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.279/2018
(Old no.A/KL-56/2017)

Appellant	:	M/s.J.M.J. Modern Rice Mill Arpookara West P.O. Kottayam – 686008
		By Adv.K.A.Hazan & V.J. James
Respondent	:	The Assistant PF Commissioner EPFO, Sub Regional Office Thirunakkara Kottayam – 686001
		By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 23.11.2020 and this Tribunal-cum-Labour Court on 14.12.2020 passed the following:

<u>O R D E R</u>

Present appeal is filed from order no.KR/KTM/20383/ENF1(1)/2016/1074 dt.14.07.2016 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 04/2008 to 03/2013. The total dues assessed is Rs.41,97,122/-.

2. The appellant is a proprietary business establishment manufacturing rice products under the brand name 'Rani Rice'. The respondent initiated action U/s 7A to assess the dues in respect of non enrolled employees and also in respect of evasion of membership in the appellant establishment. The respondent deputed a squad of officers to examine whether 6 units working in and around the appellant establishment could be clubbed and covered and also to find out whether there is any evasion of membership. The squad of officers found that the appellant establishment M/s.St.Mary's Paddy Processing and M/s.K.E.Agro Products (P) Ltd are functioning from the same premises and these are establishments having administrative, financial and geographical integrity with each other. The squad of Enforcement Officers also reported that these establishments had paid huge amounts on account of sorting and grading of paddy collected from farmers in the paddy field. The respondent ought to have seen that all the 3 units referred to above are independent establishments having separate legal status. The respondent during the course of enquiry summoned the farmers who sold the raw materials to appellant from the list of farmers supplied by the appellant to find out whether there is any element of wages involved in the processing charges paid to them. The farmers cannot be treated as employees of the appellant.

Payment on account of processing charges are paid to farmers in the field for procuring paddy.

3. The respondent filed counter denying the above allegations. The appellant establishment is covered under the provisions of the Act. Based on a complaint received by the respondent that the appellant was evading enrolment of eligible employees under the Act, a squad of Enforcement Officers were deputed for investigating the matter. The squad reported that three establishments namely M/s.J.M.J. Modern Rice Mill, M/s.St.Mary's Paddy Processing and M/s.K.E.Agro Products (P) Ltd producing 'Rani Rice' owned and managed by appellant and his wife were functioning from the same premises and are functionally integral. It was also reported that there were 20 employees working in all the 3 units put together. It was also found that the work of sorting and grading of paddy was entrusted to trade unions whose employees carried out the work in the place of a contractor. As per Para 30(3), it shall be the responsibility of the principal employer to pay both the contributions payable by himself in respect of the employees directly employed by him and also in respect of employees employed by or through a contractor. Hence the payment made to the trade union workers attract PF and hence dues were determined dividing the expenditure on these accounts

as per profit and loss account statement into 12 equal months as the appellant establishment failed to submit monthly wages of employees engaged for sorting and grading of paddy. The appellant establishment has not raised any dispute regarding the clubbing of 3 establishments before the respondent authority. In fact the appellant had admitted the functional integrity in its letter dt. 18.01.2012 which is marked as Annexure R1. Adequate opportunity was given to the appellant to adduce evidence and also a copy of the squad report was served on the appellant along with the adjournment notice dt.07.04.2015 and the same was acknowledged by the appellant. The appellant never filed any objection to the squad report.

4. According to the learned Counsel for the appellant the respondent initiated investigation on a complaint filed by one Sri.Shaji V.G. He was neither an employee nor a person known to the appellant. According to the complaint, Rani Group is a cluster of 6 firms and all are owned and managed by one Thomas Mathew. Based on the complaint, an investigation was ordered by the respondent and a squad of Enforcement Officers was deputed to enquire into the complaint. According to the squad report, out of the 6 units named in the complaint, 3 establishments are functioning from the same premises and are having administrative, financial and geographical integrity.

The total strength of all the 3 units reached 20 only from the date it is covered and there is no scope for preponment of the date of coverage. The squad also reported that huge amounts were paid towards processing and procurement charges. The appellant has also spent huge amounts towards sorting and grading expenses.

5. As per the impugned order the respondent decided the following issues.

1. The respondent found that only 3 establishments out of total 6 can be clubbed for the purpose of coverage.
2. The procuring and processing charges paid to the farmers will not attract provident fund deduction.
3. The two employees were not enrolled to the fund are required to be enrolled from their date of eligibility.
4. The employees involved in sorting and grading of paddy are required to be enrolled to provident fund and therefore contribution is to be paid in respect of the sorting and grading charges.

6. The learned Counsel for the appellant fairly conceded that he is not disputing the clubbing and covering of the establishments and also enrollment of two employees from their date of eligibility.

7. The only issue therefore that is required to be examined in this appeal is whether the employees engaged for sorting and grading of paddy collected from the fields can be treated as employees of the appellant for the purpose of provident fund deduction. The learned Counsel for the appellant submitted that the area where the appellant is situated is notified under Kerala Head Load Workers Act and the Scheme framed thereunder. Hence the trade union workers who are engaged by the appellant for doing the sorting and grading work through trade unions need not be extended the benefit of EPF Act. It is seen that this issue was not taken up before the respondent at the time of hearing. Hence there is no finding in the impugned order whether the trade union workers who are entrusted with the responsibility of sorting and grading were excluded from the provisions of EPF Act. There is no evidence in this appeal also whether the trade union workers who are engaged for sorting and grading are covered by Kerala Head Load Workers Act and Scheme thereunder. The learned Counsel for the appellant relied on the decision of the Division Bench of Hon'ble High Court of

Kerala in **RPFC Vs Kerala Small Industries Development Corporation and others**, W.A 116/2007. In the above judgment the Division Bench of Hon'ble High Court of Kerala held that,

> " In such circumstances, conclusion is irresistible that, in view of the mandate of Clause (2) of Article 254 of the Constitution, the provision of Kerala Head Load Workers Act, which is a latter special enactment, which received presidential accent on 28.09.1980 shall prevail in the State of Kerala, till the Parliament legislates under proviso to Clause (2) of Article 254 of the Constitution ".

In view of the above decision, the head load workers who are registered under Kerala Head Load Workers Act and Scheme will be excluded from the provisions of EPF & MP Act, 1952. Since there is no evidence to substantiate the fact that the workers who are involved in sorting and grading work are registered under Kerala Head Load Workers Act the issue is left open to be decided by the 7A authority.

8. The next point canvased by the learned Counsel for the appellant is that in view of the nature of work done by the trade union workers they cannot be treated as employees for the purpose of EPF & MP Act. As per Sec 2(f) of EPF & MP Act, employee means any person who is employed for

wages in any kind of work, manual or otherwise in or in connection with the work of an establishment who gets its wages directly or indirectly from the employer and includes any person (i) employed by or through a contractor in or in connection with the establishment (II)……

According to the learned Counsel for the respondent the definition of employee in the Act is vide enough to include all the employees employed by or through a contractor in or in connection with the work of the establishment. According to the learned Counsel for the appellant the workers doing the sorting and grading work is supplied by the local trade unions and the same employees may not be deployed by the trade unions in the same establishment every time. Hence identification of the contract employees becomes difficult. He also relied on the decision of the Hon'ble High Court of Delhi in **Summerfield School Vs RPFC**, W.P.no.3099/2011. In that case, the Hon'ble High Court considered whether a contract given to an agency and the workers deployed by them for transporting students can be considered as employees of the school. The facts of the said judgment is not relevant to the facts of the present appeal. The learned Counsel for the appellant also relied on the decision of the Bombay High Court in **Sandeep Dwellers Pvt Ltd Vs UOI**, 2007 (3) BOM CR 898 to argue that the employees who are engaged for casual work cannot be treated as employees under EPF & MP Act. The

above decision also is not of much help to the appellant as it covers the contract employees engaged by subcontractors in construction industry and as rightly pointed out by the learned Counsel for the respondent it was decided by the various High Courts and the Hon'ble Supreme Court that in view of the amendment to Para 26(2) of Provident Fund Scheme, 1952 all those employees will have to be covered under the provisions of the Act. The learned Counsel for the respondent argued that the definition of employee U/s 2(f), takes in its fold all contract, temporary, seasonal and casual workers employed directly or through contractors in or in connection with the work of the establishment. By notification dt.01.10.1990 Para 26(2) of EPF Scheme was amended to include the following.

> " After this paragraph came into force, in a factory or other establishment, every employee employed in or in connection with the work of the factory or establishment other than excluded employees who has not become a member already shall be entitled and required to become a member of the Fund from the date of joining the factory or establishment ".

This amendment was challenged by various organisations on the ground that in many industry such as construction industry the workers are engaged for one or two months and therefore the enrollment of these kind of

employees will be difficult. The Hon'ble Supreme Court in **J.P.Tobacco Product Vs UOI**, 1996 1 LLJ 822 SC upheld the constitutionality of the amendment. The division bench of the Hon'ble High Court of Delhi in **Builders Association of India and other Vs UOI**, LPA no.727230/2014 and the Hon'ble High Court of Madras in **Builders Association Vs UOI**, W.A.(MD) No.478/2008 held that all temporary, casual and site workers will have to be covered under the provisions of the Act. In a recent decision by Hon'ble Supreme Court in **Pawan Hans Ltd Vs Aviation Karmachari Sankh**, AIR 2020 SC 56, the Court held that contract and seasonal workers engaged by an establishment are also covered under the provisions of the Act.

In view of the above discussion and also considering the nature of work done by the trade union workers, there cannot be any doubt that they will come within the definition of employee under EPF & MP Act.

9. The last issue that was taken up by the learned Counsel for the appellant is with regard to the identification of the employees and the assessment made by the respondent as per the impugned order. On a perusal of the impugned order it is seen that the respondent has not taken any effort whatsoever to identify the employees who are engaged for sorting and grading of paddy collected from the field. The respondent has also

explained as to how he has arrived at the quantum of dues. He has taken the total payment made for sorting and grading from the profit and loss account for the year 2008-09 to 2012-13. According to the respondent " As the establishment failed to submit the monthly wage particulars of employees engaged for sorting and grading of paddy, it has been decided to divide the expenditure on this account in 12 equal months of each year and determine the dues " . This kind of assessments are not appreciated by Courts from the very beginning. In **Food Corporation of India Vs RPFC**, 1990 1 CLR 720 while examining the assessment of dues in respect of contract employees of the Food Corporation of India, the Hon'ble Supreme Court held that " It will be seen from the above provisions that the Commissioner is authorised to enforce the attendant of any person and also to examine any person on oath. He has the power requiring the discovery and production of documents. The power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his power to collect all evidence and collate all material before coming to a proper conclusion. That is the legal duty of the Commissioner ". In this particular case, it is seen that the respondent failed to make any effort to quantify the dues of trade union workers engaged

for sorting and grading of paddy. The respondent ought to have summoned the trade union representatives to get the details of the employees deployed by them to the appellant establishment during the relevant point of time. He could have also obtain the details of wages paid to these employees. It is true that the appellant is also required to maintain the details of employees engaged through a contractor as per the provisions of the Act and Schemes thereunder. If the appellant failed to maintain the records or failed to produce these records before the respondent in the enquiry, the respondent can take an adverse presumption, however after exhausting all possible efforts as pointed out above. If the appellant failed to produce the required information and the respondent could not get the required information from the trade unions who deployed the workers, they can still rely on the balance sheet figures as held by the Hon'ble Supreme Court in its order dt. 02.12.2020 in **Panther Security Services Pvt Ltd Vs EPFO and another**, Civil Appeal nos.4434-4435/2010.

In view of the above discussion the appeal is partially allowed, the impugned order assessing the dues in respect of sorting and grading workers are set aside and the matter is remitted back to the respondent to re-assess the dues within a period of 3 months after issuing notice to the appellant.

The appellant shall produce all the relevant records before the respondent, failing which the respondent can take adverse presumption. The respondent also shall endeavour to summon the trade unions which deployed the employees during the relevant point of time and try to assess the dues on the basis of actual wages paid to the employees.

Sd/-
(V. Vijaya Kumar)
Presiding Officer