



सत्यमेव जयते

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

Present: Shri.V.Vijaya Kumar, B.Sc., LL.M, Presiding Officer.  
(Wednesday the 9<sup>th</sup> day of March, 2022)

**Appeal No.68/2019**

Appellant

M/s. Gokaram Enterprises  
Gokaram Mansion,  
Old Railway Station Road,  
Kochi – 682 018.

By Adv.P. Ramakrishnan &  
Adv.C. Anil Kumar

Respondent

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

By Adv. S. Prasanth

This case coming up for hearing on 11/11/2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 09/03/2022.

**ORDER**

Present appeal is filed from order No. KR/KCH/21593/ COC.Ref. KRKCH 21485/ E-court No. 217/2018/Enf-V(1)/2018/2359 dt. 27/12/2018 issued U/s 7C of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') against non-enrolled employees

for the period from 04/2012 to 03/2016 and order No. KR/KCH / 21593 / COC Ref. KRKCH / 21444/ E-court.216/2018/ Enf-V(1) / 2018/2360 dt. 27/12/2018 assessing dues U/s 7A of the Act in respect of non-enrolled employee for the period from 04/2016 to 12/2017. The dues assessed as per 7C order is Rs.65,616/- and the dues as per 7A order is Rs. 51,782/-.

2. The appellant is engaged in the business of distribution of pharmaceutical products of various companies. All the employees of the appellant establishment are covered under the provisions of the Act. The loading and unloading workers are covered under Kerala Headload Workers Welfare Fund Scheme. The work of stacking and arrangement of transporting of goods to transporting agencies has been entrusted with a contractor by name, Ravindran on agreed terms. The contractor deployed his own work force to carry out the work as per the terms of contract. The wages to the said workers were being paid by Shri. Ravindran. By an order dt. 29/06/2016, an amount of Rs.4,64,498/- was assessed against the appellant for the said contract workers for the period from 02/2004 to 03/2016 and dues in respect of evaded wages for the period from 04/2008 to 21/2018. A copy of the order is produced and marked as Annexure1. The appellant complied with the Annexure 1 order. The

respondent initiated further action after a long period for assessing dues U/s 7C in respect of non-enrolled employees on the basis of a complaint and report of the Enforcement Officer. The complainants were Shri.Ravindran and Shri.Akhilesh. Shri Ravindran is the contractor and Akhilesh was an employee engaged by him. Two separate proceedings were issued one for the period 04/2012 to 03/2016 and the second one for the period 04/2016 to 12/2017. The appellant attended the hearing and filed objections dt. 03/12/2018 in the above two proceedings, copies of which are produced and marked as Annexure 2 & Annexure 3 respectively. The appellant also placed on record all necessary documents to support their contentions. Without considering the objection raised by the appellant, the respondent issued the impugned order. The true copies of the impugned orders are produced and marked as Annexure 4 & 5 respectively. As per Annexure 1 order the respondent authority fixed the liability to remit contribution as a principal employer as the contractor Shri.Ravindran failed to remit the contribution in respect of the employees engaged by them. In Annexure A1 order there is a specific finding by the respondent authority that the contract employees are engaged by the contractor Shri.Ravindran. Respondent had no case that Ravindran was an employee under the appellant.

3. Respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 02/2004 to 03/2016. The respondent received a complaint through the Central Grievance Portal, EPF IG MS from one Shri.K.Akhilesh that he joined the appellant establishment in 2003 and was denied provident fund benefits by the appellant. An enquiry was initiated U/s 7A and order dt. 29/06/2016 was issued assessing dues in respect of 4 non-enrolled employees for the period from 02/2004 to 03/2016. Again another complaint was received from an ex-employee Shri. Ravindran and enquiry U/s 7C of the Act was initiated to determine the escaped amount in respect of Shri Ravindran fixing an enquiry on 26/06/2018. A representative of the appellant attended the enquiry. A copy of the inspection report was also furnished to the appellant. An order dt. 27/12/2018 is issued directing the appellant to remit the escaped amount pertaining to the dues period 04/2012 to 03/2016 in respect of Shri. Ravindran. The respondent received another complaint from two ex-employees of the appellant Shri.Sudheesh CR and Shri. Rahul R stating that the benefits under EPF were not extended to them by the appellant. The Enforcement Officer who conducted the inspection, reported that the dues in respect of 4 employees had already been assessed for the period 02/2004 to 03/2016 vide

order dt. 29/06/2016. The dues in respect of Shri. Sudheesh C.R and Shri. Rahul R were assessed in the above order. Hence an enquiry was initiated U/s 7A to determine the dues in respect of Shri. Ravindran and Shri. Akhilesh for the period from 04/2016 to 12/2017. A representative of the appellant attended the hearing and the enquiry was posted on 26/06/2018, 02/08/2018, 04/10/2018, 15/11/2018 and 03/12/2018. The enquiry was concluded, as the representative of the appellant stated that all the relevant records had already been produced.

4. As per rule 10 of EPF appellant Tribunal ( Procedure) Rules, 1997. “ An appeal shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another.” In the instant case the present appeal is preferred seeking remedies from two separate orders issued U/s 7C and 7A of the Act for different periods. The appeal is therefore not maintainable under rule 10 of EPF Appellate Tribunal ( Proceedure) Rules, 1997 .

5. On the basis of the report of the Enforcement Officer the dues in respect of 4 non-enrolled employees mainly Shri. Akhilsesh, Sudheesh, Rahul R and Krishna Bhadur were assessed as per Annexure 1 order and the appellant remitted the same. As per Sec

8A of the Act, the principal employer is fully responsible for enrolling all employees engaged through contractors and is authorized to recover the dues payable from the contractor concerned. As per Sec 2(f) of the Act an employee is defined as a person working in or in connection with the work of the establishment engaged directly or through a contractor. Since the Annexure A1 order did not include the dues in respect of Shri. Ravindran, enquiry U/s 7A of the Act was initiated to quantify the dues. The contention of the appellant that Shri. Ravindran is the contractor and 4 employees were engaged by the contractor is not correct, as all the 5 employees were receiving wages directly from the appellant. During the course of enquiry the appellant has not produced any records or agreement confirming the contention that Shri. Ravindran is the contractor and others are his contract employees. Sec 2(f) and 8A of EPF & MP Act and Para 26 and 30 of EPF Scheme makes the Principal employer responsible for the default of the contractor.

6. The learned Counsel for the respondent raised a preliminary issue that appeal from 2 different orders for different periods cannot be maintained in a single appeal. As per Rule 10 of EPF Appellate Tribunal (Procedure) Rules, 1997. “ An appeal shall

be based on a single cause of action and may seek one or more relief provided that they are consequential to one another". According to the learned Counsel, the order issued U/s 7C of the Act dt. 27/03/2018 is for the period from 04/2012 to 03/2016 for an amount of Rs. 65,616/- in respect of one non-enrolled employee Shri. Ravindran. The order issued U/s 7A dt. 27/12/2018 is for the period 04/2016 to 12/2017 assessing the dues amounting to Rs. 51,782/- in respect of two non-enrolled employees. According to the counsel for the respondent, the two orders issued by the respondent, one U/s 7C and another 7A of the Act for different periods are of different cause of action. Hence the appeal is not maintainable under rule 10 of EPF Appellate Tribunal (Procedure) Rules, 1997. If the matter is looked into critically it can be seen that the impugned orders are issued U/s 7C and U/s 7A of the Act. Technically the claim of the learned Counsel for the respondent is correct as the assessment is made under different sections for different periods. However it is seen that the appeal is filed basically challenging the dues assessed in respect of Shri. Ravindran. According to the appellant Shri. Ravindran is the contractor through whom the other four employees were engaged. Hence it is felt that it is not fair to dismiss the appeal on the technical ground after such a long time that the present appeal is

filed from two orders issued under two different sections and for two different periods.

7. The enquiry U/s 7C of the Act was initiated to assess the dues in respect of Shri. Ravindran for the period from 01/04/2012 and Shri. Akhilesh from 01/02/2004. On conclusion of the enquiry, Annexure 4 order was issued assessing the dues in respect of Shri. Ravindran for the period from 01/04/2012. It is also stated in the said order that the dues in respect of Shri. Akhilesh for the period from 02/2004 to 03/2016 was already assessed U/s 7A dt. 29/06/2016. The appellant remitted the contribution in respect of Shri. Akhilesh. Hence the dues in respect of only Shri. Ravindran for the period from 01/4/2012 to 03/2016 was assessed. In the subsequent proceedings U/s 7A of the Act. The respondent authority assessed the dues in respect of Shri. Ravindran and Shri. Akhilesh from April 2016 to December 2017. The assessment of dues in respect of Shri. Akhilesh is not seriously contested by the learned Counsel for the appellant, probably because the assessment made as per Annexure 1 order has already been remitted by the appellant. Hence there is no dispute regarding the assessment in respect of Shri. Akhilesh for the period from 04/2016 to 12/2017. The main dispute is regarding the assessment in respect of



Shri.Ravindran in both the impugned orders. According to the learned Counsel for the appellant, the representative of the appellant establishment has raised a valid dispute before the respondent authority that Shri. Ravindran is a contractor through whom four contract employees were engaged. He pointed out that the Annexure 2 and Annexure 3 representations dt. 03/12/2018 filed before the respondent authority during the enquiry is not considered by the respondent authority while finalizing the impugned orders. In the representation it is seen that the appellant has specifically raised a question as to “How a person can become both employer and employee at the same time ?” On a perusal of the Annexure 1 order issued by the respondent U/s 7A of the Act it is seen that there is a clear finding by the respondent authority that “All the above four contract employees were engaged by the same contractor Shri. Ravindran”. Hence it is clear that Ravindran is a contractor through whom the four employees were engaged. According to the learned Counsel for the respondent all the five employees were drawing salary / wages directly from the principal employer and therefore there is no dispute regarding the fact Shri. Ravindran is also an employee of the appellant establishment. I am unable to agree with the argument of the learned Counsel for the respondent. It is seen that the attendance and wage registers of the appellant

establishment were produced before the respondent authority during the Sec 7A enquiry which culminated in Annexure 1 order. It is seen that one of the complainant Shri.T.K.Akhilesh attended the enquiry. He agreed with the wages details furnished by the representative of the appellant, on the basis of which the Annexure 1 order is issued. If Shri. Ravindran was an employee, the Annexure 1 assessment ought to have included the dues in respect of Shri Ravindran also. The respondent authority who issued the impugned orders ought to have examined the documents to arrive at a conclusion whether Shri.Ravindran as a petty contractor was also working with the appellant establishment and drawing salary from the appellant establishment before assessing the dues in respect of the contractor. This become relevant since the appellant establishment raised this dispute at the time of the enquiry U/s 7C and 7A of the Act .

9. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not in the position to sustain the impugned order. However the assessment of dues in respect of Shri. Akhilesh in Annexure 5 order is upheld.

Hence the appeal is partially allowed, the impugned orders assessing the dues in respect of Shri.Ravindran is set aside and

upholding the assessment in respect of Shri.Akhilesh. The matter is remitted back to the respondent to re-assess the dues in respect of Shri. Ravindran after deciding his eligibility to be enrolled to the fund. If the appellant fails to appear or produce the records called for, the respondent is at liberty to assess the dues according to law. The pre deposit made U/s 7(O) of the Act as per the direction of this Tribunal shall be adjusted or refunded after finalization of the enquiry

Sd/-

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