



सत्यमेव जयते

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

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

(Wednesday the 3rd day of November, 2021)

APPEAL No.170/2018

(Old no.A/KL-109/2016)

Appellant : Sri.Abdul Latheef M.
M/s.Hercules Super Bazar Pvt Ltd
Ash-Har Complex
Palace Road, Attingal
Trivandrum – 695101

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

By Adv.Ajoy P.B.

This case coming up for final hearing on 14.07.2021 and this Industrial Tribunal-cum-Labour Court on 03.11.2021 passed the following:

ORDER

Present appeal is filed against order no.KR/TVM/1034363/ENF-1(2)/2016/7645 dt.19.01.2016 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on preponment of coverage. The total dues assessed is Rs.9,05,455/-.

2. The appellant is operating a supermarket at Attingal with branches at Kollam and Kallambalam, engaging around 8 permanent staff and 12 trainees. In all the units more than sufficient employees were appointed and most of them were trainees. Majority of them left voluntarily or terminated by the appellant. Majority of the employees were reluctant to make provident fund contribution. The appellant was regular in remitting contribution. While so the appellant received a notice issued by the respondent fixing an enquiry on 14.07.2015. A representative of the appellant attended the hearing. The enquiry was thereafter adjourned to 05.08.2015, 12.09.2015 and 11.01.2016. The respondent issued the impugned order without taking into account any of the contentions raised by the appellant. The appellant therefore preferred a review application and the same was also rejected vide order dt.04.08.2016. The respondent authority failed to verify the documents and written statement filed by the appellant. The respondent authority failed to notice that there were trainees, and temporary and casual employees working in the appellant establishment. The Kollam unit of the appellant commenced operation only from 06/2014. The appellant covered the units only from September 2014. Hence preponing the coverage to January 2014 is not correct and therefore illegal. The calculation of the dues is also not based on any documents.

3. The respondent filed counter denying the above allegations. The appellant establishment at Attingal is covered under the provisions of the Act. The appellant in his online application for coverage had stated that the employment strength crossed 19 from 01.09.2014. The Enforcement Officer inspected the appellant establishment on 18.06.2015 and after verification of records reported that the establishment was having branches at Kollam and Kallambalam and the employment strength of the appellant establishment crossed 19 on 13.01.2014. The Enforcement Officer provided a copy of the inspection report with his observations to the appellant and the same was acknowledged by him. On the basis of the report of the Enforcement Officer, an enquiry was initiated U/s 7A and a summons was issued on 14.07.2015. The appellant did not attend the enquiry. Thereafter a summons dt.05.08.2015 was issued directing the appellant to attend the enquiry on 11.09.2015. The enquiry was further adjourned to 21.10.2015 on the request of the appellant. The appellant was represented in the enquiry and a written statement of objection was also filed. In the written statement the appellant contended that they do not have permanent staff as reported by the Enforcement Officer. On 10.01.2016 a representative attended the hearing and submitted that the appellant establishment is running in a financially difficult situation. The date of coverage of an establishment can only be decided on the basis of the

number of employees working in the establishment as per Sec 1(3) of the Act. It has got nothing to do with the financial condition of the establishment. Further all the employees working in the establishment along with its branches are required to be enrolled. The appellant never raised any objection regarding the quantum of dues reported by the Enforcement Officer which is based on the records maintained by the appellant establishment. Aggrieved by Sec 7A order, the appellant submitted an application U/s 7B for a review. In the 7B review application the appellant contented that the date of coverage shall be taken only as 09/2014. The appellant however failed to substantiate his claim. The appellant produced wage registers for the period in question which did not bear the signature of the employees as proof of having received wages. Evidently the wage register now produced during the hearing of Sec 7B review application is a fabricated one. The review application was therefore rejected by the respondent authority. The respondent authority preponed the coverage of the appellant establishment to 13.01.2014 on the basis of the records and registers secured from the appellant establishment. The appellant never raised any objection regarding the employment strength or wages paid at the time of inspection by the Enforcement Officer. The appellant was provided more than adequate opportunity before the impugned order is issued. Sec 2(f) of the Act clearly defines an employee to include

temporary or casual employees. The financial difficulties of the appellant is not a criteria while covering an establishment under the provisions of the Act. The coverage of the establishment along with its branches was preponed to 13.01.2014 from 01.09.2014 based on the records maintained by the appellant. The appellant establishment has clearly violated the provisions under Para 30(1) and 38(1) of EPF Scheme.

4. The appellant establishment took an online registration of establishment (OLRE) own his own under the Act. In the online application, the appellant stated that the employment strength of the appellant crossed 19 on 01.09.2014. As per the prevailing instructions, an Enforcement Officer of the respondent inspected the appellant establishment on 18.06.2015 to confirm the correctness of the data furnished by the appellant establishment. On verification of records the Enforcement Officer found that the appellant establishment is having branches at Kollam and Kallambalam and the employment strength crossed 19 w.e.f. 13.01.2014. The Enforcement Officer therefore recommended that the appellant establishment is required to be covered U/s 1(3)(b) of the Act w.e.f. 13.01.2014. The Enforcement Officer also reported that the appellant establishment has not started compliance and reported the provident fund dues for the period from 01/2014 to 05/2015. A copy of the inspection report was provided to the appellant. The appellant

never objected regarding the employment strength, the proposed date of coverage or the dues quantified by the Enforcement Officer. Since the appellant failed to comply, the respondent authority initiated an enquiry U/s 7A of the Act. It is seen that the appellant was given adequate opportunity. The appellant failed to produce any documents before the 7A authority, however submitted a letter stating that the permanent employees are much less and the rest of the employees are casual, temporary or trainees. The appellant on a subsequent date of proceedings submitted that the financial situation of the appellant establishment is bad and therefore the coverage of the appellant establishment as on 09/2014 may be sustained. The respondent authority issued the impugned order preponing the coverage to 13.01.2014 and also assessing the dues from 01/2014 to 05/2015. Aggrieved by the said order, the appellant filed a review application U/s 7B of the Act. During the Sec 7B review, the respondent found that the appellant produced certain fabricated salary registers which was rejected by the respondent authority. The respondent authority also found that the appellant failed to produce any new and important matter or evidence which after exercise of due diligence in the enquiry was not within the knowledge of the appellant.

5. The main contention of the appellant in this appeal is with regard to the preponment of coverage from 09/2014 to 01/2014. It is seen that the

appellant establishment is covered from 09/2014 on a self declaration that the employment strength reached 20 only on that date. However, in the first inspection after coverage, the Enforcement Officer noticed that the appellant establishment is having branches at Kollam and Kallambalam and the employment strength crossed 20 as on 13.01.2014. The appellant could not controvert the contention of the Enforcement Officer during the course of enquiry U/s 7A of the Act. The contention taken in this appeal is many of these employees are casual, temporary and trainees. According to the learned Counsel for the respondent, Sec 2(f) of the Act defining employees includes all categories of employees including trainees. Therefore there is no basis in the contention of the appellant that only permanent employees are required to be considered for coverage under the provisions of the Act. Hence the finding of the respondent that the coverage is required to be preponed to 13.01.2014 is legally correct and is upheld.

6. With regard to the quantification of dues, it is seen that the major part of the assessment pertains to the dues from 09/2014 to 05/2015 with regard to which there is no dispute. Since the coverage is preponed to 01/2014, the appellant is liable to remit contribution in respect of all its employees from 01/2014. I don't find any infirmity in the assessment made by the respondent

authority in the absence of any reliable evidence produced by the appellant during the course of the enquiry.

7. Considering the facts, circumstances 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