent initiated U/s 7A of the Act. The appellant appeared before the respondent and filed Exbt. A5 representation. Without considering any of the contentions of the appellant the respondent issued the impugned order. The appellant is not the employer of the workers of M/s Kalamassery labour Service

Society. M/s Kalamassery Labour Service Society is an establishment independently covered under the Act. The respondent did not consider Annexure A1 agreement or A3 challan dt. 07/04/2014 while fixing the liability.

3. The respondent filed counter denying the allegations in the appeal memorandum. The appellant is an establishment covered under the provision of the Act and they are challenging an order issued U/s 7A assessing dues in respect of M/s Kalamassery Labour Service Society for the period from 03/2013 to 08/2016. M/s. Kalamassery Labour Service Society defaulted in payment of contribution and hence an enquiry U/s 7A of the Act was initiated. During the course of the enquiry it has come out that M/s Kalamassery Labour Service Society is a contractor of M/s Transport Company. Hence a notice dt. 09/06/2015 was issued to the principal employer M/s. Southern Transport Company also to appear in the enquiry on 22/06/2015. Thereafter the enquiry was adjourned 24 occasions providing the society and also the appellant adequate opportunity before the impugned order was issued. The only ground pleaded by

the appellant before the respondent was that as per Para 09 of Annexure A1 agreement the society is only responsible for the PF liability of its employees. However it is pointed out that an agreement or contract is void if it is expressly or impliedly prohibited by law or if any terms in the document executed between the parties are in violation of the Provision of a statute. As per Sec 2 (f) of the Act employee means any person who is employed for wages in any kind of work manual otherwise, in or in connection with the work with an establishment and who gets wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with work of the establishment. Further Paras 30, 32, 36 and 36B categorically put the onus on the contractor as well as the principal employer with regard to the compliance under the Act. Therefore any agreement or contract that seeks to contravene the statute shall be void to that extent. Hence the contention of the appellant that they are not responsible for any statutory compliance because of the agreement is a mere argument without any legal backing. In **People's Union for Democratic Rights Vs Union of India** , 1982 AIR 1473, 1983 SCR(1) 456

the Hon'ble Supreme Court held that if the contractor fails to fulfill his duties under the Act then the principal employer shall be under an obligation to provide all amenities and benefits provided under the law to contract labour deployed at its establishment. The report of the Enforcement Officer who is an inspector U/s 13 of the Act will not cast any liability on the employer . Only an authority U/s 7A can fix the liability under the Act. The allegations made against the Enforcement Officer who conducted inspection of the appellant establishment are not supported by any evidence and the appellant is legally bound to prove the same. The concept of principal employer is recognized under the Act and schemes and Para 30 of the EPF Scheme cast a duty upon the principal employer to ensure that the contractors engaged by them pay PF contribution and in case of default the principal employers are held liable. The appellant is held jointly and severally liable to remit the contribution under the Act and Schemes there under. As per Para 30(3) of the EPF Scheme “ It shall be the responsibility of the principal employer to pay both the contributions payable by himself in respect of the employees directly employed by him and also in respect of

the employees employed by or through a contractor ”. In view of the above legal position the respondent authority had no other option than to fasten the liability on both principal employer and the contractor. It is pointed out that the principal employer pays the ESI dues in respect of the workers of the contract. Hence it is not clear how the appellant as a principal employer is taking the stand that they are not responsible to paying PF contribution. As per the provisions of the Act, the principal employer is liable to remit the dues in respect of members employed through a contractor in the first instance. The contractor shall then recover the contribution payable by the employees engaged through it and shall pay the same to the principal employer along with the administrative charges. As far as the employees’ concerned the contractor and the principal employer are equally responsible to make the remittances under the Act and the schemes there under.

4. From the fact of the case narrated above it is seen that M/s Kalamassery Labour Service Society which is an independent contractor covered under the provision of the Act defaulted in payment of contributions under the schemes.

During the course of enquiry it come out that the appellant is the principal employer and therefore the appellant was also summoned in the enquiry. On verification of the impugned order it is seen that the matter was adjourned 24 times giving the society as well as the appellant adequate opportunity to prove their cases. According to the appellant they entered into Annexure A1 agreement with the society for getting certain specified works done . Para 9 of the said agreement holds the society responsible for paying the statutory liabilities such as ESI , PF and contribution to other welfare schemes. However as per the agreement the appellant is liable to remit the ESI contribution. According to the learned Counsel for the respondent this provision in the agreement with regard to the remittance of contribution is abinitio void as it is in violation of the provisions of EPF Act and schemes there under. As per Sec 2(f) an employee means any person who is employed for wages in or in connection with the work of the establishment and who gets its wages directly or indirectly from the employer and includes any person employed by or through a contractor in connection with the work of the establishment. As per Sec 8(A)



of the Act the amount of contribution payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor. As per Sec 8A(2), a contractor may recover from his employees the employees contribution by deduction from the wages paid to the employees. As per Para 30 of EPF Scheme, the employer shall in the first instance pay both the contribution payable by himself and also on behalf of the member employed by him directly or through a contractor. As per Para 30(2) the contractor can recover the employee share of contribution from the salary of the employees. As per Para 30(3) it shall be the responsibility of the principal employer to pay both the contribution in respect of his own employees and also the employees employed by or through a contractor. Para 36 B also casts a responsibility on the contractor to submit a statement of recoveries of contribution in respect of employees employed by him to the principal employer. As per Para 4 of Employees Pension Scheme, it is the responsibility of the principal employer to pay contributions

payable to Employees Pension Fund in respect of employees directly employed by him and also employees employed through a contractor. On a close reading of the above provision the appellant cannot escape the responsibility of ensuring that the contribution in respect of the employees engaged through a contractor is remitted in time. In the present case, it can be seen from Annexure 1 that the nature of the agreement between the appellant and the society is that of a work contract. To that extend the liability of the principal employer under the Act is limited to ensure that the society remits the PF contribution of its employees in time. In case of failure by the society the respondent is legally entitled to claim the amount from the appellant. The appellant, however, can adjust the contribution paid against the contract amount as per the provision of the Act and schemes, discussed above. Even otherwise the respondent can recover the amount of dues from the appellant U/s 8(F) of the Act against the amount due from the appellant to the society. It is also pertinent to note the claim of the society that

the PF contribution for its employees were being paid by the appellant till the E-payment system was introduced by the respondent.

5. Considering all the facts, circumstances and evidence in this appeal I am not inclined to interfere with the impugned order. However it is clarified that the society, which is an independent contractor, is liable to remit the contribution in respect of its employees. In case of failure by the contractor the respondent can recover the amount from the appellant and the appellant can legally adjust that contribution against any contract amount payable to the society.

Hence the appeal is dismissed with the above clarifications.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer