



सत्यमेव जयते

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL**

TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.
(Wednesday the 06th day of October, 2021)

Appeal No.449/2018

(Old No. ATA-150(07)/2011)

Appellant : M/s. Kairaly Super Speciality
Medical Lab Pvt. Ltd.,
Kairaly Complex, Adoor
Pathanamthitta-691523.

By Adv. Usha Nandhini .V

Respondent : The Assistant PF Commissioner
EPFO, Regional Office
Pattom , Trivandrum -695004.

By Adv. Nitha N.S

This appeal came up for hearing on 28/04/2021 and this Industrial Tribunal cum Labour Court issued the following order on 06/10/2021.

ORDER

Present appeal is filed from Order No. KR / 26079 / ENF-1(5)/ 2010 / 12505 dt. 17/12/2010 confirming the

coverage of appellant establishment and assessing dues U/s 7A of EPF & MP Act,1952 (hereinafter referred as 'the Act'.) for the period from 08/2009 to 11/2009. The total dues assessed is Rs. 85,308/-.

2. The appellant is the Managing Director of M/s Kairaly Super Specialty Medical Lab Pvt. Ltd. Adoor. His wife, Smt. Prema Kumari is its Director. There are only 3 employees working in the establishment. The appellant is also the proprietor of M/s Kairaly Medi Lab, Adoor and Kairaly Mini Lab, Adoor. His son Shri.Vipin Sasi is the proprietor of M/s. Kairaly Lab, Pathanapuram. All these five units are independent. The activities are also different. The employment strength of the individual establishments are below 20 and even if the total employment strength of all the five units are taken into account, the employment strength is below 20 and the appellant cannot be covered under the provisions of the Act. The appellant issued Annexure A2 notification clubbing and covering all the five units with effect from 01/08/2009. On 19/11/2009 the appellant sent a letter to the respondent authority informing him that he is employing only 5 employees and therefore

the appellant establishment cannot be covered under the provisions of the Act. A copy of the letter dt. 19/11/2009 is produced and marked as Annexure A3. On the basis of the letter, the respondent initiated an enquiry U/s 7A of the Act by issuing a notice dt. 30/12/2009 and fixing the enquiry on 09/02/2010. The appellant also received a letter dt. 01/01/2010 directing to comply under the provisions of the Act. A copy of the said letter is produced and marked as Annexure A4. The appellant filed a reply dt.25/05/2010 informing the respondent that the five units are not interdependent and therefore the provisions of the Act will not be applicable to the appellant. The copy of the reply along with the documents is produced and marked as Annexure A5. A representative of the appellant attended the hearing before the respondent authority and pleaded that the appellant establishment cannot be covered under the provisions of the Act. The appellant produced all the records such as cash book, ledger account etc as directed by the respondent authority. Without considering any of the pleadings and documents produced, the respondent authority issued the impugned order confirming the

coverage of the appellant establishment and also assessing the dues. The impugned order cannot be sustained legally as well as factually. In page No.3 of the impugned order the respondent authority stated that Smt.G.Prema Kumari is the proprietrix of M/s. Kairaly Medicals, which is factually incorrect. The appellant is the proprietor of the said firm. The finding entered by the authority that 4 employees each are working in M/s Kairaly Medicals and Kairaly Mini Lab are factually incorrect. The Form 12A issued by the Enforcement Officer would clearly prove that only 2 employees' each were working in these establishments. The fact that all the above firms are running in the brand name of "Kairaly" is not relevant in deciding the issue. The activities of these units are different and the establishments are independent in nature. Even if all the five units are taken into consideration for the purpose of coverage the employment strength of the appellant establishment is below 20 and therefore the provisions of the Act are not applicable and the assessment of dues made are also not based on the actual salary paid and is only on imaginative figures.

3. The respondent failed to file any counter inspite of giving more than adequate opportunity. Though the learned Counsel for the respondent submitted that written statement was filed when the matter was pending before the EPF Appellate Tribunal, New Delhi. A copy of the written statement filed before the EPF Appellate Tribunal was also not produced in this appeal, inspite of specific direction by this Tribunal. Further, the top sheet available in the file does not indicate the respondent having filed any counter before EPF Appellate Tribunal, New Delhi.

4. Hence the Counsels were heard in detail. The appellant is disputing the coverage by clubbing five units under the provisions of the Act. According to the learned Counsel for the appellant all these five units are independent units engaged in different activities, maintaining separate books of accounts and registration and therefore cannot be clubbed for the purpose of coverage. The learned Counsel further pointed out that, even if all the five units are clubbed the employment strength will not reach the statutory limit of 20 and therefore the units cannot be covered under the provisions of the Act. The appellant

establishment is a Private Ltd company registered under Company's Act. Shri. N.K Sasidharan Nair is the Managing Director. The Enforcement Officer on investigation came to know that two more units are functioning in Adoor and Pathanapuram in the name and style of "Kairali". On the directions of the respondent authority, Shri.N.K.Sasidharan Nair, Managing Director of Kairaly Super Speciality Medical Lab Pvt. Ltd., appeared and produced all the documents called for by the respondent authority. From the documents produced the respondent authority found that

- 1) M/s. Kairaly Super Specialty Medical Lab is a Private Ltd Company and Shri. N.K Sasidharan Nair is the Managing Director and his wife Smt G.Premakumari is a Director and they employed 3 persons .
- 2) M/s. Kairaly Medicals is owned by Smt. G.Premakumari wife of Shri. N.K Sasidharan Nair was employing 4 employees.
- 3) M/s. Kairaly Mmedical Lab, Adoor is owned by Shri. N.K. Sasisdharan Nair as a proprietary concern and was employing 8 employees.

- 4) M/s. Kairaly Mini Lab is also owned by Shri.N.K Sasidharan Nair as proprietor and was engaging 4 employees.
- 5) M/s. Kairaly Lab, Pathanapuram is owned by Shri.Vipin Sasi son of Shri. N.K Sasidharan Nair, as proprietor and was engaging 2 employees. The respondent authority also found that 3 of the units were directly managed by Shri. N.K Sasidharan Nair. One unit is owned by his wife Prema Kumari and another unit is owned by his son Vipin Sasi. According to the respondent authority, in all the advertisements issued, the details of all the five units are furnished. Further Shri. N.K Sasidharan Nair, Managing Director of M/s Kairaly Super Specialty Medical Lab has signed the coverage proforma furnishing the details of all the five units and names of 20 employees. On the basis of this information the Enforcement Officer proposed coverage which was accepted by the respondent authority. However once the coverage notice is issued the appellant disputed the coverage on the ground that all the five units are independent and there is no interdependence between these five units. The learned Counsel for the appellant

pointed out certain anomalies also in the impugned order. According to the learned Counsel for the appellant all these five units are independent and these units cannot be clubbed for the purpose of coverage under provision of the Act. The learned Counsel for the appellant relied on the decisions of the Hon'ble Supreme Court to argue that functional integrity is the real test for the purpose of determining whether two units of an establishment can be clubbed for the purpose of Sec 2A of the Act. She relied on the decision of the Hon'ble Supreme Court in **Pratap Press etc. Vs Their workman**, 1960 (1) LLJ 497 (SC) and also **Associated Cement Company's Ltd., Vs Their Workmen**, 1960 (1) LLJ 1 (SC). In both the above decision the Hon'ble Supreme Court held that the Courts will have to approach the issue of clubbing with utmost care. The test of functional integrality shall depend on the functional interdependence that one unit cannot exist conveniently and reasonably without the other and also whether in matters of finance and employment the employer has actually kept the two units integrated. The learned Counsel for the appellant also relied on the

decision of the Hon'ble High Court of Kerala in **George Sons & Co. Vs EPF Appellate Tribunal and Others**, W.P.(C) No. 27790/2010 and **Central Board of Trustees Vs. M/s Krishnan Nair & Sons Jewellers and Another** to argue that common ownership is not at all a criteria while deciding the coverage by clubbing different units. Learned Counsel for the respondent argued that the respondent authority finalized the coverage on the basis of the information furnished by the appellant in the proforma for coverage and also his declaration that the employment strength of all the units put together was 20 at the relevant point of time. It was also pointed out by the learned Counsel for the respondent that the units are owned by the family members, ie Husband, Wife and Son and the “Kairaly” brand name is used by all these units. The question therefore is whether the tests applied by the respondent authority is adequate for clubbing five different units into one for the purpose of coverage apart from the proforma information furnished by the appellant. In **Regional PF Commissioner Vs. Raj Continental Exports Pvt.Ltd**, 2007 (2) SCC (L&S) 37 (SC2J) the

Hon'ble Supreme Court held that merely because the proprietor of one concern was the Managing Director of another, that by itself is not sufficient to establish that one is a branch of another. The Hon'ble Supreme Court held that the two units cannot be clubbed unless there is clear evidence to establish that there was supervisory, financial and managerial control. Similarly in the case of **Regional PF Commissioner, Mangalaore Vs B. Ganapathy Dhandarkar**, 2003 (3) LLJ 356, the Division Bench of Hon'ble High Court of Karnataka held that clubbing of the units on the sole ground of common ownership for the purpose of the Act is not correct unless the financial and functional dependency between the 3 units are properly established by evidence. The Hon'ble High Court held that inter connection by way of common supervisory, managerial and financial control is necessary to determine the clubbing of 3 units having common ownership. In view of the above decisions common ownership by family members will satisfy only one limb of the investigation for the purpose of coverage. The other limb to be establish is the financial and functional integrity and

interdependence. There is no documents or evidence available in this appeal to finally decide this issue. The only document relied on by the respondent authority is the proforma for coverage signed by the Managing Director of the appellant on behalf of himself and four other units and also his declaration with name that they were employing 20 employees as on the date of coverage. Though the appellant produced various documents before the respondent authority to prove that there is no financial and functional interdependence the impugned order is completely silent on the above issue.

5. It is seen that the appellant establishment is covered from w.e.f 01/08/2009 clubbing all the five units. The available documents and pleadings do not support the case of the respondent for clubbing of five units for the purpose of coverage. In the absence of proper evidence the clubbing and coverage and assessment cannot be sustained.

Hence the appeal is allowed and the impugned order is set aside.

Sd/-

(V. Vijaya Kumar)
Presiding Officer