



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

सत्यमेव जयते

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

(Monday the 15th day of February, 2021)

Appeal No.12/2018

Appellant

M/s. Hotel Luciya
East Fort.,
Thiruvananthapuram -695 023.

By Adv. Ajith. S. Nair

Respondent

The Assistant PF Commissioner
EPFO, Regional Office
Pattom,
Thiruvananthapuram – 695 004.

By Adv. S.Sujin

This case coming up for hearing on 20/01/2021 and this Industrial Tribunal-cum-Labour Court issued the following order on 15/02/2021.

ORDER

Present appeal is filed from order No. KR / TVM / 10249/ Enf-1 (4) / 2017/5337 dt. 3/10/2017 assessing the dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 06/2014 to 01/2015. The total dues assessed is Rs. 1,44,445/-.

2. The appellant is a Hotel. The appellant is having Bar License issued under provisions of Kerala Abkari Act for running the bar. The license is being renewed from year to year. The appellant is covered under the provision of the Act and complying regularly. An Enforcement Officer inspected the records of the appellant establishment on 05/2/2015. The Enforcement Officer in his report submitted that 11 employees employed by the appellant were not enrolled to provident fund. On the basis of the report of the Enforcement Officer the respondent initiated action U/s 7A of the Act. A representative of the appellant attended the hearing and filed a detailed reply. A copy of the reply is produced and marked as Annexure 2. The alleged non-enrolled employees are abkari workers deployed in the Bar. Government of Kerala has introduced a welfare fund for the abkari workers by enacting Kerala Abkari Workers Welfare Fund Act. The appellant is bound to comply with the provisions of the Act and enroll the abkari workers under the state fund created for the Abkari Workers Fund. Remittance of contribution under Abkari Welfare Fund is mandatory requirement for granting license under the Abkari Act for running a bar hotel. Therefore the appellant

remitted the contribution of the abkari workers to the Abkari Workers Welfare Fund Board. Abkari Workers Welfare Fund Act is a state enactment and it will override the central enactment as per the provisions of the Constitution of India and as such the EPF cannot be made applicable to the abkari workers in the state who are covered under the Welfare Fund Act. The appellant raised a dispute regarding the applicability of the Act to the abkari workers under Para 26B of the EPF Scheme. Further the proceedings conducted under Para 26B was not proper, in as much as, no notice was given to the employees who are sought to be covered. The decision under Para 26B is not appealable and as such the said order could not be appealed against. The impugned order deserves to be set aside since the crucial issue regarding the applicability of the Act has not been decided before determining the contribution. If EPF Act is made applicable to the abkari workers, they will be entitled for double benefit, whereas the other employees in the establishment are not entitled to such benefits.

3. The respondent filed counter denying the above allegations. An Enforcement Officer of the respondent

organization during the inspection of the appellant establishment noticed that 11 employees of the appellant were not enrolled to provident fund. Hence the Enforcement Officer issued a notice dt. 18/3/2015 to the appellant calling for compliance. Since there was no response, an enquiry U/s 7A of the Act was initiated. During the course of the enquiry the counsel representing the appellant filed an objection on the eligibility of membership of the employees in question as they were already enrolled under Abkari Workers Welfare Fund and requested for an adjudication under Para 26B of the employees provident fund scheme. Hence the matter was taken up by the Commissioner under Para 26B. Though six opportunities were given, the appellant neither appeared nor filed any documents in support of his contentions. The Commissioner thus concluded the hearing holding that non-enrolled employees will have to be enrolled under the provisions of the Act. A copy of this proceedings dt. 7/2/2017 is produced and marked as Exbt R1. Thereafter the 7A enquiry for assessment of dues continued and the dues were assessed as per impugned order. An enquiry regarding the eligibility of the employees to be enrolled was

taken up on the request of the appellant by the Commissioner. The Commissioner issued the final proceedings vide order dt. 7/2/2017. Since the said order was not challenged, it has attained finality. An order issued under Para 26B of the Scheme cannot be challenged in an appeal before the EPF Appellate Tribunal. The Abkari Workers Welfare Fund Act being a state enactment on a subject under concurrent list cannot override the central Act, that is, the Employees Provident Fund and Miscellaneous Provision Act, unless it has received the Presidential assent. The appellant cannot indirectly challenge Exbt R1 order issued under Para 26B of EPF Scheme in this proceedings.

4. The issue raised in the appeal is with regard to non-enrollment of 11 employees, who according to the appellant, are enrolled to the Abkari Workers Welfare Fund Board. According to the appellant the Abkari Welfare Fund Board is constituted under Kerala Abkari Workers Welfare Fund Act and since the Abkari Workers Welfare Fund Act is a state enactment, it will override the provision of EPF Act which is a central legislation. Article 254 of the Constitution of India deals with inconsistency between laws made by

Parliament and laws made by the legislatures of states. As per Article 254 :-

(1) “ If any provision of a law made by the legislature of a state is repugnant to any provision of a law made by the Parliament, which parliament is competent to enact, or to any provision of an existing law with respect of one of the matters enumerated in the concurrent list, then, subject to the provisions of the clause 2, the law made by Parliament, whether passed before or after the law made by the legislature of such state or as the case may be, the existing law, shall prevail and law made by the legislature of the state shall, to the extent of repugnancy, be void.

(2) Where a law made by the legislature of a state with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the legislature of such state shall, if it has been reserved for consideration of the president and has received his assent, prevail in that state.

5. Provided that nothing in this clause shall prevent Parliament from enacting at any time, any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislature of the state.” From the above provision it is very clear that unless the law made by the state legislature is reserved for the consideration of President and has received his assent the law made by the Parliament shall prevail. That being so, the claim of the appellant that the provisions of Abkari Workers Welfare Fund Act will prevail over the EPF & MP Act which is a central legislation will have no basis in law. Since the appellant did not raise any dispute regarding the assessment of dues and the eligibility of the 11 employees has already been decided under Para 26B of EPF Scheme, I am inclined to hold that there is no merit in the appeal.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer