



सत्यमेव जयते

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

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

(Monday the 21<sup>st</sup> day of February, 2022)

**APPEAL No.39/2017**

Appellant

M/s. Kerala Chamber of Commerce  
Industry,  
Chamber Building  
Shanmugham Road,  
Ernakulam – 682 031.

By M/s. Menon & Pai

Respondent

The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Kaloor,  
Kochi -682017.

By Adv. S. Prasanth

This case coming up for final hearing on  
13/10/2021 and this Tribunal-cum-Labour Court on  
21/02/2022 passed the following:

**ORDER**

Present appeal is filed from order No KR/KC/ 29223/Enf  
-2 (4) /2017 / 7310 dt. 29/08/2017 U/s 7A of EPF & MP Act,  
1952 (hereinafter referred to as ‘the Act’) confirming coverage and  
also assessing dues for the period from 04/2011 to 07/2014. The  
total dues assessed is Rs.10,24,400/-.

2. Appellant is an association registered under the provisions of Sec 25 of the Companies' Act. A true copy of the certificate of incorporation consequent on change in name issued by the Registrar of Company is produced and marked as Annexure A1. The appellant has been registered U/s 12AA of Income Tax Act on 25/06/1973. A true copy of the certificate of registration under Income Tax Act is produced and marked as Annexure A2. The appellant was incorporated with the object to protect and promote trade. A true copy of the Memorandum of Articles of Association is produced and marked as Annexure A3. The respondent vide its notice dt. 26/04/2013 informed the appellant that the provisions of Employees Provident Fund and Miscellaneous Act is applicable to the appellant with effect from 01/04/2011. The respondent initiated an enquiry U/s 7A of the Act to assess the dues for the period from 04/2011 to 07/2014. The appellant appeared in the enquiry through its Counsel. It was pointed out to the respondent authority that the appellant is an association registered under the

provisions of Sec 25 of the Companies' Act and the objective of the association is only to promote commercial activity etc. and the intention is not to make profit in order to pay any dividend. It was contended that the appellant is not a commercial establishment. The provisions of the Act is not applicable to the appellant establishment. It is not an establishment coming U/s 1(3)(b) of EPF Act. It was further contended that government of India vide notification dt. 14/05/2010 exempted establishments run by public, religious or charitable Trusts or endowments including Temples, Gurudwaras, Churches, Synagogues, Societies and Trust for religious or charitable or other public purposes and notified as such by Central Government under the Income Tax Act for the period from 01/04/2010 to 31/03/2015. A true copy of the written statement dt, 26/02/2015 filed by the appellant before the respondent is produced and marked as Annexure A4. Without considering any of the contentions the respondent authority finalize the coverage as well as assessed the dues vide the impugned order. The appellant is

not rendering any service to outsiders and is confined to the members of the association. The registration of EPF Act is not applicable to an establishment registered U/s 12 AA of the Income Tax Act. Many of the employees who were working with the appellant establishment left the establishment and therefore the beneficiaries are not known. The appellant establishment is covered on 26/04/2013 and therefore the appellant is not liable to comply under the provisions of the Act prior to the said date. The provisions of the Act can be enforced only from a prospective date as the appellant did not collect the employees' share of the contribution prior to the date of the coverage.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act with effect from 01/4/2011 U/s 1(3)(b) of the Act. A copy of the coverage notice dt. 26/04/2013 is produced and marked as Exbt R1. Prior to the coverage the appellant establishment was inspected by the Enforcement Officer to examine whether the appellant

establishment is coverable under the provisions of the Act. The Chairman, Kerala Chamber of Commerce and Industry has submitted a pro-forma for coverage under his seal and signature furnishing the details of 41 employees working in the establishment. A copy of the proforma of the coverage along with the list of employees submitted under the seal and signature of the Chairman of the appellant is produced and marked as Exbt.R2. The appellant is an association of business entrepreneurs and a body corporate engaged in various activities to protect and promote traders and business people. The provisions of the Act is applicable to the appellant establishment in view of GSR Notification No. 1294 dt. 30/11/1974 under the Schedule head "Societies, Clubs and Associations". The employment strength of the appellant crossed 20 as on 01/04/2011 and therefore the appellant establishment is coverable under the provisions of the Act Sec 1(3)(b) of the Act. The provisions of the Act and Schemes applies to an establishment by its own force once the conditions prescribed for coverage under the Act are

fully satisfied. It is for the appellant to approach the respondent organization and start compliance once the statutory requirements for coverage are met. The appellant ought to have started compliance from 01/04/2011 extending the benefit of social security benefits to its employees from their date of eligibility. Since the appellant establishment failed to start compliance, an Enforcement Officer was deputed to verify and persuade the appellant to start compliance. Since the appellant refused to register in E-Seva portal of the respondent, the Enforcement Officer inspected the records and reported the dues with effect from 04/2011 to 07/2014. Since the appellant failed to start compliance inspite of all the efforts, the respondent initiated an enquiry U/s 7A of the Act. The enquiry started on 04/12/2014 and concluded on 19/07/2017 after giving more than adequate opportunity to the appellant to produce records and submit their written statement, if any. After verifying the documents, written submission filed by the appellant and also the report of the Enforcement Officer the

respondent authority confirmed the coverage of the appellant establishment U/s 1(3)(b) of the Act and quantified the dues for the period from 04/2011 to 07/2014. As per Sec 1(3)(b), any establishment employing 20 or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf will come under the provisions of the Act. U/s 16 (1)(c) of the Act, only those establishments which are set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension are excluded from the provisions of the Act. The appellant establishment is covered under the provisions of the Act on the basis of the pro-forma for coverage furnished by the Chairman of the appellant. After fully admitting coverage of the establishment by submitting the pro-forma with connected documents under the seal and signature of the Chairman seeking coverage, the appellant is estopped from disputing the applicability of the provisions of the Act to the

establishment at a later stage. Government of India vide notification dt.14/05/2010 had exempted some class of establishments from the operation of the Act for a period up to 31/03/2015 with effect from 01/04/2010. The said notification covers only those establishments which are registered under Societies Registration Act, 1860 or under any other corresponding law for the time being in force. The appellant establishment is registered U/s 25 of Indian Companies' Act, and therefore, does not fall within the ambit of the Notification dt.14/05/2010. The mere registration of the establishment U/s 12 AA of the Income Tax Act 1956 does not confer any relaxation to the establishment from implementing the provisions of the Act. The claim of the appellant that many of the employees left the organization and therefore cannot be extended the social security benefit cannot be legally accepted. The explanation is absolutely untenable as it categorically affirms the position that the employer is trying to find a shelter under their own violation of the statutory provisions. The liability of the appellant to



contribute to provident fund is created the moment the provisions of the Act becomes applicable to the establishment by virtue of Sec 1(3) of the Act. It applies to the establishment by its own force and does not depend upon the vigilance of the provident fund department. The contention of the appellant establishment to permit them to implement the provisions of the Act from a prospective date amounts to permitting the appellant to select his own time to extend social security benefits to its employees, which is not legally permissible. It is an absolute and unqualified liability and does not depend either on the vigilance or detection of the respondent or upon the will of the employer or the employees. EPF & MP Act is beneficial legislation which provides for the institution of provident fund, pension fund and deposit liked insurance fund, in furtherance of the mandate of Articles 38 of the Constitution of India.

4. The Chairman of the appellant establishment submitted a pro-forma for coverage along with the required details under his seal and signature to the respondent's office

for covering the appellant establishment with effect from 01/04/2011. The respondent issued a coverage notice covering the appellant U/s 1(3)(b) of the Act with effect from 01/04/2011 after verifying the records of the appellant through an Enforcement Officer. Since the appellant failed to start compliance under the provisions of the Act, an Enforcement Officer of the respondent organization was deputed to the appellant establishment to persuade them to register under E-Seva portal of the respondent organization and start compliance. Since the appellant failed to comply the respondent initiated an enquiry U/s 7A of the Act. In the enquiry the appellant disputed the coverage of the appellant establishment, on the ground that the appellant is not engaged in any schedule activity, is not a profit earning organization and also that the societies and associations were excluded by the Central Government by notification dt.14/05/2010 for a period of 5 years from 01/04/2010. The appellant also contended that the appellant establishment cannot be directed to comply

from a retrospective date since the appellant establishment is notified for coverage only with effect from 26/04/2013. The respondent authority examined all the above issues and came to the conclusion that the appellant establishment is liable to be covered under the provisions of the Act with effect from 01/04/2011. The respondent authority also assessed the dues from 01/04/2011 to 07/2014.

5. In this appeal, the learned Counsel for the appellant reiterated the stand taken by the appellant before the respondent authority that the appellant establishment is not coverable under the provisions of the Act. According to the learned Counsel for the appellant, the appellant establishment is not an establishment working with any profit motive and he relied on the Annexure A3 Memorandum and Articles of Association of the appellant to argue that the objective of the appellant establishment is only to protect and promote trade and it will not come within the definition of an establishment U/s 1(3)(b) of the Act. According to the learned Counsel for the respondent, all

“Societies, Clubs and Associations” are notified by Government of India under GSR No. 1294 dt. 30/11/1974 and therefore the appellant establishment being an association of members is covered by the above notification. As per GSR 1294 dt. 16/11/1974 all Societies, Clubs or Associations which render service to their members without charging any fee over and above the subscription fee for membership, is an establishment covered under Sec 1(3) (b) of the Act. Going by the memorandum of association of the appellant establishment, it is very clear that the appellant establishment comes within the Government of India notification dt.16/11/1974. Another contention taken by the learned Counsel for the appellant is that the appellant is not an establishment established for making profit and therefore the appellant establishment cannot be covered under the provisions of the Act. Once an activity is notified under the provisions of the Act it is not relevant whether the appellant establishment is established for making profit or is a charitable organization. The Hon'ble High Court of

**Madras in Venkataramana Dispensary Ayurvedic College Vs Union of India**, 1986 (2) LLJ 411 held that the question as to whether the establishment is a charitable or commercial is immaterial while deciding the applicability of the provisions of the Act to an establishment. The Division Bench of the Hon'ble High Court of Madhya Pradesh in **Christian Association for Radio and Audio Visual Services Vs RPF**, 1979 LIC 283 (MP. DB) held that an establishment U/s 1(3) (b) includes an establishment run on no loss no profit basis or run with the aid of others. The Hon'ble High Court of Delhi in **Politin Bag Factory Vs Assistant Provident Fund Commissioner**, 2015 (1) LLJ 301 held that for covering an establishment under the Act, it is immaterial whether or not it is engaged in a profit making business. All the above authorities categorically establish the legal position that it is not relevant whether an establishment is engaged in a profit making business to be covered under the provisions of the Act, once the activity is notified under the provisions of the Act or Schemes thereunder. Another

contention taken by the learned Counsel for the appellant is that the government of India vide notification dt. 14/05/2010 had exempted certain class of establishment from operation of the Act from 01/04/2010 to 31/03/2015 and therefore the appellant establishment cannot be covered till 31/03/2015. As per SO 1431 dt. 14/05/2010 the Central Government in exercise of its powers conferred under sub Sec 2 of Sec 16 of EPF and MP Act exempted certain establishments registered under the Societies Registration Act, 1860 or under any corresponding law for time being in force with effect from 01/04/2010 to 31/03/2015. The institutions registered under Societies Registration Act, 1860 being run by public, religious or charitable trust or endowments of societies and trusts for religious or charitable or other public purposes and notified as such by the Central Government under Income Tax Act 1961 are exempted by Central Government. It is clear that the appellant establishment is registered U/s 25 of the Companies' Act and Sec 12 AA of Income Tax Act. Therefore the appellant

establishment cannot claim any exemption under notification SO 1431 issued by the Government of India.

6. Another ground pleaded by the learned Counsel is with regard to the retrospective coverage of the appellant establishment. According to him the appellant establishment is covered from 04/2011 by coverage notice dt. 26/04/2013 and therefore the appellant is liable to remit contribution only from the said date. The EPF and MP Act acts on its own force and is not depended on the vigilance of any departmental official. Once the conditions for coverage are satisfied, it is the responsibility of the appellant to start compliance from the said date. If the argument of the learned Counsel for the appellant is accepted it would amount to giving the employer and employee to decide the date of coverage, which is not the legislative intention, while passing the Act by the Parliament. It will further amount to ratifying the default committed by the appellant establishment, which is not legally correct.

7. Considering the facts, 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