



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

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

(Tuesday the 07th day of September, 2021)

Appeal No. 660/2019
(Old No.ATA-87(7)2013)

Appellant M/s. Nadathara Farmers Service
Co-operative Bank Ltd., No. 3499,
H.O. Poochatty,
Nadathara P.O
Thrissur- 680751.

By Adv. M. Sasindran

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

By Adv. Thomas Mathew Nellimoottil

This case coming up for hearing on
26.03.2021 and this Industrial Tribunal-cum-Labour
Court issued the following order on 07/09/2021.

ORDER

Present appeal is filed from order No. KR/KC/27944/Enf-II(2)/2012/11803 dt. 30/11/2012 deciding the coverage U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act').

2. Appellant is a Co-operative Society governed by the Kerala Co-operative Societies Act 1969. The respondent covered the appellant establishment under the provisions of the Act. The appellant disputed the coverage. The respondent authority initiated an enquiry U/s 7A of the Act. A true copies of the notices are produced as Annexure 1 & 2. The appellant filed detailed reply stating that the appellant establishment cannot be covered under the provisions of the Act. A true copy of the reply dt.26/09/2012 is produced and marked as Annexure 3. Without examining the issues raised by the appellant, the respondent authority issued the impugned order, which is produced and marked as Annexure A4. The appellant was

represented before the respondent authority in almost all sittings. The respondent ought to have decided the applicability of the Act to the appellant establishment before initiating an enquiry U/s 7A of the Act. The Enforcement Officer explored the possibility of coverage without any authority. The respondent authority overlooked the scope of Sec 16 (1) (a) of the Act. It is settled law that Sec 1(3) (b) is subject to stipulation U/s 16 of the Act. U/s 16 (1)(a), the Act will 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 50 persons and working without the aid of power. To get the benefit of the Section a co-operative society shall be working with less than 50 employees and also without the aid of power. The staff strength of the appellant establishment was proved through documents at the time of hearing and the total

number of employees was only 24. With the aid of power could only be taken as relating to an establishment which uses any form of power as its basic component for activities. The electricity bills would clearly show that post computerization there was not much difference in the use of electricity. The employment strength for the month of December 2012 is produced and marked as Annexure A5. True copies of the statement showing electricity charges form 01/01/1999 to 31/12/2001 is produced and marked as Annexure 6. An intimation regarding issue of code number does not by itself make the Act applicable to the establishment. The extension of an Act to an establishment depends on the satisfaction of certain conditions.

3. The respondent filed counter denying the above allegations. The respondent received a complaint from one of the ex-employees of the appellant establishment that the appellant

establishment is not covered under the provisions of the Act, even though they employed more than 20 persons. An Enforcement Officer who is an inspector appointed U/s 13 of the Act was deputed to investigate the complaint. The Enforcement Officer send a report recommending coverage of the appellant establishment w.e.f 25/04/2005 U/s 1(3)(b) of the Act under Schedule Head “Banking” notified under GSR No. 77 dt. 25/02/2000 subject to verification of further details. Accordingly the appellant establishment was covered w.e.f 25/04/2005. Since the appellant establishment failed to start compliance an enquiry was initiated U/s 7A of the Act and notice dt. 11/09/2012 was issued to the appellant fixing the enquiry on 26/09/2012. Representative of the appellant establishment attended the hearing and filed a statement disputing applicability of the provisions of the Act. On the request of the appellant the enquiry was adjourned to 09/10/2012. On 09/10/2012 an

Advocate representing the appellant appeared and pointed out that in view of the provisions of Sec 16(1)(a) and since the appellant establishment is engaging less than 50 employees and is functioning without the aid of power, the provisions of the Act is not applicable to the appellant establishment. The appellant was direct to produce the books of accounts and the enquiry was adjourned to 19/10/2012. On 19/10/2012 the appellant produced the records called for. The respondent authority after considering all the relevant documents issued the impugned order confirming the coverage of the appellant establishment. The respondent has no case that the appellant did not attend the hearing. The appellant did not attend the hearing on the last date of positing on 09/11/2012. When the coverage of the establishment is disputed by an establishment it is incumbent on the respondent authority to decide the applicability of the Act to the appellant in an enquiry

to be initiated U/s 7A of the Act. In the present case the respondent authority decided the applicability U/s 7A. The Enforcement Officer is the notified authority to conduct investigation and he can only recommend action and the competent authority to decide disputed issues are only the respondent authority U/s 7A of the Act. ***In Mansa Nagrik Sahkari Bank Ltd Vs Regional PF Commissioner***, 2005(3) LLJ 669 (Guj) it was held that Clause (a) of Sec 16(1) contemplate a co-operative society employing less than 50 employees and carrying on the process without the aid of power. In ***M/s. Kasargod Co-operative Town Bank Vs Assistant PF Commissioner***, ATA No.167 (7) 2001 the Hon'ble EPF Appellate Tribunal held that the provisions of the Act is applicable to factories as well as establishments registered under Co-operative Societies Act with less than 50 employees but working with the aid of power. It is not correct to say that the appellant has not received any intimation after the

inspection by the Enforcement Officer. A coverage notice intimating and allotting code number was issued to the appellant on 12/06/2012 and the same was acknowledged by the appellant. A copy of the acknowledgement card is produced and marked as Exbt. R4. The appellant establishment will come within the provisions of the Act as the appellant is having more than 20 employees and is working with the aid of power.

4. The main issue involved in this appeal is whether the appellant being an establishment registered under the Co-operative Societies Act is required to be covered under the provisions of the Act. A former employee of the appellant establishment filed a complaint stating that the appellant establishment though employing more than 20 employees, is not covered under the provisions of the Act and the benefits under the Act and Schemes are not extended to its employees. Accordingly the respondent deputed

an Enforcement Officer to investigate the complaint. The Enforcement Officer found that the appellant establishment is a primary co-operative bank employing 24 employees and working with the aid of power and therefore is liable to be covered U/s 1(3) (b) of the Act w.e.f 25/04/2005. The respondent therefore issued a coverage notice covering the appellant establishment w.e.f 25/04/2005. The appellant disputed the coverage and hence an enquiry U/s 7A of the Act was initiated. A representative of the appellant attended the hearing and produced the records called for. On conclusion of the enquiry vide impugned order, the respondent authority came to the conclusion that the appellant establishment is coverable under Section 1(3) (b) of the Act. According to the learned Counsel for the appellant, the appellant establishment being a Co-operative society is excluded as per Sec 16 of the Act. Sec 16(1)(a) of The Employees Provident Funds and Miscellaneous Provisions Act, 1952 reads as follows.

“ 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 the time being in force in any state
relating to co-operative societies, employing
less than fifty persons and working without the
aid of power ”

It is settled law that the consequences resulting from
Sec.1(3) (b) is subject to the stipulations under Sec.
16 of the Act. Under Sec 16(1)(a) it is made clear that
the Act will 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
50 persons and working without the aid of power.
This, otherwise means, to get the benefit thereunder,
the concerned Co- operative society has to satisfy
both the limbs simultaneously as to the requisite

number of employees to be less than 50 and also as to the working of the establishment without the aid of power. The appellant produced the staff pattern order and acquaintance register proving staff strength as on 04/2005. It is clear from the above documents that the employment strength of the appellant establishment was 24. According to the Counsel for appellant the words “with the aid of power” could only be understood as relating to an establishment which uses any form of power as its basic component for activities.

5. There is no dispute regarding the fact that the appellant establishment is engaged in the banking business which is a notified activity u/s 1(3) (b) of the Act. However according to the learned Counsel for the appellant Sec 1(3)(b) is subject to Sec 16(1)(a) of the Act and therefore unless the appellant is employing 50 persons the appellant establishment cannot be covered as the appellant is working without the aid of

power. There is also no dispute that the appellant establishment is employing less than 50 persons. However the dispute is only with regard to the fact whether the appellant establishment is working with the aid of power. The learned Counsel for the respondent relied on the decision of the Hon'ble High Court of Gujarat in ***Mansa Nagrik Sahkari Bank Ltd Vs RPFC***, 2005 (3) LLJ 669 (Guj). In the above case the petitioner before the Division Bench of the Hon'ble High Court of Gujarat was a Co-operative Bank, like appellant and the bank was employing more than 20 employees and therefore the PF organization covered the Co-operative Bank U/s 1(3)(b) of the Act. The order issued by the PF Commissioner was challenged before the Hon'ble High Court of Gujarat and the learned single judge held that the appellant works with the aid of power not only for the purpose of lighting and cooling the bank premises but also uses power for its computers and

gadgets for providing effective services to its customers. The Division Bench after elaborate consideration of the related decisions by various High Courts came to the conclusion that the Co-operative Bank is liable to be covered under the provisions of the Act, even if the employment strength is below 50 since the appellant establishment work with the aid of power. The above decision of the Hon'ble High Court of Gujarat is squarely applicable to the facts of the present case. According to the learned Counsel for the appellant the dictum laid down in ***Mansa Nagrik Sahkari Bank Ltd Vs RPFC (Supra)*** is not applicable in view of the binding decision of the Hon'ble Supreme Court in ***Mohmedalli and Others Vs Union of India***, AIR 1964 SC 980. The argument for the learned Counsel for the appellant cannot be accepted as the general law regarding Co-operative Societies is spelt out by the Hon'ble High Supreme Court in ***Mohmedalli and Others*** (Supra) whereas

the specific issue involved in this case is whether the appellant Co-operative Bank is working with the aid of power and whether it will come within the exclusion clause available as per Sec 16 (1)(a) of the Act. As already pointed out the appellant establishment is engaged in the banking business which is a notified activity and is working with the aid of power. As rightly pointed out by the learned Counsel for the respondent, it is not the case of the respondent that the appellant is using electricity for lighting. The case of the respondent is that the appellant establishment is working with the aid of computers and other electrical gadgets and this will take the appellant out of the purview of the exclusion. The exclusion provided U/s 16 (1)(a) is meant for sectors like handloom which requires real financial support particularly when they are working in Co-operative sector. Same protection cannot be and need not be extended to establishments like appellant which is involved in the banking

industry. It is also relevant to point out that hundreds of such primary co-operative banks are already covered under the provision of the Act and complying with the provisions. The only exemption is with regard to Employees' Pension Scheme for those primary co-operative banks which subscribe to the pension benefits of Kerala State Pension Board. The Division Bench of Hon'ble High Court of Kerala in ***Assistant PF Commissioner Vs Karappuram White Line Shell Vyavasaya Co-operative Society***, 2018 (156) FLR 487 held that to bring establishments U/s 16 (1)(a) of the Act the twin conditions of employing not less than 50 employees and working without aid of power are to be fulfilled. Similarly in ***Kottayam District Co-operative Hospital Vs RPFC***, 2009 LLR 839 (KHC) the Hon'ble High Court of Kerala held that to get the benefit of exclusion under 16 (1)(a) of the Act, the concerned Co-operative society has to satisfy both the limbs of Section simultaneously, ie the

requisite number of employees must be less than 50 and the establishment must be working without the aid of power. The Hon'ble High Court also held that the appellant being a Co-operative hospital running its medical equipments and lab with the aid of power it cannot fall under the exception U/s 16 (1) (a) of the Act. As explained in the earlier paras, the appellant primary Co-operative bank cannot claim exclusion in view of the fact that the appellant establishment is working with the aid of power for the normal functioning of the bank, even though the employment strength is below 50.

6. Considering the facts, circumstances, evidence and pleadings in this appeal I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer