



सत्यमेव जयते

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

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

(Tuesday the 15<sup>th</sup> day of December, 2020)

**APPEAL Nos.576/2019, 582/2019 & 583/2019**

(Old Nos. 615(7)/2012, 613 (7)/2012 & 614 (7) 2012)

- Appellant :
1. M/s. Manjeri Opticals and  
Vision Centre (LLP)  
Court Road, Manjeri  
Malappuram- 676121
  2. M/s. Shone Import & Export (P) Ltd  
Hospital Road,  
Perinthalmanna  
Malappuram – 679322
  3. M/s. Malappuram Opticals &  
Vision Centre (LLP)  
Manjeri Road,  
Malappuram – 676 505

By Adv. P.K.Ibrahim

Respondent : The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Calicut- 673 006

By Adv.Dr.Abraham.P.Meachinkara

This cases coming up for final hearing on 16.11.2020 and this Tribunal-cum-Labour Court on 15.12.2020 passed the following:

**ORDER**

All the above appeals are filed against order No KR/KK/28206/28207/28208/Enf 1 (4) 2012-13/589 dt. 16/05/2012 clubbing & covering three establishments under the provision of EPF & MP Act 1952 (hereinafter referred to as 'the Act')

2. Appellants in Appeal No. 576 of 2019 and 583 of 2019 are Limited Liability Partnership firms incorporated U/s 12 (1) of the Limited Liability Partnership Act 2008.

3. Appellant in Appeal No 582/2019 is private limited company incorporated under the Company's Act, 1956. The appellants conduct retail optical shop at different locations and employed less than 20 employees. Appellant in Appeal No 576/2019, M/s. Mancheri Optical and Vision Centre (LLP) was covered under the provision of the Act treating it as a branch unit of M/s. Alsalama Eye Hospital,

Perinthalmanna which is an independently covered unit. On receiving the communication from the respondent, the appellant, M/s. Mancheri Optical and Vision Centre informed the respondent that the appellant is a separate legal entity and it is not statutorily coverable under the provision of the Act as the employment strength was only 06 at that point of time. It was also pointed out that the appellant was not having any connection with M/s Alsalama Eye Hospital. The appellant initiated an enquiry U/s 7A of the Act to decide the question of coverage, clubbing it along with M/s. Alsalama Eye Hospital. During the hearing the respondent took a view that the appellant is a branch unit of M/s. Shone Imports & Exports Pvt Limited and Malappuram Optical and Vision Centre. The only ground alleged by the respondent is that the managing partner of the appellant unit is also a partner in the other two establishments. The appellants therefore pleaded that all the units are totally independent limited liability partnership and company, having separate legal entity and therefore cannot be clubbed for the purpose of coverage

under the Act. Ignoring the contentions of the appellant, the respondent issued the impugned order. The respondent also issued separate code numbers to all the units for administrative convenience. The respondent clubbed all the above units as the combined employment strength of all the three units was 21 and none of the units are independently coverable as the employment strength of none of the units reached 20 at that point of time.

4. The respondent filed counter denying the above allegations. M/s Shone Imports & Exports Pvt. Limited, the appellant, in Appeal No. 582/2019 was covered under the provision of the Act on their request from 15/06/2011. The establishment was covered as a branch unit of M/s Alsalama Eye Hospital. The appellant filed objection in treating the unit as a branch unit of M/s. Alsalama Eye Hospital. The appellants were therefore summoned U/s 7A of the Act. The appellants were represented in the enquiry and they took a view that three units cannot be clubbed as they are independent legal entities. The appellants also

produced records to substantiate their claim. The appellants also produced their profit and Loss account and Balance Sheet. While verifying the ownership details of three establishments, it was seen that Shri. A. Shamsudheen is Chairman and Managing Director of M/s. Shone Import & Export (P) Ltd and Shri. Muhammed Kutty is the Director. M/s. (Shone) Malappuram Optical and Vision Centre (LLP) is owned by Shri. A Shamsudheen and Muhammed Raffi as partner. M/s. (Shone) Mancheri Optical and Vision Centre (LLP) is owned by Shri. A Shamsudheen as managing partner and Shri. Shahul Hameed as partner. In the statement filed by Shri A Shamsudheen before the respondent, it was stated that 'Shone' is the brand name of their opticals. The Optical and Vision Centres are registered as limited liability partnership in their respective names of places. Hence it can be seen that 'Shone' is the common brand name of all the units and Shri. A Shamsudheen is the Managing Director or Managing Partner of all the units. As on 01/11/2010, 5 persons were employed in

M/s. Shone Import and Export Private Ltd, 7 persons in M/s (Shone) Malappuram Optical and Vision Centre and 9 persons in M/s. (Shone) Mancheri Optical and Vision Centre (LLP). Hence the total employment strength of all the three units comes to 21. On the basis of the above evidence the respondent came to the conclusion that all the above units are required to be clubbed. Since, it satisfies the statutory requirement of more than 19 employees all the appellant establishments were clubbed and covered under the provision of the Act. To that extend, the order 07/07/2011 treating the appellant as branch unit of M/s Alsalama Eye Hospital was also modified.

5. The respondent issued an order dt. 7/7/2011 covering M/s. Mancheri Optical and Vision Centre with effect from 01/11/2010 treating the unit as a branch of M/s. Alsalama Eye Hospital which was already covered under the provision of the Act. The appellant disputed the clubbing of its unit with M/s. Alsalama Eye Hospital. Hence the respondent initiated an enquiry U/s 7A of the

Act. During the course of enquiry the respondent found that there are 2 more units with the similar brand name working from different locations. The respondent found that the brand name of all the three units are same and the chairman or the managing partner of all these units are one person. Accordingly the respondent issued the impugned order clubbing all the three units as the total employment strength of all the three units exceeded the statutory limit of 20. The clubbing of the units is challenged in all these three appeals. According to the learned Counsel for the respondent the trade name of all the three units are same, activities are common and administrative control is with one person. Hence the clubbing done by the respondent as per the impugned order is legally correct. The learned Counsel for the appellant argued that all the three units are independent legal entities, two units being limited liability partnership and one a company incorporated under the Company's Act. According to the learned Counsel for the appellant the three units will not satisfy the tests for clubbing and

therefore the appellant establishments cannot be clubbed for the purpose of coverage.

6. Normally such disputes arise when the infancy protection is denied to an establishment because of clubbing or the coverage itself is challenged on the ground that the individual units were not employing more than 20 persons independently. In such cases the coverage itself will be under dispute. In this particular case the learned Counsel for the appellant fairly conceded that they are not disputing the coverage of the establishments under the provisions of the Act. They are only disputing that clubbing of three independent units. The Hon'ble Supreme Court of India and High Courts of various states evolved various tests for clubbing two or more establishments for the purpose of coverage under the Act. In **Regional PF Commissioner Vs. Raj's Continental Exports Pvt. Ltd**, 2007 (2) LLJ 553 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 also held that unless there is clear evidence to establish that there was supervisory, financial or managerial control, it could not be held that one was the branch of another. In **Adithya Synthetic (P) Ltd Vs Union of India**, 1994 (2) LLJ 76 of Hon'ble Division Bench of Rajasthan held that two units having separate ownership, employees and existence under various Acts cannot be set to be the unit of another merely because one unit producer the raw material for another. In **Ebrahim Careem Vs RPFC**, 1994 (1) LLJ 369 the Hon'ble High Court of Mumbai held that while deciding functional integrality, Court has to decide whether there is inter dependents that one unit cannot exist conveniently and reasonably without the other. The Division Bench of the Hon'ble High Court of Karnataka in **Regional PF Commissioner, Mangalore Vs Ganapathi Bhandharkar**, 2003 (3) LLJ 356 held that common ownership of individual over shops and factory is not enough, but inter connection by way of common supervisory, managerial and financial control is necessary

to decide the clubbing of two units. In **RPFC Vs Dharamsi Morarji Chemical Company Ltd**, 1998 (1) LLJ 1060 the Hon'ble Supreme Court of India held that in the absence of supervisory, financial and managerial control, two units cannot be treated as one merely on the basis of common ownership. It is clear from the above discussion that for clubbing three units the administrative, managerial and functional integrality will have to be established. On a perusal of the impugned order it is seen that the respondent has not examined the above aspects and answered the tests properly. The only ground that was taken by the respondent is that all the three units are having a common Chairman and Managing Director or a Managing Partner. It is also stated that all the three units used common brand name. As discussed above it is very clear that those findings will not be adequate to establish

that there is financial functional and managerial integrity for the purpose of clubbing and covering all the three units.

7. The appropriate case open to this Tribunal is to remand the matter back to the respondent to re-examine the issue in the light of the above discussion. The learned Counsel for the appellant pointed out that there is no dispute regarding coverage of the establishments the only dispute is with regard to clubbing of three independent units. The very purpose of Sec 2A of the Act is to ensure that social security benefits are extended to the employees from the due date of eligibility. In this particular case it is seen that the legislative intention of Sec 2A is satisfied when the appellants agreed to extend the social security benefits to the employees from the due date of eligibility.

8. Hence I am not inclined to extend the pain of the adjudicatory process any further by remanding the case back to the respondent.

Hence all the appeals are allowed but with a specific direction that all the employees working with the appellant establishments shall be extended the benefit of social security cover from their due date of eligibility.

Sd/-

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