



सत्यमेव जयते

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

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

(Friday the 20<sup>th</sup> day of May, 2022)

**Appeal No.168/2018**

(Old No. A/KL 108/ 2016)

Appellant : M/s. Muhamma Lime Shell  
Co-operative Society No. 2551,  
Muhamma P.O  
Alappuzha – 680 013.

M/s. Rajesh Nair & Bijoy Chandran

Respondent : 1. The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Kaloor,Kochi – 682 017.

By Adv. Sajeev Kumar K. Gopal

2. Shri. K.C Roy  
Charamangalam,  
Kochuvelil,  
Muhamma P.O  
Alleppey – 688525.

3. Shri. P.K.Thilakan  
Panakkaparambil  
Perunthuruthu,  
Muhamma P.O  
Alleppey – 688525.

By Adv. Bindu. T.N

This case coming up for final hearing on 31/08/2021 and this Tribunal-cum-Labour Court on 20/05/2022 passed the following:

### ORDER

Present appeal is filed from order No. KR / KCH /Muhamma/Enf-2(1)/2016 dt. 20/09/2016 deciding the applicability of the provisions U/s 7A of EPF and MP Act 1952 (hereinafter referred to as 'the Act') to the appellant establishment with effect from 22/04/2013.

2. The issue involved in this appeal is whether the provisions of the Act applies to the appellant Society. Sec 16 (1) of the Act provides that this Act shall not apply to any establishment registered under the Co-operative Societies Act 1912 or under any other law for the time being in force in any state relating to Co-operative Societies employing less than 50s person and working without the aid of power. The provisions of the Act will not apply to the appellant society if it satisfies that it is registered under Co-operative Societies Act, it employs less than 50 persons and is not working without the aid of power. The appellant society satisfied all the three criteria and pointed out to the respondent authority

that the appellant establishment is not coverable Under Sec.1(3)(b) of the Act in view of Sec.16(1) of the Act. However ignoring the contentions of the appellant the respondent issued the impugned order, a copy of which is produced and marked as Annexure A1. The appellant challenged the above said order before the Hon'ble High Court of Kerala in W.P.(C) No. 25476/2016 and the Hon'ble High Court vide judgment dt.24/06/2016 directed the appellant to appear before the APFC to decide the question of applicability. A true copy of the judgment dt. 24/06/2016 is produced and marked as Annexure A3. The appellant is a Co-operative Society formed under Act 05/1112 in the year 1946 and it started functioning in the year 1948. The appellant society is registered as a primary miscellaneous Co-operative society under the Kerala Co-operative Societies Act, 1969 and is working under the administrative control of the Joint Registrar of the Co-operative Department of Kerala. A true copy of the certificate of registration is produced and marked as Annexure A4. The appellant therefore satisfies the first criteria for exclusion U/s 16(1) of the Act. The society is formed with an objective of protecting the welfare of members engaged in the collection of black lime-shells and

also associated for the purpose of selling the black lime shells collected from the members from the Vembanad back waters. The society has more than 2000 members. Each individual members collected black lime shells and sell them to the depots of the society. The appellant is acting as an agent in the sale of black lime shells collected by its members. The profit made from these sales are given as dividends to the members. The appellant is employing 41 workers for the purpose of measuring, weighing, and loading the black lime shells who are employed on a piece rate basis. The workers do their work manually and no power is used for their work. The employees of the society are included in the pension fund which has been duly approved by the Co-operative department. There is also provision for medical and sickness benefits for the workers. Besides 23 of these workers are registered under the Kerala Fishermen's Welfare Fund Board. The workers are also entitled for bonus. The appellant is meeting its liabilities from the meager profit received from the sale. Copies of the statement showing the details of workers is produced and marked as Annexure A5. From the statement it can be seen that 10 workers are not members of the society and the rest of the workers are members of the

society. The third criteria is that the society is function without the aid of power. The appellant is not using any power for its activities. The Society is using only a petrol run pump for washing the black lime to remove the silica as per the demands of buyers. The head load workers are not employed for cleaning black shell. For the purpose of cleaning two or three workers from outside are engaged on piece rate contractual basis. The motor pump owned by the society is given in hire to these workers. The motor pump is a petrol pump and it does not use electricity for its activities. The electricity bills for the period 31/08/2005, 26/12/2014 and 31/10/2014 are produced and marked as Annexure A6 series. The bill dt.22/04/2013 issued by the Regional Agro Industrial Development Co-operative of Kerala Ltd, showing the purchase of petrol engine pump is produced and marked as Annexure A7. It establishes the fact that the society was functioning without the aid of power. Hence it is clear that the provisions of the Act is not applicable to the appellant. The appellant society can survive without the aid of power. No manufacturing process is carried on by the appellant society. The appellant society is acting only as an agent and it can function without the aid of power. The buyers of the

black lime shell, as per their option, take the petrol pump set on rent from the appellant for cleaning the shell. Cleaning is done by persons hired on contract by the purchaser of black lime shell who has nothing to do with the appellant society. The finding of the respondent authority that the members of the appellant society who are employed by the society also will come within the ambit of the definition of employee is not correct. In **Muhammed Haneef Vs ESIC**, 1985 LAB IC 763 (Allahabad) and **New Taj Mahal Café Ltd Vs Inspector of Factories Mangalore**, AIR 1956 (Mad) 600 it was held by respective High Courts that where the use of Electric Power is an integral part of the operation, it can be said that the manufacturing process is carried on with the aid of power. The report of the Enforcement Officer, Alapuzha was not produced in the proceedings U/s 7A and the appellant society did not have any opportunity to counter the contents of the report.

3. 1<sup>st</sup> respondent filed counter denying the above allegations. The appellant is a Co-operative Society. The respondent received a complaint from a section of the employees that the statutory provident fund benefits were

not extended to them. Accordingly an Enforcement Officer was deputed for investigation. The Enforcement Officer reported that the appellant is a Co-operative society registered under Kerala Co-operative Societies Act 1969. The Enforcement Officer reported that the appellant establishment is employing more than 19 employees and working with the aid of power and therefore recommended coverage with effect from 22/04/2013. The appellant was therefore directed to register the appellant establishment in the online portal. The appellant is already covered under Employees State Insurance Act with effect from 16/08/1994 with 30 employees. M/s. Karappuram White Lime Shell Vyavasaya Co-operative Society, Muhamma is a similar society which is covered under the provisions of the Act with effect from 01/04/1989. The said society is also engaged in white lime shell processing and sales. The appellant society disputed coverage and failed to register online inspite of the specific directions issued by the respondent authority. In the meanwhile complaints were received on behalf of eligible employees stating that the appellant society is engaged in processing and sale lime shells and it employed more than 40 employee and also using power for manufacturing process

from 2010 onwards. Since the appellant was employing less than 50 employees before started using electricity for its operation, it was not coverable prior to 2010. The appellant approached the Hon'ble High Court in W.P.(C) No. 21546/2016 and the Hon'ble High Court vide judgment dt.24/06/2016 directed the respondent to decide the question of applicability. The respondent initiated an enquiry U/s 7A of the Act and directed the appellant to produce the attendance and wage registers and profit & loss account, cash book, ledger etc for the last 5 years. The Advocate who appeared on behalf of the appellant submitted that the employment strength of the appellant society is less than 50 and is working without the aid of power and therefore the Act is not applicable to the appellant. Notice was also issued to the complainants to appear and defend their case. The complainants also attended the hearing on 12/08/2016. The complainants confirmed the report of the Enforcement Officer that the appellant society is coverable under the provisions of the Act from 22/04/2013. They further submitted that the appellant society is using power since they are using 10 HP motor pump for washing and cleaning of products of the appellant society. They also argued that the



Hon'ble Supreme Court of India has held that even use of LPG satisfies the definition of power. After hearing the appellant and the complainants the respondent issued the order holding that the appellant establishment is coverable with effect from 22/04/2013. By a combined reading of Sec 1(3)(b) and Sec 16 (1) of the Act, it is clear that any Co-operative Society working with the aid of power and employing less than 50 employees is coverable under the provisions of the Act. The appellant society is using petrol fuel motor pump for the purpose of cleaning/washing the lime shell before they are selling the lime shells to their clients. The marketability of the products improves due to this process. The appellant society is also employing more than 20 employees. As per Sec 2(1)(c), manufacture or manufacturing process is defined as any process for making, altering, repairing, ornamenting, finishing, packaging, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal. "Power is not defined in the Act" However as per Sec 2(g) of Factories Act 1948, 'Power' means electrical energy or any other form of energy which is mechanically transmitted and is not

generated by human or animal agency and includes electrical energy. Similar the Central Silk Board Act 1994 defines power as any form of energy which is mechanically transmitted. The Hon'ble Supreme Court of India in **Bombay Anand Bhavan Restaurant Vs ESI Corporation,** 2009 (4) KLT 237 ( SC ) held that LPG satisfies definition of power as it is mechanically transmitted and is not something generated by human or animal agency. The petrol fuel motor pump used by the appellant society for cleaning / washing lime shells also is to be treated as a manufacturing process with the aid of power. The society members who worked with the appellant establishment and to whom wages are paid will be treated as an employee U/s 2(f) of the Act .

4. The respondent 2 & 3 filed counter denying the allegations in the appeal memorandum. It is true that before 22/04/2013, EPF Act was not applicable to the appellant society as it had employed less than 50 employees and was working without the aid of power. The appellant admitted that the appellant society purchased two 3.5 HP Pump sets for using it for cleaning the shells. It is also admitted by the appellant society that they are using 2 or 3 persons engaged

on piece rate contractual basis for cleaning the black lime shells collected, to remove silica as per the demand of buyers. Admittedly the motor pumps are owned by the society and is run by the use of petrol and it is working without the aid of any human or animal agents. When the appellant society started using petrol engine pumps for washing and cleaning their products, they lost the exemption U/s 16 (1) of the Act. The Hon'ble Supreme Court has held that the use of LPG satisfies the definition of power as it is mechanically transmitted and it is not something generated by human or animal agency. In the same analogy, the motor pumps run on petrol also satisfies the definition of power. Once the appellant society is covered under the provisions of the Act, it is immaterial whether the employees are eligible for other welfare schemes. As a workers co-operative society the members themselves can work simultaneously. When they earn salary or wages they come within the definition of employees.

5. The appellant filed a reply to the written statements filed by the respondents. They also produced the photographs of the petrol pump set used and the bills issued to some

customs as additional documents. The appellant further produced some receipts showing delivery charges and also the ledger account of the appellant society under the miscellaneous head. The appellant reiterated its stand that the appellant establishment is not coverable under the provisions of the Act in view of the fact that the appellant society is not working with the aid of power.

6. The first respondent authority received a complaint from some of the employees of the appellant society stating that they are not extended the social security benefits under the Act. An Enforcement Officer was deputed to investigate. The Enforcement Officer reported that the appellant establishment is registered under the Co-operative Societies Act, is employing more than 19 employees and working with the aid of power and therefore the appellant establishment is coverable under the provisions of the Act from 22/04/2013. The appellant establishment was therefore directed to register in the online portal for coverage. Since the appellant failed to register, the first respondent issued prosecution notice. The appellant challenged the said notice before the Hon'ble High Court of Kerala in W.P.(C) No.

21546/2016. The Hon'ble High Court vide its judgment dt.24/06/2016 directed the first respondent to decide the question of applicability and directed the appellant to appear before the respondent on 07/07/2016. The representatives of the appellant attended the hearing and submitted that the appellant is an establishment registered under the Co-operative Societies Act and is working without the aid of power and the employment strength of the appellant is below 50 and therefore is not coverable under the provisions of the Act. The first respondent issued notice to the complainants and they entered appearance and contested the stand of the appellant society and submitted before the respondent authority that is true that the appellant establishment was not coverable under the provisions of the Act till 21/04/2013 since the society was working without the aid of power. However from 22/04/2013 the appellant society is working with the aid of power as it is using 2 petrol pump sets for cleaning the black lime shells for enhancing the sale value of the products to the customers. The respondent authority after considering all the relevant facts concluded that the appellant society is working with the aid of power and therefore the

appellant society stands covered under the provisions of the Act with effect from 22/04/2013.

7. In this appeal the learned Counsel for the appellant reiterated its stand before the respondent authority that the appellant establishment is working without the aid of power and being a society registered under Co-operative Societies Act and employing less than 50 employees, is not coverable under the provisions of the Act. The learned Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents pointed out that the appellant society has admitted that they are using two 3.5 HP petrol engine pumps sets for washing and cleaning of black lime shells which amounts to the society working with the aid of power. The learned Counsel also pointed out that the appellant admitted the fact that the buyers insist for washing and cleaning the product before the same is sold and they are engaging 2 or three employees on piece rate or contractual basis to do the work. Power is defined as electrical energy or any other form of energy which is mechanically transmitted. The Hon'ble Supreme Court in **Bombay Anand Bhavan Restaurant Vs ESI Corporation**, 2009(4) KLT 237 (sc) held that “ In our view the use of

LPG satisfies the definition of power as it is mechanically transmitted and it is not something generated by human or animal agents”. If use of LPG satisfies the definition of power, the motor pumps running on petrol would definitely satisfy the definition of power. It was admitted during the hearing that Hindustan Newsprint Ltd is one of the major clients and they accept black lime shell only after cleaning and they will ensure that the lime shells brought from the appellant society is properly cleaned from their Quality Control Lab. After that only they will allow the black lime shell to be unloaded. The requirement of Hindustan Newsprint was very large quantity and it was not possible to clean the lime shell as per their requirements. In the **Impression Prints Vs Central Excise**, 2005 (7) SCC 497 the Hon'ble Supreme Court held that the definition of “manufacture” as in 2 (f) puts it beyond any possibility of controversy that if power is used for any of the numerous process that are required to turn the raw materials into a finished article known to the market the clause would be applicable; and an argument that power is not used in the whole process of manufacture using the word in its ordinary sense will not be available. In **CCE Vs Guru Kripa Resins Pvt. Ltd**, 2011 (13) SCC 180 the Hon'ble Supreme Court held

that manufacture is end result of one or more process by which original commodity changes into new commercial commodity – operation of lifting of water from well to higher levels, is so integrally connected with manufacture of turpentine oil and rosin that without this activity it is impossible to manufacturer said goods, therefore processing of the said raw material in or in relation to manufacture of the said final goods is carried on with the aid of power. The learned Counsel for the 2<sup>nd</sup> & 3<sup>rd</sup> respondent also argued that the EPF Act covers employees employing directly or indirectly or through agents working for the establishment. Sec 2 (f) of the Act takes into its hold all kind of employees working in or in connection with the work of the establishment. The Hon'ble High Court of Madras, Madurai Bench in **Palliyadi Handloom weavers Co-operative Production and Sale Society Vs Assistant PF Commissioner and Others**, WP MD No 1593 of 2021 held that the weaver workers are entitled for provident fund benefits as they will come within the definition of employees U/s 2(f) of the Act. The learned Counsel for the 1<sup>st</sup> respondent pointed out that the availability of other social security schemes will not prevent the extension of the social security measures under the Act, if



it is coverable under the provisions of the Act and schemes there under. The learned Counsel for the 1<sup>st</sup> respondent argued that the appellant is using power for washing the shells which improves the market value. It was also contended that the manufacturing process as defined U/s 2(i)(c) includes 'washing and cleaning' and therefore the appellant society cannot escape the liability under the Act stating that it is a minor activity done on the request of the customers.

8. The learned Counsel for the appellant relied on various judgments for driving home in his arguments that using a petrol engine pump to clean the black shells cannot be treated as working with the aid of power as same will not come within the manufacturing process. He relied on the decision of the Hon'ble High Court of Chennai in **New Taj Mahal Café Ltd Vs Inspector of Factories**, AIR 1956 Madras 600. The above case was under the Factories Act, and the Hon'ble High Court held that what Sec 2 (k) of the Factories Act requires is that it should be subject of manufacturing process and not the subject of a manufacture process. It was the case were the Hon'ble High Court examined the process

of manufacture and remanded the matter for fresh consideration. It has got no relevant to the facts of the present case. The learned Counsel for the appellant also relied the decision of **Central Board of Trustees Vs Newton Pushpak Premises Co-operative Society Ltd**, 2016 LLR 1019 wherein the Hon'ble High Court of Bombay decided that merely because of electricity is used in the premises of the housing society for providing light and other amenities at the work place, it cannot be said that the establishment works with the aid of power. However the Hon'ble High Court clarified that “ working with the aid of power implies that there must some work or process carried on in the establishment with the use of power and such use must be proximate as regards the activity carried on by the establishment.” In the present case the evidence adequately support the fact that the appellant is using 2 petrol pump sets for cleaning the black lime shells which will come within the definition of manufacturing process as per the definition of Sec 2 (ic) of the Act. The Hon'ble Counsel also relied on the decision of the Hon'ble High Court of Madras in **V Muhammed Haneef and Company Vs ESIC**, 1969 (1) LLJ 586. In this case the Hon'ble High Court was examining the definition of manufacturing

process under ESIC Act. In the above case the establishment was involved in tanning and the power is used to lift water from a nearby well outside the establishment and stored in tanks and the water is diverted into the establishment for its manufacturing process. The Hon'ble High Court held that since the power is used outside the premises it cannot be held that power is used in the manufacturing process merely for the reason that water used has been lifted from the well with the aid of power. He also referred the decision in **Jawaharlal Nehru University Students Union Vs Jawaharlal Nehru University and Another**, 1985 LAB IC 762. This is a case where the Hon'ble Supreme Court examined the definition of the “manufacturing process” as defined in the Factories Act, and is not relevant to the facts of the present case. Another case relied on by the learned Counsel of the appellant is that of **Aniketh College of Social Works Vs Assistant PF Commissioner and others**, 2017 LAB IC 4442. In the above case the appellant establishment was registered under the Societies Registration Act and Maharashtra Public Trust Act 1950 and not under Co-operative Societies Act. However the Hon'ble High Court held that the use of power of electricity must necessarily have a direct or proximate nexus with the

work of the establishment and further held that imparting of education with the help of electronic gadgets like computers, projectors or the light may possibly imply that the working is with the aid of power . However if the use power is only to operate tube lights and fans, such use of power shall certainly not imply that imparting of education is with the aid of power.

9. The facts in this case are not generally disputed. The appellant is an establishment registered under the provisions of Kerala Co-operative Societies Act 1969. The appellant is employing less than 50 persons. The learned Counsel for the appellant as well as the Counsels for the respondents relied on Sec16 (1)(a) of the Act to press home their contentions. According to sec 16(1)(a)

“ Act not to apply to certain establishments –

- 1) This Act shall not apply,
  - a) To any establishment registered under the Co-operative Societies Act 1912 ( 2 of 1912 ) or under any other law for time being in force in any state relating to Co-operative Societies

employing less than 50 persons and working without the aid of power;

b) ....

c) ....

10. According to the above provisions any establishment which is registered under the Co-operative Societies Act will not be covered under the provisions of the Act if the employment strength of the establishment is less than fifty and the establishment is working without the aid of power. There is no dispute regarding the fact that the appellant establishment is registered under the Co-operative Societies Act and the employment strength of the appellant is below fifty. The only issue on which there is dispute is with regard to the question whether the appellant establishment is working with the aid of power. The Division Bench of the Hon'ble High Court of Kerala in **Assistant Provident Fund Commissioner EPFO Vs Karappuram White Lime Shell Vyavasaya Co-operative Society Ltd and others**, 2018 (156) FLR 487 held that in order to bring the establishment under Sec.16(1) of the Act, the twin conditions of employing not less than fifty persons and working without aid of power are

to be fulfilled. In this case the condition of employing not less than fifty persons is satisfied. Then, the question is whether the appellant establishment is working with the aid of power. The learned Counsel for the appellant relied on various decisions to substantiate his contentions that just because the appellant establishment is using two 3.5 HP Motors to clean the lime shells, it cannot be taken as the establishment is working with the aid of power. He also stated that the appellant establishment can work without the aid of power and it was working so, prior to 22/04/2013. This is exactly the point of dispute in this case. Till 22/04/2013 the appellant was only collecting and selling the black lime shells from the members of the society. However on 22/04/2013 they purchased two motors to wash and clean the black lime shells collected from the members of the society before selling it to the customers. According to the learned Counsels for the respondents the value addition to the product sold by the appellant had brought the establishment within the fold of the Act as it started functioning with the aid of power. The learned Counsel for the 2<sup>nd</sup> & 3<sup>rd</sup> respondent, who were the employees of the appellant establishment fighting for the extension of social security, argued that the major customer

of the appellant establishment was M/s. Hindustan News Print Factory and they insisted for cleaning of the black lime shells without which they were not willing to accept the product. The appellant was therefore constrained to install the petrol pump set to clean the lime shells without which the marketability of the product and the price was very poor. The learned Counsel for the appellant argued that the appellant establishment was using only petrol water pump sets and therefore cannot be treated as working with the aid of power. According to the learned Counsel for the first respondent though “power” is not defined in the Act, the definition in other Acts and the common dictionary meaning can be adopted. As per the common dictionary meaning ‘power’ is energy that is produced by mechanical, electrical or other means. As per Sec 2 (g) of Factories Act, power means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agents. The Central Silk Board Act, 1948 also defines “power” in the same terms. The learned Counsel for the respondent 2 & 3 also relied on the decision of the Hon'ble Supreme Court in **Bombay Anand Bhavan Restautant Vs ESIC**,(supra) to argue that the use of LPG satisfies the

definition of power as it is mechanically transmitted and not something generated by human or animal agency. Hence it cannot be disputed that using a petrol pump set will amount to using power for washing and cleaning of the black lime shells. The learned Counsel for the appellant further argued that the washing and cleaning of the lime shells is not the main function of the appellant establishment and there is no direct application of power in the direct or proximate activity of the appellant establishment. He relied on the decision of the Hon'ble High Court of Mumbai in **Central Board of Trustees Vs Nuthan Pushpak Premises Co-operative Society Ltd** (supra). In the above case the Hon'ble High Court held that merely because electricity is used in premises of the society for providing light and other amenities at the work place, it cannot be said the establishment works with the aid of power. The learned Counsel for the appellant also relied on the decision of Hon'ble High Court of Bombay (Nagpur Bench) in **Aniketh College of Social Work Vs Assistant Provident Fund Commissioner and others** (supra) wherein the Hon'ble High Court came with a similar finding. However the Hon'ble High Court clarified that imparting of education with the aid of electronic gadgets, computers, projectors or



the like may possibly imply that the working is with the aid of power. However, if the use of power is only to operate tube-lights or fans, such use of power shall certainly not imply that the imparting of education is with the aid of power. The learned Counsel for the appellant also relied on various decisions to argue that the manufacturing process with the aid of power in the context of Factories Act which cannot be relied on while interpreting a provisions under a social security legislation. The Hon'ble High Court of Kerala examined the above issue in **Kottayam District Co-operative Hospital Vs Regional PF Commissioner**, 2009 LLR 839 (Ker.HC). The Hon'ble High Court held that the establishment is working with the aid of power since the hospital is running CT scan, Medical store and pathological lab with the aid of power and therefore will not come under the exception U/s 16 (1) (a) of the Act. The Hon'ble High Court of Gujarat also considered the issue regarding 'working with the aid of power' in **Mansa Nagrik Sahkari Bank Ltd and others Vs RPFC**, 2003 LIC 3346. The Hon'ble High Court held that the claim for exemption U/s 16 (1)(a) is ridiculous for an establishment like Co-operative bank to contend that it is operated without the aid of power. In view of the above, the

contention that the appellant establishment will come within the exemption clause under 16(1)(a) of the Act, as they are not using power for their main activity cannot be accepted. Any activity in or in connection with the work of the establishment will form part of the main activity and in this case the washing and cleaning of the black lime shells itself is a part of the main activity as the market value and the saleability of the product increases in view of the washing and cleaning of the black lime shell. Hence the appellant establishment is registered under Co-operative Societies Act engaging less than fifty employees and is working with the aid of power. The appellant cannot claim exemption U/s 16(1)(a) of the Act.

11. Taking into the account the fact, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

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