



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

सत्यमेव जयते

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

( Thursday the 30<sup>th</sup> day of December, 2021)

**Appeal No.65/2018**

Appellant : M/s. MVJ Foods (India) Pvt. Ltd  
HB#7, Panampally Nagar,  
Cochin – 682 036

By. M/s.B.S. Krishnan Associates

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

By Adv.S Prasanth

This appeal came up for hearing on 22/07/2021 and this Industrial Tribunal cum Labour Court issued the following order on 30/12/2021.

**ORDER**

Present appeal is filed from order No. KR/KCH/13746/Enf-6(2)/2017/13187 dt. 29/01/2018 assessing dues U/s 7A of EPF and MP Act 1952 (hereinafter referred to as ‘ the Act’) against non enrolled

employees for the period from 11/1992 to 07/2014. The total dues assessed is Rs. 36, 87,526/-.

2. The appellant company had a factory at Alwaye, started in 1994, engaged in procuring processing and marketing spices. The appellant is covered under the provisions of the Act. The appellant remitted contribution in respect of their regular employees promptly. The Enforcement Officer attached to the respondent organization inspected the records of the appellant establishment every now and then. The arrangements of packing finished products were initially carried out through outside agencies. Subsequently packing machines were installed and 95 % of the packing was done in house by using the machines. In the year 2013 due to increase in production some casual workers were engaged by the appellant. On 25/07/2014, a team of Accounts Officers from the respondent organization visited the appellant establishment. The appellant provided all the assistance to the Accounts Officers and provided photocopies of the available records. They prepared a mahazer after inspection and a copy of the mahazer was handed over to the appellant and obtained the signature in token of the receipt of the same. True copies of the said mahazer is produced and marked as Annexure 1. While preparing the mahazer the casual

workers declared some imaginary dates as their date of joining without any basis. The Inspectors were informed that the appellant started engaging casual workers only from 10/2013. Subsequently the inspection team issued a notice on 25/07/2014 calling for production of certain documents. True copies of the said notice is produced and marked as Annexure 2. The appellant filed a representation dt. 30/07/2014 for extension of time for production of documents. The Enforcement Officer allowed time up to the 10/08/2014 as per the notice dt. 04/08/2014. True copy of the representation is produced and marked as Annexure 3. On 09/08/2014 the appellant sought further extension of time for production of documents. The inspection team had the copy of the list of casual employees prepared by them. True copy of the list of employees is produced and marked as Annexure 4. Pursuant to this, the appellant contacted the casual employees and they submitted that they give wrong date of entry into service to the inspection team. The employees gave separate statements in their own hand writing indicating their date of entry in service. True copy of the statement of Smt. Indu N.H, one of the workers involved in these proceedings, is produced and marked as Annexure 5. True copy of Form 13 transfer form duly signed by Smt. Indu is produced as Annexure 6.

Similar records are available in respect of other employees also. The appellant furnished these materials to the inspection team along with a letter dt.18/11/2014. True copy of the letter dt. 18/11/2014 is produced and marked as Annexure 7. The inspection team advised the appellant to enroll all casual employees based on the details furnished in their ledgers. Accordingly all the statutory documents were obtained from these employees. All the casual employees were enrolled to the fund between 10/2013 to 12/2014 depending on their date of entry into service. Later the casual employees and their trade unions came to know about the imminent closure of the appellant establishment and they approached the respondent raising certain complaints regarding their date of joining. An Enforcement Officer of the respondent organization investigated the complaint but the copy of the report was never served on the appellant. The respondent initiated an enquiry U/s 7A of the Act as per notice dt.27/10/2015. A copy of the notice dt. 27/10/2015 is produced and marked as Annexure 8. The notice indicated that an enquiry is being initiated on the basis of the grievance filed by 73 employees complaining that they were not enrolled to the fund from the actual date of joining from 06/1993 to 08/2015. Though it was specified in the notice the list of non-enrolled employees

and copy of the report of the Enforcement Officer dt. 26/10/2015 was enclosed along with the notice, the same was not provided to the appellant. The appellant was directed to produce attendance register, cash book, ledger, wages/payment register, pay bills, income and expenditure statement, profit and loss account, balance sheet or any other documents for ascertaining the attendance and payment to these employees. The appellant submitted a letter dt.23/07/2015 seeking extension of time. A copy of the letter is produced as Annexure 9. The enquiry was adjourned to 07/12/2015. On 04/12/2015 the appellant filed a detailed representation. The appellant also sought copies of the nomination and declaration forms and all records proposed to be relied on by the enquiry officer and true copy of report dt. 26/10/2015 of the Enforcement Officer. The appellant also requested the number of employees, their names, their wage details and method of calculation of dues in the proposed assessment. A true copy of the representation dt. 03/12/2015 acknowledged by the respondent on 4/12/2015 is produced is marked as Annexure 12. The enquiry was thereafter adjourned to 21/12/2015, 25/01/2016, 25/02/2016, 04/04/2016, 05/05/2015 and 09/06/2016. On 08/06/2016 the appellant submitted a detailed statement explaining the inability of the appellant

to produce the documents called for and lack of bonafides of the employees. A copy of the said letters is produced and marked as Annexure 11. On 09/06/2016 the enquiry was adjourned to 01/11/2016 and appellant reminded the respondent regarding the details sought by the appellant on the previous date of enquiry. A true copy of the petition dt. 29/06/2016 is produced and marked as Annexure 12. On 28/7/2016 the appellant filed another representation informing the enrollment of workers and furnishing the copies of challans. True copy of the said representation is produced and marked as Annexure 13. As directed by the respondent organization, interest and damages in respect of delayed payment of contribution was also paid by the appellant. The enquiry was further adjourned to 06/09/2016, 31/10/2016 and 17/10/2016. On 17/10/2016 the appellant produced the details of name and address, designation and date of joining etc of the non-enrolled employees for the purpose of enrolling them to provident fund. True copies of the said representation is produced and marked as Annexure 14. On 13/07/2017 the respondent issued another notice fixing the hearing on 23/08/2017. A representative of the appellant appeared and explained all the previous details and produced a memorandum of settlement arrived at between

the appellant and representative trade unions on 28/01/2016, regarding the closure of the business w.e.f 31/01/2016. True copy of the said documents is produced and marked as Annexure 15. It was also explained that the amount set apart for payment of terminal benefits of casual employees was only 30 lakh. If the service declared by the casual employees were considered the settlement amount would have been far higher. The Annexure 15 settlement arrived at between the trade unions of casual workers before the District Labour Officer will also fortify the contention of the appellant that the claim of the casual employees regarding service is not correct. Without taking into account any of the contentions the respondent issued the impugned order, a copy of which is produced and marked as Annexure 16. The copies of the report of the Enforcement Officer, Shri. S.Haridas, K.C. Kunjamma and Reena Menon were not furnished to the appellant. The appellant was not provided an opportunity for cross examining the Enforcement Officers before arriving at the conclusion. None of the employees gave any affidavit or oral evidence in support of their case. The manufacturing process of the appellant started in Dec 1995. Initially the packing was outsourced. Subsequently packing machines were installed and only during the last quarter of 2013, due to additional work load some casual employees

were engaged for packing. The casual employees were enrolled to the fund from their actual date of entry. However they later came with untenable claims regarding their date of joining service of the appellant. The Enforcement Officers of the respondent organization was visiting the appellant establishment. But they never pointed out the non-enrollment of the employees. The contention of the respondent authority that the casual employees did not complaint due to fear of loosing their job has no basis in evidence. The respondent authority proceeded to assess the dues on the belief that 77 workers continued working with the appellant in the past 20 years prior to 2014. At the time of visit of Enforcement Officers there were only 56 casual workers present. Out of this, 17 workers have declared their date of entry into service correctly. Date of entry into service of 10 workers who were not present at the time of inspection was also included in the report. The appellant produced the personal particulars of the casual employees which was obtained from the employees. The appellant cannot be directed to and expected to produce any negative evidence. It is the burden of those who assert they were employed prior to Oct 2013. At the time of the visit of Enforcement Officers on 25/07/2014 the appellant produced attendance particulars and wage details of casual workers which is



acknowledged in the mahazer prepared by them. The appellant signed the mahazer in token of receipt of the copy of the mahaser. The attendance registers for the years 2008, 2009 & 2010 produced by the employees were created for the purpose of the enquiry.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the provisions of the Act . The appellant received a complaint during 06/2014 from the employees of the appellant alleging that they were not provided with the benefits like EPF, ESI, bonus etc, though the appellant establishment has been functioning for the last 22 years. A squad of Officers were deputed to investigate the complaint. They noticed that some 66 women employees who were engaged in doing the packing works are not given provident fund benefits, inspite of the fact that they were working in the appellant establishment for the past 10 to 20 years. The squad of Officers prepared a spot mahazer collecting the details the non-enrolled employees, date of joining, address of the employees of those who were present, signed by the employees and countersigned by the appellant. Notice was also served on the appellant directing them to produce the books of accounts of the appellant establishment. Though the appellant was given adequate time to produce the records before them, the

appellant failed to produce any documents other than those documents produced on 25/07/2014 during their inspection. The Enforcement Officer therefore prepared a statement on the basis of the daily salary of the employees and also on the basis of the balance sheet produced by the appellant for the year 2011-2012 to 2013-2014. The dues arrived at by this squad was also intimated to the appellant along with a direction to remit the same. The complaint letters dt. 10/09/2015 and 07/12/2015 received from a group of employees of the appellant establishment, alleging non-enrollment is marked as Exbt 1 and Exbt 2 respectively. And another letter dt. 07/12/2015 received from the Secretary, Ernakulam District Food Products Employees Union(CITU) is produced and marked as Exbt 3. A representation dt.06/09/2016 received from the employees of the appellant is produced and marked Exbt 4. These compliance validate the allegation against appellant on non-enrollment. On the basis of the complaints received, the respondent initiated an enquiry U/s 7A of the Act. The enquiry commenced on 23/11/2015 and concluded on 23/08/2017, extending more than 2 years. The appellant sought time for production of records. The appellant also sought documents under the custody of respondent. The respondent handed over a copy of the complaint by

respondent on 25/01/2016. Copies of the attendance registers for the years 2008, 2009 and 2010 produced by the employees during the course of enquiry was also handed over to the appellant for their comments. The appellant failed to file any comments on the said documents. The enquiry was adjourned 14 times since its commencement on 23/11/2015 on the request of the appellant. The details furnished by the complainant and the response of the appellant was elaborately considered and discussed in the impugned order. It was established beyond the reasonable doubt that 77 women employees who had been working since 1993 were not extended their legitimate social security benefits. The complainants also produced the evidence available at their disposal. But the appellant prolonged the enquiry seeking time for production of records. When the complainant and the Enforcement Officer in their report proved that the complainant employees were engaged from 1993, it is upto the appellant who is the custodian of records to produce the relevant records and disprove the claim of the complainants. The appellant completely failed in their response. The amounts set apart for payment of benefits to casual employees, on closure of appellant establishment, before the District Labour Officer, is not an exhaustive figure. The details of employees

furnished by them during the inspection was countersigned by the Director of the appellant establishment. The appellant had more than adequate opportunity to prove that the information provided by the employees are not correct. The contention of the appellant, that they employed 77 employees in October 2013 in view of increase in business cannot be relied on, since majority of the women employees engaged are in the age bracket of 50 years. The appellant failed to produce any back records. The appellant did not even produced records to show the employment of workers even for the recent years. It is also seen that the wages paid to this casual workers are not shown under salary head of the balance sheet but are included in the head “processing and packaging charges”. This is a clear subterfuge to avoid inspecting teams from locating the payments made to the casual workers. The appellant for almost 2 years during the course of the proceedings sought extension of time. However suddenly the appellant took a u-turn to state that they are not maintaining any records for the casual employees. The representative of the appellant attended the hearing on almost all days of posting but never requested that they would like to cross examine the Enforcement Officers, who conducted the inspection. In **Essdee Carpet Enterprises Vs Union of India**, 1985 LIC 1116 the Hon'ble

High Court of Rajasthan held that questions of facts not raised before the RPF in the enquiry U/s 7A cannot be raised in the subsequent proceedings. The impugned order assessing the dues was issued on the basis of the available data since the appellant failed to produce any document to substantiate their claim regarding the date of employment of casual workers and also wages paid to them.

4. There were complaints from the employees of appellant establishment that the appellant failed to enroll the casual employees engaged for packing to provident fund membership. The respondent deputed a team of Officers to investigate the matter. The Officers who conducted the investigation reported that 77 casual employees engaged for the purpose of packing the materials were not enrolled to provident fund membership. The appellant thereafter enrolled the casual employees to provident fund membership with effect from 10/2013, claiming that they are enrolled to the fund from their date of eligibility. The Officers who visited the appellant establishment on 25/07/2014 also prepared a mahazer in respect of 66 casual employees who were present in the appellant establishment at the time of inspection. The mahazer contains the name of the employees, father name, address, designation, date of joining, wages/salary and signature of the

employees concerned. The mahazer is also attested by the Director of the appellant establishment. It was subsequently reported that 2 of the employees were on leave and another 9 employees are engaged in their unit located at Vazhakkulam. According to the report of the Officers, there are two categories of employees, one is regular employees and the other category is that of casual employees. The regular employees are covered under the provisions of the Act where as the casual employees are not extended the benefit of social security. The casual employees subsequently filed complaints before the respondent authority alleging that the appellant failed to extend the social security benefits from due date of eligibility, though they were working with the appellant establishment for around 20 years. The complaints filed by employees are marked as Exbt 1 and 2 and compliant filed by the union is marked as Exbt 3. According to the employees the management of the appellant establishment took signature on certain documents stating that they are being enrolled to provident fund benefits. They also took signature on some stamp papers. Later they came to know that the date of joining furnished in the forms were not correct and therefore they filed the complaints with the respondent authority. They also took back the signed stamp papers from the management of the appellant

establishment. The matter was again investigated through the area Enforcement Officer. After confirming the position that the casual employees were not enrolled to provident fund membership from their due date of eligibility the respondent initiated an enquiry U/s 7A of the Act. In the initial stages of enquiry the appellant pleaded for time for production of documents since the documents called for pertain to the years 1992-93 onwards. Subsequently the appellant took a U-turn and took a stand that the relevant records are not available with the appellant. According to the learned Counsel for the respondent the appellant even failed to produce the latest records called for other than the documents collected by the squad of Enforcement Officers. The respondent there after provided 14 opportunities from 23/11/2015 to 23/08/2017 to facilitate the appellant to produce the records regarding the date of joining and the wages paid to the employees, from 1992-1993 onwards. As already pointed out the appellant failed to produce any documents in the enquiry. The appellant even failed give any reason for non production of records before the respondent authority. The respondent authority therefore decided the date of eligibility and also the wages paid to the employees on the basis of the mahazer prepared in the presence of the Director of the appellant

establishment and countersigned by him, and issued the impugned order.

5. In this appeal the learned Counsel for appellant took a stand that the factory at Alwaye started only in the year 1994 and the assessment of dues in respect of casual employees is made from 1992 onwards. The learned Counsel for the appellant also submitted that till 2013 the packing was outsourced and the inhouse packing started only from the last quarter of 2013 due to increase in production. Therefore, according to him the assessment of dues 1992-93 is not correct. According to the learned Counsel for the respondent the Squad of Officers succeeded in prima facie establishing that the non enrolled casual employees worked in the appellant establishment from 1992. However majority of the employees joined only after 2000 which is clear from the mahazer prepared by the squad of Officers. There was only one employee who joined in 1992. Hence the claim of the appellant that the dues were assessed as if all the 77 casual employees continued from 1992 is not correct. According to the learned Counsel for the appellant the officers who conducted the investigation were informed that the casual workers were engaged only from 10/2013 but the same was not recorded by the officers in the mahazer. According



to the learned Counsel for the respondent the Director who countersigned the mahazer ought to have recorded the same while putting his signature in the mahaser prepared by the Officers. The learned Counsel for the appellant also pleaded that he was not provided with the 2<sup>nd</sup> report of the Enforcement officer. The learned Counsel for the respondent pointed out that in Annexure 8 notice dt. 27/10/2015 it is clearly mentioned that the report of the Enforcement Officer was enclosed alongwith the summons. It is clearly stated that the report is enclosed to facilitate the appellant to defend the case before the respondent authority. If the report was not enclosed, it was for the appellant to raise the matter before the respondent authority and collect a copy of the same during the proceedings. The learned Counsel for the appellant pointed out that the appellant specifically requested for copies of 4 documents as per Annexure 10, where in the report of the Enforcement Officer dt. 26/10/2015 was also included. According to the learned Counsel for the respondent all the relevant documents were provided to the appellant during the inspection and also subsequently during the proceedings U/s 7A of the Act. Even the copies of attendance register provided by the causal employees for the years 2008-2009 and 2010 were provided to the appellant for his remarks. But the appellant

failed to respond to any of the documents provided to the appellant establishment during the course of the enquiry.

6. It is seen that the employees, the trade union and the mahazer has provided the details of the employees worked in the appellant establishment along with the date of joining and wages received by them. The appellant did not dispute the list. However the appellant provided a list containing the name of 66 employees, their date of joining and wages drawn by them. There is a conflict with regard to the date of joining and wages as claimed by the appellant and also by the employees. When there is a dispute regarding the facts furnished by the employees, the officers and the appellant, it is the responsibility of the appellant to produce the recorded, being the custodian of all the records relating to the casual employees engaged by the appellant establishment. According to the learned Counsel for the respondent the appellant failed to enroll the casual employees to the provident fund membership in the first instance. After investigation by the squad of officers they enrolled these employees, but from 2013 onwards. Whereas the claim of the employees is that they were working with the appellant establishment for the periods from 1992 to 2014. When the employees and the respondent authority succeeded in

proving their claim through prima facie evidence. It is the responsibility of the appellant to produce the records and prove their claim. Instead of doing so, they produced only a statement which was rejected by the respondent authority. The learned Counsel for the appellant also pointed out that while closing the appellant establishment, before transferring the same, there was a settlement between the trade unions representing the employees and the management of the appellant establishment before the District Labour Officer. As per Clause 6 of the settlement Rs.30 lakhs is earmarked for settling all the claims of casual employees. According to the learned Counsel the present assessment of provident fund itself is beyond Rs.30 lakhs which would clearly show that the information furnished by the appellant regarding the date of joining and wages is correct. However on a perusal of Clause 6 of Annexure 15 settlement, it is seen that the amount of Rs. 30 lakhs is only for retrenchment compensation, gratuity and retirement benefits of 11 casual employees who left the appellant establishment. The provident fund benefit of the 77 casual employees is not at all included in the settlement.

7. After considering the documents produced by the appellant and the respondent and after hearing the Counsels, the question to be decided is whether the impugned order can be challenged by the appellant, on the ground of non availability of documents, since the appellant failed to produce any relevant document during the course of the proceedings. In this case it is seen that all the 77 non enrolled employees are clearly identified. It is also a fact that the appellant is liable to enroll all the employees from their date of eligibility and submit the returns to the respondent authority and maintain the records concerning the employees. The appellant failed to do so. All the above requirements are as stipulated under the provisions of the Act. The appellant started compliance from 2013 after investigation started by the respondent authority on complaint from the non-enrolled employees. Now the question is whether the appellant can take advantage of his violation of the provisions of the Act. It is a well settled principle of common law that a wrong doer cannot take advantage of his own wrong. The maxim “ **nullus commondum capere protest de injuria sua propria**” is one of the salient tenants of equity. Hence in the normal course the appellant cannot take the assistance of this Tribunal for enjoying the fruits of his own wrong. A person who by

manipulation of the process frustrates the legal rights of others should not be permitted to take advantage of his own wrong or manipulation. In the present case the appellant violated the provisions of the Act by not maintaining the records and failed to produce the relevant records, inspite of providing 14 opportunities over a period of 2 yrs to substantiate their claims. Though the appellant initially agreed to produce the relevant records, took a U-turn on the later part of the proceedings and submitted that they are not either willing or not interested in producing records, on the ground that they are not maintaining the records at all. If the appellant is not maintaining the records of the 77 non-enrolled employees over a period of 10 to 20 years, there is not only a violation of the provisions of the Act, but also, there is violation in respect of all the labour laws applicable to such employees. In such cases, the question is, the whether the respondent authority can be blamed for relying on the mahazer prepared by the squad of officers and the other documents produced by the non-enrolled employees during the course of the 7A proceedings. In **JK College of Engineering Vs Union of India**, 2011 LLR 1013 the Hon'ble High Court held that the dodging tactics of the employer should not be tolerated. It is, therefore, abundantly clear that an employer cannot get

away by urging non availability of records there by presenting fait accompli to an authority. As already stated an establishment cannot take advantage of his own wrong. The Sec 7A (3A) provides for assessment of dues in such circumstances as per sec 7A (3A)

“ Where an employer, employee or any other person required to attend the enquiry U/s 1 fails to such enquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting to enquiry may decide the applicability of Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduce during such enquiry and other documents available on record.”

In **NTPC Ltd Vs RPFC**, 1998 (2) CLJ) the Hon'ble High Court held that in view of provisions of Sec 3A of Sec7A when the necessary documents are not produced by an assessee, the authorities shall continue to make determination based on the evidence on record. The learned Counsel for the respondent argued that the procedure adopted by the respondent while issuing the impugned order, in the absence of any document produced by the appellant, is fully justified.

8. The learned Counsel for the appellant argued that the appellant establishment is already closed and the same is sold to a new company. The learned Counsel for the respondent submitted that the compliance under the new management is continued under the same code number allotted to the appellant establishment .

9. 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