

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL  
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II,  
ROUSE AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,  
Presiding Officer, C.G.I.T.-Cum-Labour  
Court-II, New Delhi.

M/s. Khadi Gramudyog Sewa Sadan

Appellant

Vs.

APFC, Gurgaon

Respondent

**Appeal No. 721(16)2015**

**ORDER DATED:- 20 November, 2020**

**Present:- Ms. Akanksha Narang, Ld. Counsel for the Appellant.  
Shri Balraj Deewan, Ld. Counsel for the Respondent.**

This appeal assails the order dated 24.2.2015 and 21.5.2015, passed u/s 7A and 7B of the EPF &MP Act respectively (hereinafter referred to as the Act) by the APFC, Gurgaon (here in after referred to as the commissioner), rejecting the plea of the appellant and holding that the provisions of the Act are applicable to the establishment .

Facts leading to the impugned order and present appeal, in short are that, the appellant is a society registered under Society Registration Act and engaged in promoting khadi and village Industry activities as an implementing agency of khadi and village industries commission(KVIC).One Sh Tanjeb Singh Malik an ex employee of the appellant establishment had made a complaint to the CPFC alleging denial of the benefits of the act to him by the employer. The said complaint being forwarded for inquiry, a squad was constituted, and the said squad after a field inquiry recommended for coverage of the appellant establishment under the Act and the scheme w.e.f 15.8.2003.Accordingly a code no was allotted and appellant was directed to effect necessary compliance forth with. The appellant, since challenged applicability of the act to its establishment an inquiry u/s 7A was initiated and order dated 24.2.2015 was passed holding that the provisions of the act applies to the establishment. A review application filed u/s7B was also rejected by order dt21.5.15.hence this appeal.

It has been contended by the appellant that the establishment is a nonprofit making organization and the sole object is to help and assist the self employed weavers and artisans of khadi and village industry. It acts like an implementing agency of KVIC only to help the weavers the raw cotton is sold to freelance cotton yarn spinners. The yarn duly spun is purchased back and provided to the weavers, who prepare khadi cloth. The said prepared clothes are again purchased by the appellant. All these buying are made as per the scheduled rate of the

KVIC. The appellant never exercises supervision and control over the work of these weavers and artisans. Thus, there exists no employer employee relationship between them. Moreover the appellant has less than 10 no of regular employees in it's pay roll. As such it is not coverable under the provisions of the act. The fact and law pleaded before the commissioner were never considered by him and an arbitrary order was passed u/s 7A of the act. The review petition was also summarily rejected.

In reply the respondent has contended that, EPF &MP Act is a beneficial legislation, intended to ensure social security measures to the employees of an establishment. Any effort by the employer to deprive the employee of the benefits under the act is to be viewed with suspicion unless properly established. In this case pursuant to a complaint made by one of the employee, officers of the squad had conducted a spot inquiry and verified the available documents. On perusal of documents and as per the admission of the officials of the establishment, it is registered under society registration act since 1985-86 and started its business activities since 1989-90. the activity falls under the category Textiles as per the schedule of the Act. it was also found that in the year 2003, 22 artisans/workers were in the payroll of the establishment, in respect of whom, the later had submitted a list of the said workers to LIC for their enrollment under Janashree Bima Yojana. As per the said list submitted in the year 2009-10, there were more than 300 artisans in the payroll of the establishment. But the establishment was found not covered under the act. After taking all these aspects into consideration rightly a code no was allotted.

During 7A inquiry, proper opportunity was provided to the appellant establishment and all the documents made available were examined. From the documents it appeared that establishment has employed more than the required no of employees since 2003, but escaped to be covered under the act. Hence the commissioner rightly upheld the decision for allotting the code no and thereby bringing the establishment under the fold of the act.

In the light of the above pleadings counsel for both the parties advanced their respective arguments.

Ms. Akanksha Narang, Learned Counsel for the appellant submitted that artisans are not the employees of the appellant and the no of employees in the payroll are less than 10 in no. There being no employer and employee relation between the appellant and the artisans, the authorities under the act should have exempted the establishment in exercise of the power u/s 17 of the act. She further submitted that the establishment neither pays salary to the weavers and artisans, nor exercises supervision and control over their work. In support of her argument she placed reliance in the case of M/S Punjab Khadi Mandal vs. RPFC, decided by the Hon'ble High Court of Punjab in CWP No 1089 /1981, where in the Hon'ble court have held that the artisans working for the khadi Udyog are not the employees of the later. Hence the establishment can't be brought

under the fold of EPF & MP Act. She also submitted that the judgment of the Hon'ble SC in the case of R M Patel & sons vs. Union of India, (AIR 1987 SC, 447) holding the artisans as employees has been discussed and distinguished in that judgment by the Hon'ble High Court of Punjab. She also referred to several letter correspondences made between the KVIC and EPFO, pointing out the efforts made to eliminate the varied (not uniform) practices adopted by few RPFCS in applying the provisions of the Act to selective Khadi Institutions, forcing them to face legal issues like the present one. She also placed on record one circular dated 06/05/2016 issued by KVIC with regard to exemption to artisans associated with Khadi and Village Industry from EPF Act. The focus of her argument is that the commissioner while deciding the applicability issue deliberately omitted these aspects pointed out and passed the impugned order which is liable to be set aside by this Tribunal.

Sh. Balaraj Deewan, the learned counsel representing the respondent submitted that the Hon'ble SC in the case of R M Patel referred supra have clearly held that persons engaged in rolling Bidi, who work from their home using raw materials supplied to them by the manufacturer, are the employees of the said manufacturer. The case of khadi weavers and artisans is similar to those of bidi workers. Hence, entitled to the benefits of the Act. He also argued that as per the admission of the appellant during 7A inquiry, which has been mentioned in the impugned order, the artisans registered with the appellant use to receive raw materials from it to deliver finished goods and get the payment for the finished goods on piece rate basis after deduction of the scheduled price of the raw material. Hence the remuneration paid for the finished goods is nothing but their wage. Hence they are employees of the appellant in terms of the definition u/s 2(f) of the Act. The other limb of his argument is that the appellant is not a registered co-operative society, so as to get exemption under the provisions of sec 16(1) (a) of the Act.

On hearing the rival contentions of the parties, the undisputed facts which emerge are that the artisans are the home workers and earning their livelihood as self employed persons using the raw material provided to them as per scheduled price. They sell their finished products on piece rate. There is no fixed working hour for them nor they are getting the benefits of any kind of labour related legislation. The most important aspect is that the appellant does not exercise any kind of effective supervision and control on their working which has been held by the Hon'ble SC as a test to ascertain employer and employee relationship.

Way back in the year 1958 the Hon'ble SC in the case of Chintaman Rao vs State of MP (1958 LLJ 252) had held that the employer is one who employs or engages the service of another person. The employee is one who works for another for hire. The employment is the contract of service between the employer and employee, where under the employee agrees to serve under the employer subject to his supervision and control.

Not only that in the case of Shankar Balajiwale, reported in 1962(1)LLJ119, the Hon'ble Apex court have further clarified that the control of the management which is a necessary element of the relationship as master and servant is not directed towards providing or dictating the nature of articles to be produced, or work to be done, but refers to other incidents having bearing on the process of the work the person carries out. The manner of work is to be distinguished from the type of work to be performed. In the case of Ram Singh and others vs. Union Territory of Chandigarh and others(2004-1SCC126) the Hon'ble supreme court have elaborately discussed the factors to be considered for determining the employer employee relationship which include effective control, power of appointment, liability to pay and liability to organize work etc. thus from the above analysis of the principle of law it emerges that effective control is a test to determine the employer employee relation between the parties.

In this appeal the appellant has all along maintained that it never recruits the artisans nor exercises effective control on their working by fixing working hours or time target for finishing the work. The activities are intended to promote the self employed khadi artisans for earning their livelihood. The facts of M/S R M Patel & sons referred supra are completely distinguishable from the facts of this appeal. In that case the employer had a right reserved to accept or reject the finished product on the basis of its quality, which was considered by the Apex court to hold the home workers as the employees of the establishment. Hence it is concluded that the artisans collecting raw materials and selling finished products to the appellant are not its employees, so as to make the act applicable to the appellant.

It is not disputed that the appellant establishment has only 9 nos regular employees in its payroll. Since the officers of the squad found a list of 300 artisans whose names were provided to LIC for enrolling them under the Janashree Bima Yojana, recommended for coverage and allotment of code no. the commissioner in the impugned order has mentioned that the contribution collected from the artisans and deposit of the same with matching contribution at a fixed rate makes the artisans the employees of the appellant appears to be an erroneous view taken by him. He has omitted to consider that Janashree Bima Yojana is a scheme floated by KVIC in collaboration with LIC India to provide social security to the artisans and khadi weavers engaged in an unorganized sector, implemented through the societies in order to identify the persons to be benefited. The scheme in no way creates employer employee relationship between them.

Hence on a careful analysis of the position of law on the background facts of this appeal it is held that the impugned orders passed by the commissioner are based upon incorrect appreciation of fact and law and cannot sustain. Hence, ordered.

#### **ORDER**

The appeal be and the same is allowed. The order dated 24.2.2015 and 21.5.2015 are hereby set aside. It is held that the order

directing applicability of the provisions of EPF & M P Act to the appellant establishment and allotment of code no for remittance of EPF and allied dues is illegal.

Sd/-  
Presiding Officer