



सत्यमेव जयते

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

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

(Friday the 08th day of January, 2021)

Appeal No. 734/2019

(Old No.ATA-541(7)2012)

Appellant

M/s. National Co-Op Academy for
Higher Education & Management
Valancherry,
Malappuram -676552.

By Adv. Sumith U.V

Respondent

The Assistant PF Commissioner
EPFO, Sub Regional Office
Eranhipalam
Calicut – 673006.

By Adv. Dr. Abraham P.Meachinkara

This case coming up for hearing on 16/11/2020 and
this Industrial Tribunal-cum-Labour Court issued the
following order on 08/01/2021

ORDER

Present appeal is filed from order No. KR/ KK/28062/
Enf-1 (5) 2011-12/2781 dated. 26/09/2011 assessing dues
U/s 7A of the Act of EPF & MP Act,1952 (hereinafter
referred to as 'the Act') assessing dues for the period from
09/2010 to 7/2011 and Order No. KR/KK/ 28062 Enf-1 (5)

2011-12/5546 Dt. 5/3/2012 U/s 7B of the Act correcting the dues to Rs. 1,86,406/-.

2. The appellant is an education institution registered under the Kerala Co-operative Societies Act and is employed less than 10 permanent employees and some apprentices, temporary employees and daily wagers. The appellant is covered U/s 1(3) (b) of the Act. The appellant establishment is registered under Kerala Co-Operative Societies Act and is employing less than 20 persons and also is working without the aid of power. The appellant is entitled for the exclusion U/s 16 (1)(a) of the Act. It is not correct to state that appellant was not represented in the 7A proceedings as the appellant entered appearance through a Counsel and also filed its representation and produced documents before the 7A authority.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provision, of the Act w.e.f 1/9/2010. The appellant establishment defaulted in payment of contribution for the period from 9/2010 to 7/2011. The appellant therefore violated the provisions contained in Para 30 & 38 of EPF Scheme 1952. The appellant was given adequate

opportunity to represent his case before the authority U/s 7A of the Act before the impugned order is issued. The appellant cannot dispute the coverage as the appellant is already covered and is contributing under the provisions of the Act. The claim of the appellant that they were employing 20 persons is disproved by their own documents. The attendance register for 9/2010 will clearly show that the appellant was employing 20 persons during the month of September 2010. Sec 2(f) of the Act defined an employee according to which all the categories of employee directly or indirectly employed and drawing wages will have to be considered as employees of the appellant for whom the appellant is liable to pay contribution. It is denied that the appellant appeared before the respondent in the enquiry. The 7A enquiry was adjourned from 11/5/2011 to 30/5/2011, 5/7/2011, 8/8/2011 and 7/9/2011 on the request of the appellant. But the appellant did not attend the proceedings before the 7A authority.

4. The appellant is an establishment registered under the Kerala Co-operative Societies Act. The claim of the appellant in this appeal is that they are entitled for

exclusion U/s 16 (1) (a) of the Act. According to Sec 16 (1) (a) :

“ This Act shall not apply (a) 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 Act employing less than 50 persons and working without the aid of power. ”.

5. According to the Counsel for the appellant, the appellant establishment is registered under the Kerala Co-operative Societies Act. The appellant produced the registration certificates issued by the Joint Registrar of Co-operative Societies, Malappuram to substantiate the same. It is also the case of the appellant that the exclusion U/s 16(1) (a) of the Act is taken up before the respondent authority vide letter dt. 26/03/2011, a copy of which is produced in this appeal. The learned Counsel for the appellant has taken a consistent view that nobody representing the appellant attended the enquiry under 7A and no such representation was given during the course of Sec 7A enquiry. The learned Counsel for the appellant relied

on the decision of the Division Bench of Hon'ble High Court of Mumbai in ***M/s. Aniket College of Social Work vs APFC***, 2017 LLR 1095 to argue that an educational society registered under the Societies Registration Act and Maharashtra Public Trust Act availing the facility of power supply to satisfy basic needs of the employees and employing less than 50 employees is excluded from the provision of the Act U/s 16(1)(a). The learned Counsel for the appellant also relied on the decision of the Hon'ble High Court of Orissa in ***Tata Refractories Employees Co-Operative Society Ltd Vs. APFC***, OJC 15152 of 2001 wherein the Hon'ble Court held that since the establishment is a society registered under Orissa Co-operative Societies Act, 1962, and as it has engaged less than 50 persons, the establishment is excluded U/s 16(1)(a) of the Act. The appellant also produced the photocopies of the day book during September 2009 to argue that the employee strength of the appellant has never reached 50. On a perusal of impugned order, it is seen that none of the above issues were raised before the 7A authority and no decision is taken by the Sec.7A authority. In the Sec 7A as well as 7B orders, the respondent only quantified the dues

as the appellant failed to appear before the respondent during the Course of 7A. Though the issue regarding exclusion U/s 16 1(a) is a legal issue, the issue regarding the employment strength is a factual issue to be adjudicated by the competent authority U/s 7A of the Act. However, it is clarified that the appellant being an establishment registered under Kerala Co-operative Societies Act the same can be covered under the provisions of the Act only if the twin conditions of employing 50 persons and also working with the aid of power are satisfied.

6. Since the impugned order is completely silent on this important legal issue regarding the coverage of the appellant establishment under the provisions of the Act, I am of the considered view that the respondent shall decide the same before quantifying the amount due from the appellant.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the appellant to decide the questions of applicability to the Act to the appellant establishment before quantifying the dues within a period of 3 months , after issuing notice to the appellant.

Sd/-

(V. Vijaya Kumar)
Presiding Officer