



सत्यमेव जयते

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

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

(Tuesday the 5<sup>th</sup> day of October, 2021)

**APPEAL No.402/2019**

(Old no.1387(7)2015)

Appellant : M/s.Cochin Frozen Food Exports Pvt Ltd  
Arookkutty Ferry Road  
Aroor  
Alappuzha - 688534

By Adv.Salil Narayanan K.A.

Respondents : 1. The Assistant PF Commissioner  
EPFO, Sub Regional Office, Kaloor  
Kochi – 682017

By Adv.Sajeev Kumar K.Gopal

2. The Sea Food Workers Union (TUCI)  
Room no.6, K.A.M Lodge, Cherthala  
Alappuzha - 688524

By Adv.(Dr.)V.N.Sankarjee

3. Sri.Sanal Sathyan  
“Indeevaram”  
Near Arookkutty Ferry  
Cherthala  
Alappuzha - 688535

By Adv.N.G.Sunil

4. Smt.Mini Prasad  
Laksham Veedu  
Padinjare Manakodam  
Pallithodu, Thuravoor  
Alappuzha - 688532

5. Smt.Usha Lalappan  
Tharissil Nikathath  
Padinjare Manakodam  
Pallithodu, Thuravoor  
Alappuzha - 688532

By Adv.Ajitha Lekshmi Sabu

This case coming up for hearing on 16.04.2021 and this Industrial Tribunal-cum-Labour Court on 05.10.2021 passed the following:

### **ORDER**

Present appeal is filed from order no.KR/KC/13982/ENF-II(2)/2015/9416 dt.16.10.2015 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') in respect of non enrolled employees for the period from 05/1995 to 12/2012. The total dues assessed is Rs.25,42,908/-.

2. The appellant is a private limited company engaged in collection, cleaning, processing and exporting of sea foods. The appellant commenced its operations in the year 1989 and production started in the year 1992. Certain employees of the appellant had resorted to unauthorised strikes and boycotts which affected the functioning of the appellant factory. The illegal strike is resorted by some employees who were subjected to disciplinary proceedings by

the appellant. These employees under the cover of a trade union started sending complaints to various organisations such as the 1<sup>st</sup> respondent. In continuation of such complaint an Enforcement Officer of the 1<sup>st</sup> respondent conducted a surprise inspection in the appellant establishment. There was no responsible person of the appellant available at that time of inspection. In the absence of the appellant and its officers, a mahazar was prepared by the Enforcement Officer. An authorised representative of the appellant was directed to sign the mahazar. A perusal of the mahazar would indicate that the signatures are put by different persons while the entries are written in the same handwriting. Hence the mahazar prepared by the Enforcement Officer cannot be relied on. On 13.02.2013 the appellant received a notice directing the appellant to produce cash book and ledger from 04/2010 onwards and payment vouchers for the said period on 20.02.2013. The appellant requested for 10 days time for production of documents. On 26.02.2013 an authorised representative of the appellant submitted the entire evidence, called for by the Enforcement Officer. However he refused to verify the documents. The appellant therefore sent a request by registered post on 26.02.2013 seeking a date from the Enforcement Officer for the verification of the records as directed by him. The appellant received a report dt.13.02.2013, despatched on 26.02.2013. It is seen that the said report is prepared on 13.02.2013 whereas

the appellant was directed to produce the records on 20.02.2013. The documents produced by the appellant on 26.02.2013 was not verified by the Enforcement Officer. The Enforcement Officer has adopted an illegal method to calculate the dues. The Enforcement Officer assessed the dues calculating 12% reduction in each year backwards for a period of 18 years. Such calculation, without giving an opportunity to the appellant to produce the records, are clearly illegal. The appellant received a notice dt.20.06.2013 issued by the respondent authority initiating a proceedings U/s 7A of the Act. The appellant appeared before the respondent through its Counsel and filed a detailed written statement. The hearing of the 1<sup>st</sup> respondent commenced on 17.07.2013 and culminated on 04.06.2015. Before the 1<sup>st</sup> respondent, 55 employees engaged through a contractor submitted a statement on 03.12.2013 affirming that they were getting wages at Rs.7500 to 8500/- from the contractor, apart from the food during the night shift. They also affirmed in the statement that when the Enforcement Officer recorded their statements they furnished only their basic salary. The contractor who supplies the contract employees, Sri.Sanal Sathyan also attended the proceedings by the 1<sup>st</sup> respondent and filed a written statement. He submitted that he started supplying workers to the appellant from 10/2012. There was some dispute between an union and the appellant since some workers were subject to

disciplinary proceedings. The employees of the contactor were also influenced by the terminated workers to join the trade union however those employees resigned from the trade union. The employees of the contractor also furnished only the basic salary in the statement given to the Enforcement Officer. 55 employees of the contractor also filed an independent statement on 10.02.2014 before the 1<sup>st</sup> respondent reiterating the contentions of the contractor. The appellant also took a preliminary objection that the trade union cannot represent the cause of its employees as all the employees resigned from the trade union. The appellant requested that he may be allowed to cross examine the Enforcement Officer who conducted the investigation of the appellant establishment. The trade union also filed a written statement espousing the cause of 8 regular employees. Ignoring the contentions of the contractor and his employees that they were not working with the appellant establishment prior to 10/2012 and they were not extended the benefit of provident fund since they are all excluded employees, the 1<sup>st</sup> respondent issued the impugned order assessing the dues in respect of the contract employees from 1995. When the report of the Enforcement Officer was challenged before the 1<sup>st</sup> respondent it was his responsibility to deliberate on the report and tender his findings. It is not correct to rely on such a disputed report and assess the dues on the basis of the same. As already pointed out the request of the appellant

to examine the Enforcement Officer was not considered by the 1<sup>st</sup> respondent. The contractor admitted that he started supplying manpower to the appellant establishment only w.e.f. 10/2012. It is not clear as to what basis the 1<sup>st</sup> respondent presumed that the contractor was supplying manpower w.e.f. 1995. The contract employees also pleaded before the 1<sup>st</sup> respondent that they furnished only the basic wages on the direction of the other employees of the appellant establishment.

3. The 1<sup>st</sup> respondent filed counter denying the above allegations. The appellant establishment was covered under the provisions of the Act w.e.f. 30.04.1995. During the course of inspection by the Enforcement Officer of the respondent, it was seen that there was large scale evasion in enrollment of contract employees and one regular employee of the appellant establishment. The Enforcement Officer in his report submitted, the month wise dues of 62 non enrolled contract employees for the period from 05/95 to 12/2012 and month wise dues of one regular employee for the period from 03/2010 to 12/2012. The Enforcement Officer also reported that the appellant was present at the time of inspection and informed that the attendance and salary registers in respect of contract employees who were engaged through Sri.Sanal Sathyan, a contractor, was not maintained by him. On contacting the contractor it was informed that he is not remitting provident fund in respect of his

employees. The Enforcement Officer got in touch with all the employees present and took the name, age, name of husband/father, address, date of joining and salary and got it signed by them. There were 7 absentees whose details were furnished by the co-workers which is also incorporated in the mahazar. The mahazar prepared by the Enforcement Officer was signed by the Managing Director and the contractor. The appellant nor the contractor produced the wage registers and attendance registers and therefore the Enforcement Officer relied on the mahazar to quantify the dues. A copy of the report of the Enforcement Officer was served on the appellant with a direction to remit contribution in respect of the identified non enrolled employees. Since the appellant failed to comply with the directions, an enquiry U/s 7A of the Act was initiated by issuing summons dt.20.06.2013 fixing the enquiry on 17.07.2013. The enquiry concluded on 04.06.2015 furnishing the names, date of joining, self declared salary on 01.02.2013 and wages as per wages register produced by the contractor for the period 10/2012 to 12/2012 for all the identified and non enrolled 62 contract employees. The pleading of the appellant that no responsible person was available at the time of inspection by the Enforcement Officer is apparently wrong. The person who signed the mahazar on behalf of the appellant is the Managing Director, the present appellant in this appeal. The mahazar is also signed by the contractor. A copy

of the daily order sheet, mahazar and letter dt.09.05.2016 received from the appellant are produced and marked as Exbt.R1, R2 and R3. These documents will clearly prove that the appellant was very much present at the time of inspection by the Enforcement Officer and he only signed in the mahazar on behalf of the appellant establishment. The appellant was directed to produce the documents before the Enforcement Officer on or before 20.02.2013. The appellant produced the records before the Enforcement Officer on 26.02.2013 by which time the Enforcement Officer finalized the report and forwarded the same to the appellant. The Enforcement Officer assumed a wage increase of 12% in salary and calculated wages of the employees every year. The Enforcement Officer had to resort to this calculation in the absence of wage register of employees. The contention of the appellant that he was not allowed to cross examine the Enforcement Officer in the proceedings is not correct. On 30.01.2015 the Enforcement Officer was present for cross examination as per the direction of the respondent authority. The representative of the appellant failed to attend the hearing and cross examine the Enforcement Officer. The claim of the appellant that the signatures in the mahazar were put by different persons is also not correct. The mahazar was prepared in a transparent way in the presence of the appellant as well as the contractor. The appellant is liable to enroll all the employees to the benefit of provident fund



from the date of their engagement even if they are engaged for one day, after amendment to Para 26 of EPF Scheme. The constitutional validity of the said amendment was also upheld by the Hon'ble Supreme Court of India in **J.P.Tobacco Products etc Vs UOI, 1996 1 LLJ 822 SC.**

4. The 2<sup>nd</sup> respondent contractor filed counter supporting the case of the appellant. According to him when his employment strength reached 20 he voluntarily approached the 1<sup>st</sup> respondent organization and is extending provident fund benefits to all the eligible employees. He started supplying manpower to the appellant establishment w.e.f. 10/2012. Since the employees were drawing more than Rs.6500/- he was not extending provident fund benefits to his employees. However when the wage ceiling was enhanced to Rs.15000/- he enrolled all the employees under the provisions of the Act and Schemes thereunder. He produced the wage registers for the period from 10/2012 to 03/2013 which will clearly show that all his employees were receiving wages in excess of Rs.6500/- and therefore are excluded. The contractor was present during the inspection by the Enforcement Officer and signed the mahazar in token of their visit and his presence at the time of inspection. He did not endorse the correctness of the details furnished in the list. He came to know that the details furnished by his employees were basic pay alone and has not revealed the DA component as instructed by some regular

employees of the appellant establishment. He started regular business of supplying manpower only from 2012 and therefore the assessment of dues prior to that against the supply of manpower to the appellant establishment is not correct. Though there was some workers in the list who worked with him in the past, none of them were engaged continuously by him. So the date of joining furnished by them may be the date from which they started working with him intermittently. The employees had no claim that they worked with the contractor or the principle employer continuously. Hence the assessment of dues prior to 2012 is not legally correct. The assessment made by the Enforcement Officer is on the basis of assumptions. He did not see any records maintained by the contractor. The report is also prepared on the assumption that these workers worked continuously without any break from the date of joining. Two of his employees namely Smt. Mini Parasad and Smt. Usha Lalappan appeared in the enquiry and deposed the real facts. Their statements also will support the claims of the contractor. Prior to 10/2012 the contractor was not doing work systematically and therefore the records were not maintained properly. He is also not liable to maintain the past record except as provided under Kerala Payment of Wages Rules, 1958 and under Minimum Wages Rules, 1950.

5. One of the contract employees Smt.Usha Lalappan also entered appearance and filed counter affidavit. She also filed the affidavit on behalf of Smt.Mini Prasad one of her co-worker who appeared before the 1<sup>st</sup> respondent authority. According to her, when the Enforcement Officers prepared the mahazar they furnished only the basic wages and their total salary at that point of time was Rs.7500 to 8500/-. They were misled by the union and some of the regular workers of the appellant establishment but when they realised the mistake, all the contract employees resigned from the union. All the 55 contract employees who were working with the contractor filed vakalath before the 1<sup>st</sup> respondent authority and presented the real facts of the case. The contract workers were being paid Rs.7500 to 8500/- apart from food during night shift and also travelling facility.

6. The General Secretary of Kerala Sea Food Workers Union (TUCI) also entered appearance and filed counter affidavit. According to him the present appeal itself is not maintainable as the same is filed to harass the employees against whom the 1<sup>st</sup> respondent has assessed the dues. The union preferred a complaint before the EPF and ESI authorities for extending the social security benefits to all the employees working in the appellant establishment. In pursuance of the complaint filed by the union, an Enforcement Officer conducted inspection of the appellant company. The

management tried their level best to hide the employees from the inspection team. However the union representatives ensured that all the employees appeared before the Enforcement Officer and gave their statement. The report given by the Enforcement Officer is based on the real facts and the respondent authority assessed the dues on the basis of the information. The claim of the appellant that these workers are engaged through one contractor Sri.Sanal Sathyan is also not correct. The contract is only a sham arrangement because the alleged contractor, Sri.Sanal Sathyan is none other than the brother of the Managing Director of the appellant establishment. After the inspection by the Enforcement Officer the appellant denied entry to the lady workers to its premises. They were allowed entry only after they signed a blank paper provided by the appellant establishment. The appellant establishment also initiated action against some of its employees which was challenged by the union before the Labour Court, Kollam. The Hon'ble Labour Court found that domestic enquiry conducted against those employees were against principles of natural justice. The appellant establishment has challenged the said order before the Hon'ble High Court of Kerala in O.P.(LC).no.13/2019. The union filed 27 documents and proof affidavit in addition to the claim statement filed before the 1<sup>st</sup> respondent. The impugned order was passed after taking into account all those documents produced by the union.

7. It is admitted by the appellant, contractor, union and the employees' representatives that the appellant establishment is having two category of employees. The first category is regular employees. According to the 1<sup>st</sup> respondent, there is only one employee who was not enrolled to the PF. The second category of employees are contract employees engaged through a contractor. According to the union the contractor is none other than the brother of the Managing Director of the appellant and therefore it is a sham arrangement. It is also admitted by the appellant as well as the other respondents that there was some labour unrest in the appellant establishment and the union spearheading the agitation filed complaint with the 1<sup>st</sup> respondent organization that the appellant has not enrolled contract employees to PF. The 1<sup>st</sup> respondent therefore ordered investigation into the complaint. A squad of Enforcement Officers conducted an inspection of the appellant establishment and found that 62 contract employees engaged through a contractor and one regular employee who are eligible to be enrolled to the fund were not enrolled. Since the appellant failed to produce any records, the Enforcement Officer directed the appellant to produce the records before him on 20.02.2013. The appellant did not produce the records on the stipulated date. The Enforcement Officers, when they visited the appellant establishment, prepared a mahazar in the presence of the contractor as well as the Managing Director of the appellant

establishment. In the mahazar which is produced as R2, the name and address of the employees, the date of joining of the establishment and wages drawn by them were furnished. The Managing Director of the appellant establishment as well as the contractor signed in the mahazar prepared. Since the appellant failed to produce the documents called for before the Enforcement Officer, he prepared an inspection report and forwarded the same to the 1<sup>st</sup> respondent. Subsequently on 26.02.2013 the appellant through his representative produced the records called by the Enforcement Officer. Since the report has already been forwarded, the Enforcement Officer did not accept the documents. On the basis of the report, the 1<sup>st</sup> respondent initiated an enquiry U/s 7A of the Act. In the enquiry the appellant, the union, the contractor and some of the contract employees were represented. The appellant and the contractor produced some records. According to the union they produced 27 documents. However the appellant failed to produce the Profit & Loss account from 1995-96 to 2012-13, a copy of the contract agreement and the wages paid, attendance of contract employees to reconcile the Balance Sheet wages with acquaintance wages and also to clarify the ledger item 'processing expenses'. The contractor and the representatives of the contract employees supported the case of the appellant that they were not eligible to be enrolled to PF and they were drawing a total salary beyond the statutory limit of Rs.6500/-. The

representatives of the employees also submitted during the course of enquiry that their date of joining is not correctly mentioned in the mahazar prepared by the Enforcement Officer. They furnished some date on the assurance of the union that they will be get provident fund benefit from that date. It is seen from the list of eligible employees to be enrolled as per the impugned order that there were only two employees who claimed to have joined the appellant establishment on 01.05.1995.

8. From the above it is clear that the 1<sup>st</sup> respondent was having some information available with him which he should have relied on while passing the impugned order. If he had any reservation regarding any document he should have explained in the impugned order stating that he is not relying on certain documents for the reasons recorded therein. However it is seen that the 1<sup>st</sup> respondent has simply relied on the report of the Enforcement Officer to arrive at a conclusion that the contract employees were being engaged from 05/1995 and the dues were calculated on a hypothetical formula. The 1<sup>st</sup> respondent authority ought to have clarified the reasons why he did not rely on the documents available to him at the time of the enquiry. The report of the Enforcement Officer is a good starting point for initiating an enquiry U/s 7A. But relying on that document alone to assess the dues when other related

documents are available, is a dangerous procedure. Apart from the mahazar, there is no other document or proof to establish that the appellant was engaging contract employees from 1995. It is particularly important since the Enforcement Officer also failed to peruse the original records produced by the appellant before him as he has already finalised the report on the basis of the mahazar and submitted to the 1<sup>st</sup> respondent authority. Presumptive assessments can be considered only when the employers or contractors for that matter failed to produce any records before the respondent authority. In such cases also the respondent authority will have to furnish reasons why he is compelled to accept presumptive assessments and the action taken by him to get the required documents in the enquiry. In the absence of non production of records, inspite of prudent action by the assessing officers, the assessing officers can resort to assessments on the basis of the report of the Enforcement Officer or on the basis of the minimum records available before him. In this particular case it is seen that the contractor had produced some relevant records according to which some of the contract employees who are alleged to be non enrolled are excluded employees. The explanation offered by the employees' representatives in the proceedings was that they were directed by the union and some of the regular employees of the appellant to furnish only the basic wages and therefore they have not included DA and other allowances



in the mahazar prepared by the Enforcement Officer. It is always possible for the 1<sup>st</sup> respondent authority to co-relate the information available in the wages register with the contract amount paid by the appellant and corresponding balance sheet figures. It is seen that no such effort is made by the 1<sup>st</sup> respondent authority. When a coercive judicial enquiry U/s 7A is conducted by assessing officer, he will have to take all action to ensure a proper assessment taking into account the circumstances of the case. Adopting a short cut method of only taking the report of the Enforcement Officer without co-relating the same with the records maintained by the employers will have the disastrous consequence of prolonging adjudication without extending the real benefits to the affected employees. The 1<sup>st</sup> respondent authority shall consider the date from which the contract employees are required to be enrolled, the eligibility of the employees to be enrolled taking into account the claim of the contractor and the representatives of the employees that they were excluded employees prior to the enhancement of salary limit.

9. Considering the facts, circumstances, pleading and evidence in this appeal I am not inclined to accept the assessment by the 1<sup>st</sup> respondent authority in the impugned order.

Hence the appeal is allowed, the impugned order is set-aside and the 1<sup>st</sup> respondent is directed to re-assess the dues within a period of 6 months after issuing notice to all the concerned parties. If the parties concerned fail to attend the proceedings or fail to produce the records called for, the 1<sup>st</sup> respondent can decide the matter according to law. The pre-deposit made by the appellant as per the direction of the Hon'ble High Court may be adjusted or refunded after conclusion of the enquiry.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer