



सत्यमेव जयते

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

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

(Thursday the 3<sup>rd</sup> day of May, 2022)

**Appeal No. 306/2019**

Appellant : M/s. Ethix Offset & Digital Printing  
10/171/2, GN Towers  
Mettupalayam Street  
Palakkad – 678 001.

By Adv. Viju K. Raphel  
Adv. Siby P Jose

Respondent : The Central Board of Trustees  
EPFO , Bhavishyanidhi Bhavan  
14, Bhikaji Cama Place ,  
New Delhi 110 066

The Regional PF Commissioner  
EPFO, Sub Regional Office  
Eranhipalam  
Kozhikode – 673006

By Adv.Dr.Abraham.P.Meachinkara

This case coming up for hearing on 16/03/2022 and  
this Industrial Tribunal-cum-Labour Court issued the following  
order on 03/05/2022.

**ORDER**

Present appeal is filed from order No. KR/KKD/1750273/7A/Enf-4(5)/2019/836 dt.23/05/2019 finalizing the date of coverage as on 01/04/2016 and assessing dues U/s 7A of EPF & MP Act,1952 (hereinafter referred to as 'the Act') for the period from 04/2016 to 08/2018. The total dues assessed is Rs. 16,36,877/-.

2. A copy of the impugned order is produced as Annexure A1. The appellant establishment is a printer doing the business of offset printing as well as digital printing and is a propriety concern. The proprietor of the appellant establishment also owns the building in which the appellant establishment is running. The building also is having another establishment with different door numbers of third parties. The proprietor of the appellant has a partnership with one Shri.Asif Ali to run a digital printing establishment in another floor of GMT Tower with another door number. The said printing establishment has no connection with the appellant establishment. The appellant is also running a fancy store by name and style Ethix Fancy which is half a kilometer away from the appellant establishment. The said building is owned by the proprietor of the appellant establishment. The said

establishment is having separate D & EO licence, VAT, and GST Registration, Electricity Connection etc. The sale deed by which the proprietor of the appellant purchased land for Ethix Fancy is produced as Annexure A2. The copy of the VAT Registration of the Ethix Fancy dt. 06/08/2016 by the Commercial Tax Department is produced as Annexure A3. The appellant applied for voluntarily coverage of the appellant establishment U/s 1(4) of the Act. A copy of the application dt. 20/07/2018 is produced as Annexure A4 and A5 respectively. In the meanwhile the appellant received a notice from the Enforcement Officer for production of records for inspection. The appellant produced all available records. The notice issued by the Enforcement Officer is produced and marked as Annexure A6. The appellant received a notice issued by the respondent authority U/s 7A of the Act. A copy of the summons is produced and marked as Annexure A7. The copies of the documents relied on by the 2<sup>nd</sup> respondent was not given to the appellant nor an opportunity to examine the Enforcement Officer was given to the appellant. The documents, if any, given by the Enforcement Officer is behind the back of the appellant. The so called contractor of the appellant establishment was never made a party to the proceedings. The appellant is liable to comply

with the provisions of the Act only after notification contemplated by the Act. No intimation regarding the retrospective coverage was provided to the appellant. The respondent authority relied on the wages register. The said wage register is not the wage register maintained by the appellant establishment under Kerala Shops and Establishment Act nor under the Factories Act. The register does not have the signature of the employees nor the employer. It is only a computer print out. The respondent authority has no case that the said wage register has tallied with the account that has been produced before him. The respondent authority has taken into account the contract employees of the appellant establishment to arrive at the number of employees as on 04/2016. No agreement or contract is seen produced before the respondent authority. One Shri. Manikandan is taking books for binding on piece rate from appellant establishment. Shri. Manikandan is taking orders from other establishments and is running his own establishment employing his own employees. The appellant is paying piece rate charge to Shri. Manikandan. The workers of Shri. Manikandan cannot be taken as employees of the appellant. Shri Manikandan ought to have been made a party to the proceedings. Hence clubbing of the appellant with the

establishment run by Shri. Manikandan with the appellant establishment is not legally correct. The reason that the name of the employer, the Balance Sheet, one PAN and income tax same address and same electricity connection and single income tax return cannot be a ground for clubbing different establishments run by the appellant establishment. The respondent authority has not satisfied himself regarding the integral dependency, geographical unity, functionality, integrality and interchangeability of workers between different establishment of the appellant.

3. Respondent filed counter denying the above allegations. Appellant is an establishment covered under the provisions of the Act. The appellant establishment crossed the employment strength of 19 in 04/2016 and therefore it is covered under the provisions of the Act with effect from 01/04/2016. An enquiry U/s 7A of the Act was initiated and notice dt. 21/01/2019 was issued to the appellant. A representative of the appellant attended the hearing and pleaded that they employed only 15 employees and remaining employees are in respect of two sister concerns. Since she failed to produce records in respect of these firms the enquiry was adjourned to 03/12/2019. She pleaded that the appellant

establishment is employing only 15 employees and therefore the appellant may be allotted a code number U/s 1 (4) of the Act with effect from 20/07/2018. As per the wage register submitted by the Enforcement Officer duly signed by the employer, there are more than twenty employees from 01/04/2016 onwards including the contract employees. It was also noticed that only one balance sheet is prepared for all firms in the name of the proprietor and accounts are consolidated. There is only one electric connection. PAN is in the name of the proprietor Shri. Abdul Gafoor and consolidated Income Tax Returns are filed. The appellant was given more than adequate opportunity to substantiate their contention by production of documents. However the appellant failed to produce any documents during the enquiry and therefore relied on the documents produced by the Enforcement Officer and finalized the coverage and quantified the dues. As per Sec 2 (f) of the Act, an 'employee' means any person who is employed for wages in any kind of work manual or otherwise 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 or in connection with the work of the establishment.

4. The appellant establishment applied for voluntary coverage U/s 1(4) of the Act with effect from 20/07/2018. The Enforcement Officer who conducted the inspection of the appellant establishment found that the appellant establishment is having three different units and the continued employment strength crossed twenty on 04/2006 and therefore it is coverable under the provisions of the Act from that date. Since the appellant failed to start compliance, the respondent authority initiated an enquiry U/s 7A of the Act. A representative who attended the enquiry disputed the coverage on two grounds, one clubbing of three establishments and two, including the contract employees for the purpose of coverage. The respondent authority found that, as per the wage register for the month of 04/2016 submitted by the Enforcement Officer duly signed by the employer there are more than twenty employees as on 04/2016 including contract employees. He also found that one balance sheet is prepared for all the units in the name of the proprietor and the accounts are consolidated. There is only one electric connection and one PAN in the name of the proprietor, Shri. Abdul Gafoor and consolidated income tax returns are filed. According to the learned Counsel for the appellant the above tests alone will not satisfy the requirement

of clubbing and the respondent authority ought to have examined the inter-dependability, integrality of the different units etc. He also pointed out that by no stretch of imagination a printing press and fancy store can be clubbed for the purpose of coverage. He also argued that the copies of the documents relied on by the 2<sup>nd</sup> respondent authority was not provided to the appellant. The copy of the inspection report is also not given to the appellant .

5. On a perusal of the impugned order, it is seen it is a serious dispute regarding clubbing of three different units, for the purpose of coverage under the provisions of the Act. While clubbing the units, the respondent authority noticed that they are having a common ownership, common finance, consolidated accounts, and balance sheet. The learned Counsel for the respondent also raised an issue regarding the counting of the contract employees for the purpose of coverage. According to the learned Counsel for the respondent, as per Sec 2 (f) of the Act an employee means any person who is employed for wages in or in connection with the work of the establishment and includes any person employed by or through a contractor in or in connection with the work of the establishment .



6. The impugned order does not specify, the establishments which are being clubbed. It also does not specify the nature of work done by the contractor or contract employees. The specific contention taken by the appellant is that a fancy store run by the appellant some half a kilometer away cannot be clubbed with digital printing press of the appellant for the purpose of coverage. The respondent authority will have to examine all the above issues and apply the tests evolved by Hon'ble Supreme Court and High Court regarding clubbing, before proceeding to assess the dues. The learned Counsel for the appellant also has taken a contention that the report of the Enforcement Officer and the documents relied on by him, while clubbing the establishment and assessing the dues, were not provided to the appellant .

7. Considering the facts circumstances, pleadings and evidence in this appeal, I am not inclined to sustain the impugned order.

Hence the appeal is allowed the impugned order is set aside and the matter is remitted back to the 2<sup>nd</sup> respondent to decide the issue regarding clubbing before proceeding to assess the dues after issuing notice to the appellant. The 2<sup>nd</sup> respondent shall forward a

copy of the report of the Enforcement Officer along with the notice. If the appellant fails to appear or produce the records called for, the respondent is at liberty to decide the matter according to law. The pre-deposit made by the appellant U/s 7(O) of the Act, as per the direction of this Tribunal, shall be adjusted or refunded after completion of the enquiry.

Sd/-

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