



सत्यमेव जयते

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

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

(Monday the 14th day of December, 2020)

APPEAL No.178/2018
(Old No.A/KL-115/2016)

Appellant : M/s.Koliekanam Estate(RBT)
Bethel Plantations Ltd
Elappara P.O.
Idukki

By Adv.Hari Narayan

Respondent : The Assistant PF Commissioner
EPFO, Regional Office, Kaloor
Kottayam - 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 10.12.2020 and this Tribunal-cum-Labour Court on 14.12.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KTM/67/ENF-I(3)/2016/1477 dt.03.08.2016 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') in respect of regular dues and also dues in respect of 87 non enrolled employees for the period from 04/2012 to 02/2015. The total dues assessed is Rs.15,62,319/-.

2. The appellant is a unit of Bethel Plantations Ltd. It is a company incorporated as per Companies Act, 1956. It is engaged in tea plantations and manufacture of black tea. Due to financial crunch, the tea estates were running under loss from 2000 onwards and consequently the estate remained closed for the period from 31.12.2002 to 07.03.2011. During this period several workers left employment and submitted Form-19 to receive benefits under provident fund. The amounts available in the account of these workers were paid to them. There after the respondent initiated action for recovering the amounts and some of the estates owned by the appellant company were sold in auction. Hence the workers obtained the amounts due to them towards provident fund. An Enforcement Officer during the regular inspection pointed out that the dues in respect of regular employees for the period from 06/2014 to 02/2015 were not remitted by the appellant. The Enforcement Officer further pointed out 87 employees were not enrolled to provident fund. These employees have already taken their provident fund settlement and therefore they are excluded employees. However without accepting the above contention the respondent directed that the 87 employees are required to be enrolled for the period from 04/2012 to 11/2013.

3. The respondent filed counter denying the above allegations. The appellant defaulted contributions in respect of their regular employees for the

period from 06/2014 to 02/2015. They also failed to enroll 87 employees for the period from 04/2012 to 11/2013. Hence an enquiry was initiated U/s 7A of the Act. The appellant was represented in the enquiry. They admitted the liability in respect of their regular employees. With regard to the 87 non enrolled employees the appellant submitted that they are excluded employees as their provident fund account has already been settled. On a verification of records, it is seen that the provident fund in respect of 87 employees were not fully settled and they continued to be members of provident fund and they do not fall under the category of excluded employees. The list of 87 employees who had withdrawn part of their provident fund money is produced and marked as Annexure B1. The list of 87 employees with their date of final settlement is produced and marked as Annexure B2. From the above two lists it can be seen that this 87 employees continued to be provident fund members during the relevant point of time and their provident fund accounts were finally settled only during 2015-16. The opening balance of members who settled their provident fund account finally during 2015-16 is produced and marked as Annexure B3. These documents will clearly show that the 87 employees continued to be provident fund members during 04/2012 to 11/2013 and they are required to be enrolled to provident fund.

4. The impugned order U/s 7A of the Act comprises of two components. The first is with regard to the provident fund contribution in respect of regular employees for the period from 06/2014 to 02/2015. The total amount assessed in respect of these employees was Rs.10,30,199/-. There is no dispute regarding this amount. The appeal was admitted by the EPF Appellate Tribunal, Bangalore vide order dt.20.12.2016 on the condition that the appellant shall deposit 20% of the assessed dues with the respondent. The appellant approach the Hon'ble High Court of Kerala in W.P.(C) no.34432/2016 and the Hon'ble Court vide order dt.27.10.2016 directed the appellant to deposit an amount of Rs.10,30,199/- in 12 monthly equal installments starting from 16.11.2016. During the course of hearing the learned Counsel for the appellant submitted that the appellant deposited only Rs.3 lacs. It is upto the respondent to confirm whether the appellant deposited the complete dues as per the directions of the Hon'ble High Court of Kerala.

5. The only dispute that is pending is with regard to the contributions assessed in respect of 87 employees. According to the learned Counsel for the appellant, these 87 employees were provident fund members earlier and they took their final settlement and therefore they are excluded employees, they need not be enrolled to provident fund again. According to the learned Counsel for the respondent though these 87 employees were provident fund members

they have not taken their final settlement at the time of assessment and hence they continued to be provident fund members and hence they are eligible to be enrolled to provident fund and the appellant is required to contribute to provident fund against these 87 employees also. The respondent relied on Annexure B1 statement to prove that these employees have taken only part of their provident fund money. The respondent also produced Annexure B2 to show when they have finally settled their provident fund liability. To further confirm the position that they were still holding provident fund accumulation in their account, the respondent produced Annexure B3 statement showing the opening balance available in the account of these employees during 2015-16.

6. The definition of 'excluded employee' under Para 2(f) is

“ **excluded employee** means;

1. An employee who, having been a member of the fund, withdraw the full amount of his accumulation in the fund under Clause a or c of sub para 1 of Para 69.
2. An employee whose pay at the time he is otherwise entitled to become a member of the fund exceeds Rs.6500/- per month.”

Para 69 of the EPF Scheme stipulates the circumstances in which accumulation in the fund are payable to a member. As per Para 69(1) a member may withdraw the full amount standing to his credit in the fund on retirement from service

after attaining the age of 55 years. As per Para 69 (1) (c) a member may withdraw full amount standing to his credit in the fund immediately before migration from India for permanent settlement abroad or for taking employment abroad. On a combined reading of the above 3 provisions, it is clear that an employee will become an excluded employee if he takes his final settlement of provident fund after attaining the age of 55 years. As per Para 26(a) a member of the fund shall continue to a member until he withdraws the money under Para 69. From the above discussion of the legal provisions, it is very clear that an employee shall attain the age of 55 years and withdraw the complete amount lying in his provident fund account to claim exclusion from coverage under the Act. From Annexure B1 produced by the respondent, it can be seen that none of the employees attained the age of 55 on the date they took part withdrawal of provident fund money. Annexure B2 will clearly show that final settlements were taken by these employees only in 2015-16. Hence the claim of the appellant that these 87 employees are excluded employees cannot be accepted as it will not satisfy the requirement of age as well as the stipulation of withdrawing provident fund money fully from their account. Since the appellant has no dispute regarding the quantum of dues assessed in respect of these employees nothing remains in the impugned order that is required to be further examined in this appeal.

7. Considering the facts, pleadings, evidence and arguments, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-
(V. Vijaya Kumar)
Presiding Officer