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

सत्यमेव जयते

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

(Friday the 19th day of November, 2021)

Appeal No. 329/2019
(Old No.ATA-1342(7)2015)

Appellant : M/s R.F.Enterprises
Eramallolor .P.O
Alappuzha – 688 537.

By Adv. R. Sankarankutty Nair.

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Kaloor, Kochi– 682017.

By Adv. Sajeev Kumar K. Gopal

This case coming up for hearing on 09/07/2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 19/11/2021.

O R D E R

Present appeal is filed from order No. KR/KCH/15286 B/Enf-II(2)/2015/442 dt.15/09/2015 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on non- enrolled

employees for the period from 06/2004 to 03/2012 . The total dues assessed is Rs.5,39,232/-.

2. The appellant establishment is a manufacturer and supplier of milk and other allied products. The appellant is covered under the provisions of the Act and is regular in compliance. The appellant engaged independent dealers for selling their products at various places on the basis of written agreement. Such dealers will do their business as independent establishment with their own employees. As per the terms of agreement the products will be supplied at the place of dealer in insulated vehicles keeping required temperature. The appellant executed a dealership agreement on 04/09/2003 with Shri.S.Chandran for selling their products in Thiruvananthapuram region. A copy of the agreement is produced as Annexure A1. As per the terms of agreement, the dealer will be an exclusive dealer to market and sell the products of the appellant company within territories of the Thiruvananthapuram region and dealer shall make arrangements for the same by employing their own servants. The dealer was paying wages and other benefits to the employees and they were working under the control and supervision of the dealer. The appellant is not the employer of the employees under the dealer and there is no employer/employee or master/servant

relationship. On termination of the agreement executed on 04/09/2003, the appellant executed another agreement on 31/01/2009 with Shri. T. Murugan as a new dealer for Thiruvananthapuram region, a copy of the same is produced as as Annexure A2. On the basis of complaint filed by 9 employees of the dealer, the respondent initiated proceedings U/s 7A of the Act for determination of dues in respect of complainants for the period from 06/2004 to 03/2012. On the basis of the complaint, respondent directed the Area Enforcement Officer to investigate and the Area Enforcement Officer after investigation submitted a report dt. 21/10/2008, stating that the employees and staff were appointed by the distributor at Thiruvananthapuram. According to the Enforcement Officer, the complaint was genuine. The appellant disputed the proceedings on the ground that the dealer is not a contractor and the dealer cannot be treated as a branch and the complainants are not employees of the appellant. Since the complainants were not engaged by the appellant he could not produce any documents before the respondent authority except Annexure A1&A2 agreements. Ignoring the contentions of the appellant the respondent authority issued the impugned order quantifying the dues. A copy of the order is produced and marked as Annexure A3. The respondent relying on the documents

produced by the complainants found that the complainants are employees under the appellant. Neither the copy of the complaint nor the documents produced by the complainant were provided to the appellant.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act w.e.f 01/03/2002. 9 employees working at Trivandrum filed a complaint stating that they were not enrolled to provident fund benefits. An Enforcement Officer was directed to investigate into the complaint. In his report dt. 12.02.2009 the Enforcement Officer reported that the complainants were not the employees of the appellant and the attendance register forwarded along with complaint were forged. The dealership for Thiruvananthapuram region was allotted to one Shri. S.Chandran through agreement dt.04/09/2003 and the dealer was running his business with his own employees and other infrastructure. On termination of the agreement another agreement was excluded between the appellant and one Shri. Murugan. Since the appellant failed to comply the directions of the respondent, an enquiry U/s 7A was initiated. A representative of the appellant attended the hearing and stated that the complainants are employees of a dealer and they are not

the employees working in their branch. A copy of the dealership agreement of 2003 was produced. The representative of the appellant was provided with the copy of the complaint. The appellant did not produce any records other than the dealership agreements. The complainants produced the staff details from 07/2004 to 07/2006, 12/2006, 12/2007 and 07/2008, copy of ESI card of Shri. Suresh Kumar and other documents reflected in the impugned order. The respondent authority on scrutiny of the agreement concluded that dealer is actually a contractor for the principal employer. The agreement executed on 04/2003 indicates that the dealer will be exclusive dealer and marketer of milk and milk products within Trivandrum region. The dealer shall make all arrangements for supply of goods in such territories and shall engage as many agent/employees and servants for procuring orders for supply of goods at his own expenses. The dealer can utilize the infrastructure facilities as well as vehicles of the appellant for supplying goods by employing his own workers. The unsold goods will be returned to the appellant. The appellant shall not appoint any other supplier or dealer or employees for supplying the goods in the territories in which the dealer is appointed. The dealer shall make arrangements for labourers, as may be necessary for supplying goods and the dealer shall

meet the expenses and payments to the employees. The respondent authority also found that the contractor is utilizing the vehicles of the appellant for supply of milk and milk products and is not paying any hiring charges. After taking into account all these aspects, the respondent authority decided that these 9 employees are engaged by the contractor for and on behalf of the appellant and therefore held him responsible for remittance of provident fund contribution. Sec 2(f) of the Act defines an employee and Para 26 (1) (a) of EPF Scheme would clearly show that the employees engaged by the contractor are required to be enrolled to the fund by the appellant. In **M/s Patel & Sons and Others Vs Union of India,** 1986 (1) LLJ 88 (SC) the Hon'ble Supreme Court of India held that the terms of definition of employees under the Act are wide enough to they include not only persons employed directly by the employer but also persons employed through a contractor. Moreover, they include not only persons employed in the factory but also persons employed in connection with the work of the factory. In **Royal Talkies and another Vs ESIC,** 1978 SCC (4) 204, the Hon'ble Supreme Court considered the question when the canteen and cinema theatre run by independent contractors employing their own employees in connection with the work of canteen can be held liable for

contribution as the principal employer of the workman. The Hon'ble Supreme Court held that the persons employed in canteen and cycle stands are persons employed in connection with the work which is ordinarily part of the work of the theatre or incidental to the purpose of theatre. In relation to person so employed, the owners of the theatres are the principal employers. The Hon'ble Supreme Court also held the " expression in connection with the work of an establishment" includes wide variety of workman who may not be employed in the establishment but may be engaged only in connection with the work of the establishment. In connection with the work of an establishment only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the establishment; he may not even do anything which is primary or necessary for smooth running of the establishment. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment. Surely, an amenity, facility for the customers who frequent establishment has connection with the work of the establishment. The question is not whether without amenity or facility the establishment cannot be carried on but whether such amenity or facility, even peripheral has a link with

the establishment. The Division Bench of the Hon'ble High Court of Mumbai in **N.J. Naidu & Company Vs RPFC**, 2005 (2) Bom.CR 716 held that ' in connection with the work of the establishment' that the Hon'ble Supreme Court clarified in **Royal Talkies case** (supra) is available in Sec 2(f) of EPF and MP Act and therefore the discussion of the Hon'ble Apex Court is directly relevant for deciding the eligibility of an employee to be enrolled to provident fund. The Hon'ble High Court of Kerala in **Dr. AV Joseph, Director, Medical Trust Vs Assistant PF Commissioner,** 2009(4) LLJ 564 held that the 'expression' in connection with the work of the establishment contained in Sec 2(f) ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of an establishment and that some nexus must exist between the establishment and the work of the employees. The definition of the term 'employee' U/s 2(f) of the Act is different from that of the 'worker and 'workmen' in the Factories Act and the Industrial Disputes Act and it is wide enough to include a person permitted to work for someone else, if it is in connection with the work of the establishment. The agreement entered into between the appellant and contractor would sufficiently established the fact that the non

enrolled employees were working in connection with the work of the establishment and therefore they are liable to be extended the benefit of social security.

4. The respondent office received a complaint from 9 employees alleging that they are working in one of the branches of the appellant establishment and they are not enrolled to provident fund benefits. The respondent authority conducted investigation and found that the 9 employees were working with an exclusive dealer and these employees are appointed by the dealer only. However they found that the complaint is genuine and therefore the respondent authority initiated an enquiry U/s 7A of the Act. In the enquiry, the appellant took a view that the complainants are not working in their branch and employees are working with a dealer in Trivandrum and they are appointed by dealer for distribution milk and milk products. The respondent authority concluded that the complainants are the contract employees of the appellant working in connection with the work of the establishment and therefore they are liable to be enrolled to the provident fund membership.

The learned Counsel for the appellant submitted that the appellant has got nothing to do with the 9 persons who filed complaint with the respondent organisation. They are employees engaged by a dealer in Trivandrum and they don't have any further details regarding this complainants. However the appellant produced the dealership agreement. The learned Counsel for the appellant also produced an award passed by the Hon'ble Labour Court, Kollam in ID Nos 24/2007 and ID No. 46/2011. It is seen that these industrial disputes relate to the same complainants in this appeal and the appellant and the dealer as parties. It is also seen that the issue regarding extension of provident fund benefits to the complainants was also discussed during the conciliation proceedings without any favorable decision to the employees. The main dispute referred to the Labour Court was whether these complainants were employees of the appellant. After taking elaborate evidence the Labour Court concluded that the complainants in this appeal are not the workers deployed by the appellant and they are only workers of the dealer, who was also a party to said proceedings. The learned Counsel for the appellant relied on this award to argue that there is already a finding by a competent Court that the complainants in this appeal are not employees of the appellant. However the learned

Counsel for the respondent pointed out that the definition of workman in the Industrial Disputes Act and an employee in EPF and MP Act are entirely different and therefore the finding in the award will not in any way help the appellant in assert that the complainants are not the employees of the appellant as per Sec 2 (i) of EPF and MP Act . The definition of 'employee' U/s 2 (f) of the Act ropes in all kind of persons employed or in connection with the work of the establishment directly or through a contract, after its amendment in August 1988. The implication of the words " in or in connection with the work of the establishment" was considered by various Courts and it was held that even if a person is doing something ancillary to the work of an establishment, he can be considered as an employees of that particular establishment. In this case, it is seen that these employees were working with the dealer or contractor. The dealer or contractor is an exclusive dealer dealing only with the products of the appellant establishment. The respondent authority has elaborately considered the terms of agreement to conclude that the employees engaged by an exclusive dealer is also an employee working in or in connection with the work of the appellant establishment and therefore they are entitled for provident fund membership. I am of a considered view that the

interpretation given by the respondent authority to the definition of employee in EPF and MP Act is legally correct.

5. Having decided that the complainant employees are employees of the appellant as per the definition of the employees U/s 2(f) of the Act, the next question is with regard to the quantification of dues of the employees . It is seen that the respondent authority has relied on some documents produced by the complainants to arrive at the contribution payable. According to the learned Counsel for the appellant, he is not aware of the documents relied on by the respondent authority as the copies of the documents produced by the complainants were not given to the appellant. When the appellant is held liable for the provident fund liability of the complainant employees it is his right to know the documents relied on by the respondent authority for quantifying the dues. More appropriately the dealer/contractor ought to have been made a party to the proceedings and he ought to have been directed to produce the records for assessing the dues in respect of the employees engaged by him. This is particularly so because the appellant has taken a stand that all these employees engaged by the dealer are appointed by the dealer and terms of appointment and wages paid are known only to the dealer or the contractor. Further it is seen that the

Enforcement Officer, who conducted the investigation of the complaint of the employees reported that the employees are appointed by the dealer and the wage register produced along with complaint are forged. It is therefore felt that the respondent shall summon the dealer/ contractor to appear in the proceedings and produce the records for the purpose of quantifying the dues.

6. Considering the facts circumstances, pleadings and evidence in this appeal, I am not inclined to accept the quantification of dues by the respondent authority.

Hence the appeal is partially allowed. The finding of the respondent that the employees working with the exclusive dealer are working in connection with the work of the appellant and therefore, employees of the appellant is upheld. The quantification of dues in respect of non- enrolled employees is however set aside and the matter

is remitted back to the respondent to reassess the dues within a period of 6 months after issuing notice to the appellant as well as the dealer/contractor. If the appellant or the dealer fails to appear or produce the records called for, the respondent authority is at liberty to quantifying the dues according to law.

Sd/-

(V. Vijaya Kumar)
Presiding Officer