



सत्यमेव जयते

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

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

(Thursday the 8th day of April, 2021)

APPEAL No.515/2019
(Old No.718(7)2008)

Appellant : Sri.N. Nandakumar
Managing Partner
M/s.Sastha Enterprises
Beach Road
Kollam - 691001

By Adv.K.Y.Johnson

Respondent : The Regional PF Commissioner
EPFO, Regional Office, Pattom
Trivandrum – 695004

This case coming up for final hearing on 18.02.2021 and this Tribunal-cum-Labour Court on 08.04.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/1230/ENF-1(5)/2008/5140 dt.29.08.2008 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on non enrolled employees and evaded wages for the period from 04/2003 to 12/2007. The total dues assessed is Rs.21,58,385/-.

2. The appellant is engaged in cashew processing and export and is operating several factories in the state. The factory involved in this case is covered under code no.KR/1230. The appellant is regular in compliance with the provisions of the Act. While so the General Secretary of Kerala State Cashew Worker's Federation filed a complaint with the respondent that the appellant is not enrolling all the employees to provident fund membership and also stating that the contribution is not paid on the actual wages. On the basis of the complaint, Assistant Provident Fund Commissioner initiated an enquiry U/s 7A of the Act. After 12/2007 the present respondent, Regional Provident Fund Commissioner took over the enquiry. During the course of enquiry the respondent deputed a squad of Enforcement Officers to conduct an inspection and verify the books of account maintained by the appellant establishment. The squad visited the factory on 02.11.2007 and 28.02.2008. From the impugned order it is seen that the squad disputed the genuineness of cash book and ledger maintained for the relevant years. On 02.07.2008 the complainant, trade union leader produced certain records which were shown to the representative of the appellant. The representative of the appellant was made to accept the genuineness of the documents produced by the complainant. The whole enquiry is vitiated by malafide breach of fundamental principles of natural justice and the judicial procedure. In spite of specific request, copies of the complaint filed by the

complainant was not disclosed to the appellant. The complaint was dt.13.01.2004 and the enquiry is initiated only on 30.03.2007. The enquiry U/s 7A is contemplated only for one year whereas in this case it is initiated for the period from 2003 to 2007. The respondent relied on isolated and irrelevant material while issuing the impugned order. Had the respondent verify the books of accounts maintained by the appellant he would have been convinced about the genuineness of the same instead of relying on the report of the squad. The procedure adopted by the respondent in the calculation of contribution is irrelevant and unrealistic. The respondent relied on the assessment by the Inspector, Kerala Cashew Worker's Relief Welfare Fund. Those orders are being challenged in appeal. The claim of the respondent that there are discrepancies between the wages shown in the register of wages maintained in the factory and wages shown before the ESIC authorities and the wages shown in the Provident Fund records is not correct. The appellant was not afforded sufficient opportunities to explain all these anomalies.

3. The respondent filed counter denying the above allegations. General Secretary, Kerala State Cashew Worker's Federation filed a complaint dt.30.01.2004 alleging that the appellant has not enrolled all the employees of the factory and also not remitting provident fund contributions on the actual

wages paid. He also alleged that the appellant is evading wages from the year 2003 onwards. He raised the same issues in his complaint dt.08.08.2005 and 03.10.2005. An Enforcement Officer was deputed to verify the correctness of the complaint. Since the appellant did not co-operate and produce the records, the officer could not report the correct data and verify the correctness of the complaint. Hence an enquiry U/s 7A of the Act was initiated and the appellant was directed to produce records before the respondent authority. The complainant was also summoned in the enquiry to attend and produce the related documents. The enquiry started on 30.03.2007 and it was adjourned 21 times and the appellant failed to produce any documents in the enquiry. In spite of repeated directions the appellant produced no documents other than the balance sheet and Profit & Loss account for the year 2003-04, 2005-06 and 2006-07. The balance sheet is a consolidated balance sheet for different cashew factories run by the appellant. Hence a squad of Enforcement Officers were deputed to visit and collect records such as wages register, ledger account etc., pertaining to the particular unit. The appellant failed to produce any documents before the squad of officers also. The squad of officers again visited the appellant establishment on 28.08.2008 and the squad reported that there are large scale discrepancies in the records and returns filed before the EPF and ESIC authorities. The squad also reported that the appellant produced certain freshly prepared ledger before the

squad which is not reliable. However the squad collected copies of the proceedings of the Inspector, Kerala Cashew Worker's Relief Welfare Fund for the period 2004-05 to 2006-07, ESI half yearly returns for 04/2003 to 30.9.2007, ledger account of the appellant establishment 2004-05 to 2006-07 and EPF remittance details for 2007-08. The complainant also produced the proceedings dt.24.09.2007 of the Inspector, Kerala Cashew Worker's Relief Welfare Fund in which the total number of mandays unitised for production of cashew for the year 2006-07 and the contribution paid to the welfare fund are indicated. He has also produced the wages details of few employees for the period from 2005-07. The complainant further produced a list of 123 workers with their provident fund account number and wages receipt slips during 2005-07. The documents produced by the complainant were handed over to the authorised representative of the appellant who attended the enquiry and also directed them to file their objections, if any. On 02.07.2008 the authorised representative attended the 7A enquiry submitted that the amount of wages shown in the statement filed by the complainant is the actual wages paid to the employees whose names are mentioned there. But the wages shown in the list does not tally with the wages shown in the bonus register of the establishment. The representatives of the appellant submitted that the trade union leaders objected to the bonus payment based on the wages recorded in the bonus register and demanded bonus on

actual wages. The dispute was settled by making payment of bonus based on the actual wages paid to the workers and recorded in their leave book. It is admitted by the representatives of the appellant that the amount of wages shown in the leave book produced by the complainant is correct. On verification of the balance sheet and Profit & Loss account and ledger for the period 2003-04 to 2006-07 it is seen that the appellant is paying contribution only on a small portion of wages paid to the employees. On a verification of the ESI returns filed by the appellant for the period 2003-04 to 2006-07 and the proceedings of Inspector, Kerala Cashew Worker's Relief Welfare Fund and provident fund remittances it was found that the appellant is reporting different wages for provident fund contribution and ESIC contribution. The figures of mandays furnished in the proceedings of Inspector, Kerala Cashew Worker's Relief Welfare Fund also do not agree with EPF and ESIC returns. From an analysis of the above evidence it is clear that the appellant is fabricating and producing records before different statutory authorities. Since the appellant failed to produce the genuine records revealing the actual wages paid to its employees for the period from 2003-04 to 2006-07 and it is established that the minimum records produced were also fabricated. It is decided to rely on the proceedings of Inspector, Kerala Cashew Worker's Relief Welfare Fund which is issued by a statutory authority after hearing the appellant. The appellant filed W.P.no.27683/2008 before

Hon'ble High Court of Kerala seeking a direction to Regional Provident Fund Commissioner not to take any further action in pursuance of the impugned order till the review application filed by the appellant U/s 7B of the Act is disposed off. The Hon'ble High Court granted stay of the enforcement of the proceedings on the condition that the appellant shall remit Rs.5 lakhs within one month period vide its order dt.17.09.2008. The appellant filed the review application only on 15.09.2008 and was received by the respondent on 19.09.2008, after the disposal of the writ petition by the Hon'ble High Court. The appellant did not remit Rs.5 lakhs as directed by the Hon'ble High Court. Without complying with the above direction the appellant filed an appeal before EPF Appellate Tribunal, New Delhi when the review petition was still pending with the respondent. The appellant again filed another writ petition no.32592/2008 suppressing the fact that the appellant failed to comply with the earlier direction issued by the Hon'ble High Court of Kerala in W.P.(C) no.27983/2008. In the second petition the appellant prayed that the respondent may be restrained from taking coercive action until disposal of the appeal pending before the EPF Appellate Tribunal. The Hon'ble High Court directed the EPF Appellate Tribunal to pass orders in the appeal filed by the appellant and also restrained the respondent from taking recovery action till the final disposing of the appeal. The respondent rejected the application for review U/s 7B of the Act vide order dt.19.12.2008. It is clear from the above

tactics adopted by the appellant that he is only trying to delay the process of recovery of the assessed dues to be credited to the accounts of the employees of the appellant. The allegation of the appellant that the enquiry was transferred from Assistant Provident Fund Commissioner to Regional Provident Fund Commissioner with ulterior motive is not correct. As per the head office instructions the enquiries of establishments employing upto 500 employees are required to be handled by Assistant Provident Fund Commissioner and the enquiries of the establishments where the employment strength more than 500 is to be handled by Regional Provident Fund Commissioner. As on 06/2005, the employment strength of the appellant establishment was 558.

4. The appellant herein challenged the impugned order before the EPF Appellate Tribunal, New Delhi in ATA no.718(7)2008. The EPF Appellate Tribunal vide order dt.12.01.2011 dismissed the appeal. The appellant approached the Hon'ble High Court of Kerala in W.P.(C) no.11278/2011. The Hon'ble High Court of Kerala vide judgment dt.03.01.2012 allowed the writ petition, set aside the order of EPF Appellate Tribunal with a direction to take back the appeal to file, issue notice to the parties, afford them an opportunity of being heard and pass orders after adverting to various contentions raised by the petitioner in the appeal. The Hon'ble High Court also directed that revised

orders in the matter shall be passed expeditiously and in any event within 4 months from the date of judgment. EPF Appellate Tribunal, New Delhi could not complete the proceedings as directed by the Hon'ble High Court of Kerala and subsequently EPF Appellate Tribunal transferred the concerned file to the EPF Appellate Tribunal, Bangalore and later the EPF Appellate Tribunal itself was abolished by amendment of the Act. The files were subsequently transferred to this Tribunal for final adjudication. The notice was issued to both the parties, heard the Counsels and the matter is taken for orders.

5. The respondent received complaints from a trade union leader that the appellant has not enrolled substantial number of employees and also the wages on which the contribution is paid is substantially low. Respondent deputed an Enforcement Officer to investigate the complaint. The appellant did not co-operate with the Enforcement Officer by producing the records for inspection. The Enforcement Officer reported the same to the respondent. The respondent therefore initiated an enquiry U/s 7A of the Act. The complainant was also summoned in the enquiry. According to the respondent, the appellant was given 21 opportunities to produce the relevant records before the respondent authority. The appellant produced only the balance sheet of the corporate office for 3 years. The respondent therefore deputed a squad of

Enforcement Officers to verify and produce the records of the appellant in the enquiry. The squad of officers reported that the cash book and the ledger produced before them are newly created with falsified data and therefore the same cannot be relied on. The squad therefore collected some third party information such as ESIC returns filed by the appellant for the relevant point of time and also the copies of proceedings of the Inspector, Kerala Cashew Worker's Relief Welfare Fund, copies of balance sheet and EPF remittance particulars for the year 2007-08. The complainant filed the details of 122 employees with the details of wages actually received by them. In the above statement the complainant has furnished the wages as per the leave book. On a perusal of the details the respondent authority noticed that the wages as per the bonus register is only 50% of the wages paid as per the leave book. Hence during the course of 7A enquiry the respondent handed over the details provided by the complainant to the representatives of the appellant who attended the enquiry. They sought some time to clarify the difference in wages in two documents available with the appellant establishment. On the next date of posting the representative of the appellant confirmed that the wages reflected in the leave book is correct. With regard to the difference in wages, the representative of the appellant clarified that when the appellant tried to release bonus on the basis of wages reflected in the bonus register, the same was disputed by the

trade union representatives and the dispute was finally settled by making payment of bonus based on the actual wages paid as reflected in the leave book of the employees. The appellant thereafter tried to retract the statement of its representatives stating that the same is extracted from the representatives by the respondent authority. The impugned order also elaborately discussed the various components of wages, processing charge, salary to staff, leave with wages, holiday wages, wages reported to provident fund, wages reported to ESI and demonstrated that the appellant was resorting to falsification of data to suit his convenience and reduce contribution under the provisions of the Act and Schemes. The respondent also elaborately examined the orders issued by Kerala Cashew Workers Relief Welfare Board to examine the wages as per the wages register of the establishment, the wages calculated as per the KCWWB orders, ESIC returns and also the wages as per the PF returns. These figures reflected in the impugned order clearly shows that the wages reported as per the provident fund returns is not correct. As already pointed out the appellant was given more than adequate opportunities to explain all these anomalies. The learned Counsel for the respondent pointed out that 21 opportunities were given to the appellant to produce the records and also substantiate the different wages reported under various statutes to different authorities. The appellant failed to take the opportunity and clarify the same before the respondent authority. When

the respondent has succeeded in substantially proving its case it is for the appellant to produce records and disprove the claim of the respondent. The respondent authority also clarified the reasons why he is not in a position to accept the ledger and cash book produced by the appellant before the squad of Enforcement Officers. In the impugned order the respondent authority has in detail explained the procedure adopted by him and also the reasons for the same. He has also explained each document relied on by him and the difference in wages reported by the appellant in each of this statutory returns. It was upto the appellant to take the opportunity provided to them to produce the documents, explain the difference and claim the relief in the proceedings when he was provided the opportunity. Having failed to do so the appellant cannot come up in appeal and plead that he was not provided adequate opportunity and challenge the procedure adopted by respondent.

6. It may be seen that the dues assessed is for the period from 04/2003 to 12/2007. The appellant avoided compliance by challenging the order before various forums. The cashew workers are one of the most deprived class who are entitled for the social security benefits provided under the Act and Schemes. Any further delay will only amount to denial of not only justice but social security to many of these employees.

7. Considering the facts, circumstances, pleadings and evidence in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer