



सत्यमेव जयते

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

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

(Monday the 1<sup>st</sup> day of March, 2021)

**APPEAL No.407/2018**

Appellant : M/s.Thejaswini Co-operative Hospital &  
Research Centre Ltd  
Nileshwar P.O.  
Kasargod - 671314

By Adv.Suresh Kumar Kodoth &  
Antony Binu K.P.

Respondent : The Regional PF Commissioner  
EPFO, Regional Office  
Kannur -

By Adv.K. C. Santhosh Kumar

This case coming up for final hearing on 07.01.2021 and this Tribunal-cum-Labour Court on 01.03.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KNR/1712787/ENF-2(3)/7A/2018-19/1129 dt.30.08.2018 issued U/s 7A of the EPF & MP Act, 1952 (hereinafter referred to as 'the Act') deciding the question of applicability of the provisions of the Act to the appellant establishment.

2. The appellant is an establishment registered under the Kerala Co-operative Societies Act, 1969. The society owns and manages a multi speciality medical hospital. The respondent informed the appellant that they are liable to be covered under the provisions of the Act. The respondent initiated action by issuing a notice dt.07.07.2017. The appellant filed reply dt.14.07.2017 stating that the appellant establishment is registered under the provisions of Kerala Co-operative Societies Act(KCS Act) and it has established a provident fund for all the 32 regular employees on its rules. The respondent vide letter dt.27.07.2017 informed the appellant that the establishment is coverable under the provisions of the Act since it runs with the aid of power and has engaged more than 20 employees. Hence the appellant was directed to register online under the provisions of the Act. The appellant appeared before the respondent, produced relevant records such as attendance register, aquittance register, day book for the period from 04/2017 to 05/2018, payment register, general ledger, Profit & Loss account and balance sheet for the year 31.03.2017. The appellant took a stand that since the appellant establishment is covered under the provisions of the KCS Act and has implemented Provident Fund and Pension Scheme which are more beneficial to the employees the appellant is entitled for exclusion U/s 16 of the Act. The sub rules framed by the society for the purpose of provident fund as per Sec 61 of KCS Act 1969 was approved by the Joint

Registrar on 01.01.2010. The respondent issued the final order stating that the appellant establishment is coverable under the provisions of the Act. Since the appellant failed to comply, the respondent issued prosecution notice. A copy of the prosecution notice dt.20.09.2018 is produced and marked as Annexure A2. The appellant filed an explanation dt.15.10.2018 and requested that further steps on the notice may be deferred as steps are being taken for compliance U/s 61 of the KCS Act. A true copy of the letter dt.15.10.2018 is produced and marked as Annexure A3. The appellant deposited Rs.30,48,128/- being with provident fund contribution in the FD account of Kasargod District Co-operative Bank. The true copy of the covering letter and receipt dt.22.10.2018 is produced and marked as Annexures A4, A5 respectively. The appellant filed W.P.(C) no.34769/2018 before the Hon'ble High Court of Kerala. The Hon'ble High Court having noticed that alternate remedy is available, disposed off the petition vide judgement dt.22.11.2018. A copy of the judgment dt.22.11.2018 is produced and marked as Annexure A6. The appellant establishment is liable to be drawn under the purview of EPF & MP Act only if the provident fund under EPF & MP Act is more beneficial than the Scheme available in the appellant. The rate of provident fund contribution under KCS Act is 10% and under EPF Act is 12%. A member who contributes 12% of their basic and DA under EPF Act will be getting lesser benefits than the PF related pension under KCS Act. The

respondent ought to have seen that by virtue of Sec 18A, KCS Act 1969 the employees of the establishment were brought under the Kerala Co-operative Societies Employees Self Financing Scheme 1994. The respondent failed to consider this aspect while deciding the applicability of the Act to the appellant establishment. The Society has been paying contribution to the Pension Board at the rate of 12% of pay and DA without any default. The employees are therefore entitled for higher pension under the said scheme. The appellant establishment registered under the KCS Act had to abide by the provisions of the Act in regard to the staff it engages. The benefits of provident fund cannot be extended to the daily rated/contract employees since they are not regarded as regular staff to be treated at par with regular employees. As per Sec 61(1) of the KCS Act, the appellant establishment will have to establish a contributory provident fund for the benefit of the employees in accordance with the rules or the EPF & MP Act whichever is more beneficial. Proviso to the Section further states that contributory provident fund shall not apply to Society where provisions of Self Financing Pension Scheme framed U/s 80A are made applicable and such Society shall establish a provident fund in such manner and subject to such conditions for the benefit of employees. In view of the above provisions the employees have an option with regard to the applicability of EPF & MP Act. In **Kerala State Co-operative Employees**

**Pension Board Vs C. D. Udaya Kumar and other**, 2012 (3) KLT 320 the Hon'ble High Court has recognised the above right of option for the employees of Co-operative Society. In the absence of such selection, the respondent cannot enforce the provisions of the EPF & MP Act on the appellant. The approach of the respondent cannot satisfy the principles of reasonableness and rationality.

3. The respondent filed counter denying the above allegations. An Enforcement Officer of the respondent during his inspection on 16.11.2016 found that the appellant establishment is engaging 32 employees and they are working with the aid of power. Hence the appellant establishment was directed to register under the Act in its online portal within 7 days. Thereafter a reminder was also issued on 15.12.2016. The Enforcement Officer was deputed to facilitate the online registration. In spite of repeated efforts by the respondent, the appellant failed to register their establishment under the provisions of the Act. Hence a show cause notice dt.07.07.2017 was issued to the appellant. In the reply dt.14.07.2017 the appellant took a view that they are working under the administrative control of the Co-operative department. It was clarified to the appellant establishment that they can seek exemption U/s 17 of the Act and if they are contributing to Kerala Co-operative Societies Employees Self Financing Scheme 1994 the Employees Pension Scheme 1995 they are entitled for exemption from Employees Pension Scheme 1995. On the

basis of the representation filed, the appellant is not entitled for exemption and therefore the appellant establishment was covered U/s 1(3)(b) of the Act w.e.f. 16.11.2016. The appellant failed to comply even after the coverage of the appellant establishment under the provisions of the Act. The appellant establishment utilised the provident fund money recovered from the employees for other purposes. When the respondent initiated action the appellant remitted some amount in the Fixed Deposit of Kasargod District Co-operative Bank. A mere deposit of amount in Fixed Deposit is in violation of Sec 16(1) of the KCS Act. As per the provisions of the Act, along with the employees contribution of 12%, the employer also has to contribute 12% of the employees wages, out of which 8.33% will go to the Pension Fund and the remaining 3.67% will go to the individual account of the employees. Hence the individual PF account of the employees will have a contribution of 15.67% of wages every month along with cumulative interest on the same. The appellant also failed to make any contribution to the KCS Act as they failed to remit the contribution towards Kerala Co-operative Societies Employees Self Financing Scheme and Pension Scheme. It is to be noted that the Govt of Kerala has granted exemption to primary co-operative societies only from the operation of Employees Pension Scheme and does not absolve the appellant from the liability to comply under EPF and EDLI Schemes. It is seen that the contribution

collected from the employees towards provident fund was kept in the Fixed Deposit and is shown in the balance sheet of the appellant establishment. The deposits are shown as part of their business. The appellant failed to produce any data to verify whether they also contributed at an equal rate. Provisions of Sec 61 of KCS Act makes it clear that the provident fund established by the society shall not be used in the business of the society and that shall not form part of the assets of the society. True copy of the audited report is produced and marked as Annexure R1(a). As already stated, under the EPF Scheme an employee is entitled for 15.67% of its wages as contribution in every month and also the cumulative interest. Under the Employees Pension Scheme the employee is not making any contribution. 8.33% of the employers contribution is to be transferred to the Pension Fund. The Hon'ble High Court of Kerala in **Kerala State Co-operative Employees Pension Board Vs C. D. Udaya Kumar** (Supra) made clear that employees are the persons entitled to make an option but such option shall be in respect of more beneficial schemes. Provisions of Sec 16(1)(a) is not applicable to the appellant since the establishment is working with the aid of power. Sec 16(1)(c) is also not applicable to the appellant as the appellant failed to establish a contributory provident fund and failed to contribute towards co-operative pension scheme.

4. The appellant filed a reply statement along with additional documents. According to the appellant they established a provident fund as per Sec 61 of KCS Act 1969. The society framed sub rules in relation to the provident fund for its employees as per resolution adopted on 28.08.2009. A true copy of the said sub rule is produced and marked as Annexure A7. The Joint Registrar of Co-operative Society, Kasargod approved the sub rule, vide proceedings dt.01.12.2010. A true copy of the proceedings is produced and marked as Annexure A8. All the 32 regular employees were covered under the provident fund which have been constituted with the share of 10% contribution deducted from the salary of the accounts. Nine other employees are also absorbed as regular employees subsequently and therefore joined the provident fund. Hence the claim of the respondent that no provident fund is constituted by the appellant is wrong. It is also a fact that the employees of the appellant were brought under the Kerala Co-operative Societies Employees Self Financing Scheme 1994 and contribution at the rate of 12% of basic and DA is paid from the funds of the establishment. The contribution at the rate of 10% deducted from the salary of the employees and amounting to Rs.30,48,128/- has been deposited with the Bank on 22.10.2018 and this corpus is exclusively meant for payment of provident fund to the employees on their retirement. The said deposit satisfies the requirement of Sec 61 of KCS Act. The said amount is



deposited under provident fund deposit and is not available for the appellant establishment for any other purposes. The difference of contribution under the two Acts has no impact on the actual benefit accrued to the employees. The higher rate of deduction at the rate of 12% does not bring proportionate benefits to the employees.

5. The main issue raised by the appellant in this appeal is with regard to the applicability of the provisions of the Act to the appellant establishment. According to the learned Counsel for the appellant the appellant being a Co-operative Society registered under the KCS Act, is entitled to maintain a provident fund of its own for its employees. As per Sec 61 of KCS Act, the appellant also framed sub rules in relation to provident fund. The sub rules were also approved by Joint Registrar of Co-operative societies. It was also pointed out by the learned Counsel for the appellant, U/s 18A of KCS Act 1969 the employees of the establishment were brought under the Kerala Co-operative Societies Employees Self Financing Scheme 1994 and the contribution at the rate of 12% is being paid to the said fund. According to the learned Counsel for the respondent, the provisions of EPF & MP Act is applicable to the appellant establishment and if at all the appellant want to claim exemption they shall apply for exemption U/s 17 of the Act and exemption will be granted if the scheme of the appellant establishment is more beneficial to

the employees. According to the Counsel for the respondent there is no scheme for provident fund maintained by the appellant and 10% contribution deducted from the employees of the appellant are kept in the Fixed Deposit and there is no contribution from the side of the employer. The respondent also pointed out that there is no proof that the appellant is contributing to Kerala Co-operative Societies Employees Self Financing Scheme 1994.

6. There are two basic issues raised by the Counsel in this appeal. One is with regard to the applicability of EPF & MP Act to the appellant establishment. It is seen from the impugned order that the appellant is having around 32 regular employees and around 20 employees engaged on contract/casual basis. The Hon'ble High Court of Kerala in **Kottayam District Co-operative Hospital Vs RPF**, 2009 LIC 2666 held that a co-operative hospital running CT scan, medial store and pathological lab is evidently using power and therefore it cannot fall U/s 16(1)(a) of the Act. As per Sec 16(1)(a) the "Act shall not apply to any establishment registered under the Co-operative Societies Act 1912 or any other law for the time being in force in any State relating to co-operative societies employing less than 50 persons and working without the aid of power". Applying the test given by the Hon'ble High Court of Kerala in above referred case, it is very clear that the exclusion provided U/s 16(1)(a) of the Act will not be applicable to the appellant establishment. According to the

learned Counsel for the appellant, they are entitled to the benefit of exclusion U/s 16(1)(c) of the Act. As per Sec 16(1)(c) the "Act shall not apply to any other establishment set up any Central Provisional or State Act whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed up under the Act governing such benefits". According to the learned Counsel for the appellant the appellant establishment has framed the rules for provident fund U/s 61 of KCS Act and the contribution is being deposited as per the rules. The Joint Registrar of Co-operative Societies, Kasargod also approved the said rule. It was also pointed out that the appellant establishment is remitting contribution to Kerala Co-operative Societies Employees Self Financing Scheme 1994 at the rate of 12%. The appellant failed to produce any documentary evidence to support the claim of transfer of 12% of the pay and DA of its employees to the self financing scheme. The learned Counsel for the respondent took a view that the appellant is not remitting any contribution to the Self Financing Scheme 1994. The respondent also took a view that as per the provisions of EPF & MP Act the employees are entitled for 15.67% of their wages as monthly contribution and the appellant is deducting and remitting only 10% of wages as contribution and depositing the same in a fixed deposit account. According to the respondent the EPF Scheme under EPF & MP Act is more beneficial to the employees

than the benefits available under the appellant's scheme. However U/s 16(1)(c) the appellant is entitled for exclusion if the employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under the Act governing such benefits. It is seen that the appellant produced the sub rules framed U/s 61 of the Co-operative Societies Act 1961 in this proceedings and the same was not produced before the respondent at the time of Sec 7A enquiry. It is also seen that the appellant failed to produce any proof to show that the pension contribution is being transferred to the Kerala Co-operative Societies Employees Self Financing Scheme 1994. The appellant was deducting and keeping the provident fund money of the employees and only after the respondent initiated action that the appellant transferred the money to a fixed deposit. The respondent shall also examine whether keeping the money in fixed deposit will satisfy the requirement of the rates. He shall also examine how the monthly contribution collected from the salary of the employees is handled by the appellant.

7. Considering the facts, circumstances, pleadings and evidence in this appeal I am not inclined to uphold the impugned order. The respondent will have to examine the exclusion of the appellant establishment under 16(1)(c) of the Act in view of the observations made above.

Hence the appeal is allowed, the impugned order is set aside and the matter is remitted back to the respondent to re-decide the issue on the basis of the observations made above within a period of 6 months after issuing notice to the appellant. In case the appellant fails to produce any documents to support their claim of exclusion, the respondent may take adverse inference.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer