



सत्यमेव जयते

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

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

(Friday the 23<sup>rd</sup> day of October, 2020)

**APPEAL No.480/2018**

Appellant : M/s.Aramana Bar & Restaurant  
Railway Station Road  
Thrissur – 680001

By Adv.K.K.Premalal

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office, Kaloor  
Kochi – 682017

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 02.03 .2020 and this Tribunal-cum-Labour Court on 23.10.2020 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KC/15427/ENF-4(1)/2017/50 dt.31.03.2017 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') in respect of one Shri.K.N. Ramachandran for the period from 09/1996 to 03/1998. The total dues assessed is Rs.12,902/-.

2. The appellant is an establishment covered under the provisions of the Act. The appellant was regular in compliance. The appellant received an order U/s 7A dt.31.03.2017 directing to remit an amount of Rs.12,902/- in respect of Sri. Shri.K.N. Ramachandran for the period from 09/1996 to 03/1998. The appellant did not receive any notice or summons in respect of the assessment. The 7A order was passed without affording the appellant a reasonable opportunity to represent his case. It appears that the impugned order is issued assessing dues in respect of Shri.K.N. Ramachandran. The appellant never employed Shri.K.N. Ramachandran as referred to in the 7A order. Hence the appellant filed an application for review U/s 7B of the Act. The appellant appeared in the enquiry and after repeated request, a copy of the complaint filed by Shri.K.N. Ramachandran was given to the appellant. The enquiry was further posted to 14.06.2018 for filing written statement and documents on the side of the appellant. On 14.06.2018 the Counsel appearing for the appellant sent the written statement through email and by Speed Post to the respondent. A true copy of the written statement dt. 14.06.2018 is produced and marked as Annexure 3. True copy of the covering letter dt.14.06.2018 is produced and marked as Annexure 4. From the tracking record of the Speed Post it is seen that written statement was physically received by the respondent on 19.06.2018. A true copy of the tracking record

of the postal article sent on 14.06.2018 is produced and marked as Annexure 5. Without considering the above statements, the impugned order is issued. The findings arrived at in Annexure 1, 7A order and Annexure 6, 7B review order are against the records and evidence. The records relied on the complaint are in no way connected with the appellant establishment. The evidence produced by the complainant would show that he was an employee of another establishment. The claim of the employee was that he was employed by Sri. V.K.Asokan. The said V.K.Asokan is not a partner of the appellant establishment. This fact is borne out the records including Form 5A available in the office of the respondent. The respondent has denied the appellant a reasonable opportunity to represent his case.

3. The respondent filed counter denying the allegations in the appeal memorandum. The appellant is an establishment covered under the provisions of the Act w.e.f. 01.09.1996. An enquiry U/s 7A of the Act was initiated on the basis of a complaint from one Shri.K.N. Ramachandran who worked in various establishments owned by Sri.V.K.Aoskan and his family members. The complainant stated that he worked at M/s.Bini Tourist Home, M/s.Aramana Bar & Restaurant, M/s.Hotel Hill Top and M/s.Asoka Inn all covered under the provisions of the Act and some other establishments which are not covered under the Act. According to the complainant all these units

are owned by Sri.V.K.Aoskan and his family members. Further the complainant also stated that he worked with the above establishments for the period from 09/1996 to 03/1998 and the employees' share of contribution was deducted from his salary. Since the employment of the complainant stands among various establishments under the management of Sri.V.K.Aoskan and his family members, a combined enquiry was conducted. A detailed proceedings U/s 7A was issued on 31.03.2017 directing the employer to remit an amount of Rs.12,902/- towards dues in respect of the complainant. The assessment is made on the basis of an investigation report submitted by the Enforcement Officer. The appellant filed a review application U/s 7B of the Act. The 7B application was filed on the ground that the appellant was not provided reasonable opportunity of being heard. The appellant was provided 12 opportunities before finalising the 7B review application. However the appellant failed to produce any records before the Sec 7B authority. Hence the 7B application was rejected vide order dt.14.06.2018. As per the office records no written statement dt. 14.06.2018 is received by the respondent during the course of enquiry. It is a well settled law that what is not raised before the enquiry authority cannot be raised before the Appellate authority. The Hon'ble High Court of Rajasthan in **ESS DEE Carpet Enterprises Vs UOI**, 1985 LIC 1116 held that a question of fact

not raised before the Regional Provident Fund Commissioner in the enquiry U/s 7A cannot be raised in the writ petition. The appellant was provided the copies of the complaint and other documents relied on by the complainant. 12 opportunities were given over a period of one year to the appellant to submit their argument and evidence. The appellant failed to produce any documents or written statement inspite of several opportunities provided to them. As per form 5A available in the office Sri. V.K.Asokan is the Managing Partner of the appellant establishment. Hence the impugned order was issued in the name of the Managing Partner.

4. The enquiry U/s 7A of the Act was initiated on the basis of a complaint filed by one Sri. K.N.Ramachandran. According to the complainant, he worked in various establishments owned and managed by Sri.V.K.Aoskan and his family. Some of the units are covered under the provisions of the Act and few establishments are not covered. The respondent issued the impugned order holding that the complainant was employee of the appellant establishment for the period from 09/1996 to 03/1998 and dues for this period was also assessed. On receipt of the order, the appellant filed an application U/s 7B to review the order U/s 7A. The respondent gave more than adequate opportunity to the appellant to file his defence statement and also to produce records to substantiate the same. Even after 12 opportunities the

appellant failed to produce any document before the Sec 7B authority. Hence the 7B authority issued an order dismissing the review application.

5. The impugned order U/s 7A or the review order U/s 7B of the Act do not disclose the documents relied on by the authorities to decide whether the complainant Sri.K.N. Ramachandran was an employee of the appellant during the relevant period of time. The impugned order U/s 7A is a completely non speaking order and is only referring to another order issued against another establishment. Hence it is not possible to make out anything from Sec 7A order as to how the respondent arrived at the conclusion that the complainant was an employee of the appellant during the relevant point of time. Further it is also not clear on what basis the assessment of dues is made by the respondent.

6. Considering the facts and circumstances of this case, I am inclined to hold that the appellant deserves one more opportunity to adduce evidence on his side and also to counter the claim of the complainant and the documents if any, produced by him.

Hence the appeal is allowed and the impugned orders U/s 7A and 7B of the Act are set-aside and the matter is remitted back to the respondent to re-decide the matter after issuing notice to the appellant and the complainant within a period of 3 months from the date of receipt of this order. If the appellant fails to avail the opportunity or fails to produce the documents called for, the respondent may take an adverse inference on the same. The Sec 7(O) amount remitted by the appellant shall be adjusted after finalisation of the enquiry.

Sd/-

(V. Vijaya Kumar)  
Presiding Officer