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कर्मचारी भविष्य निधि संगठन  
उप क्षेत्रीय कार्यालय,  
पी.बी.नं.११७, वी.के.कॉम्प्लेक्स,  
फोर्ट रोड, कण्णूर



അതാഴിലാളി ഭവിയ്ക്കു നിയമി സംഘടന  
ഉപമേഖലാ കാര്യാലയം,  
കണ്ണൂർ

**EMPLOYEES' PROVIDENT FUND ORGANISATION**  
SUB REGIONAL OFFICE, PB.NO. 117 V.K.COMPLEX, FORT ROAD, KANNUR  
Phone: 2708760, 2703760, 2712388 Fax: 2712355

KR/KNR/Legal-69/HC-253/2016/

Date: 25.05.2016

~~6 JUN 2016~~ ~~7 JUN 2016~~

To

The Central P.F.Commissioner  
Employees Provident Fund Organisation  
Bhavishya Nidhi Bhawan  
14, Bhikaji Cama Place,  
NEW DELHI - 110 066.

By name to:  
Shri Samendra Kumma  
R.P.F.C(Legal)

Sub: Forwarding of important Order delivered by Hon'ble High Court of Kerala in  
**W.P.(C) No.7905/2011** filed by M/s Professional Couriers against coverage  
of the establishment - reg.

Sir,

Please find enclosed herewith a copy of order dated 11.03.2016 delivered by  
the Hon'ble High Court of Kerala.

The Hon'ble Court has dismissed the Writ Petition filed by M/s Professional  
Couriers against the order passed by the EPF Appellate Tribunal dismissing the  
appeal filed against the coverage of the establishment, with the observation that  
"ultimate control; both the financial and human resources, are vested with the  
petitioner. So also unity of management and control, functional integrity and unity  
of purpose, are obviously evident from the clause".

It is felt that the order is significant one and needs to be circulated since so  
many Courier agencies are operating in India and hence this letter alongwith a copy  
of the order of Hon'ble High Court of Kerala.

Yours faithfully,

*(Signature)*  
(K.MUTHUSELVAN)

REGIONAL P.F COMMISSIONER-II

Encl: As above.

- Copy to: 1. The Addl.Central P.F.Commissioner (TN&KR), Chennai
- 2. The Regional P.F.Commissioner, Kerala, Trivandrum

14/6/16  
R.P.F.C

718  
14/6/16

15/6

Dr. Karan Singh

640  
15/6/16

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. HARILAL

FRIDAY, THE 11TH DAY OF MARCH 2016/21ST PHALGUNA, 1937

WP(C).NO. 7905 OF 2011 (K)

PETITIONER:

THE PROFESSIONAL COURIES,  
ADMINISTRATIVE OFFICE: 5, T.P.COMPLEX, BANK ROAD,  
KANNUR-670 001, REPRESENTED  
BY ITS FRANCHISEE SAYED NAVAS.V.P.

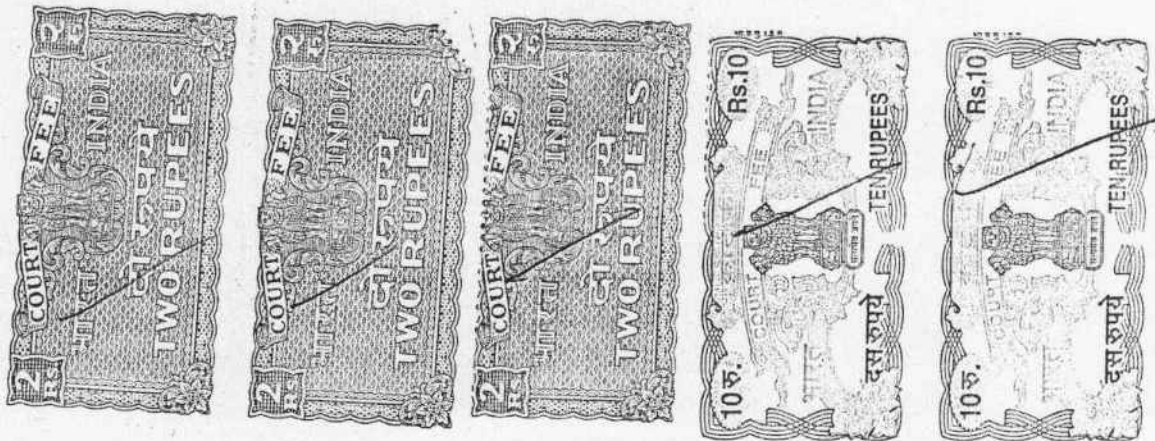
BY ADVS. SRI.E.K.NANDAKUMAR  
SRI.A.K.JAYASANKAR NAMBIAR  
SRI.K.JOHN MATHAI  
SRI.P.BENNY THOMAS  
SRI.P.GOPINATH

RESPONDENT(S):

1. EMPLOYEES PROVIDENT FUND APPELLATE  
TRIBUNAL, SCOPE MINAR, CORE II,  
4TH FLOOR, LAXMI NAGAR DISTRICT CENTRE, LAXMI NAGAR,  
NEW DELHI-110 092.
2. THE ASSISTANT PROVIDENT FUND  
COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANISATION,  
SUB REGIONAL OFFICE, V.K.COMPLEX, FORT ROAD  
KANNUR-670 001.

R2 BY ADV. DR.ABRAHAM P.MEACHINKARA, SC, EPF ORG.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
11-03-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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K. HARILAL, J.

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W.P. (C) No. 7905 of 2011

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*Dated this the 11<sup>th</sup> day of March, 2016*

J U D G M E N T

The petitioner is a proprietorship concern engaged in the business of courier service. The business is carried on by the petitioner, as a franchisee of the Professional Courier, Mumbai. For the purpose of carrying on his business, the petitioner had entered into agency agreements with various parties like Ext.P1. Altogether the petitioner has entered into such agreements with 11 persons and the business is carried on by the agents to operate on commission basis. According to the petitioner, the commission agents work independently and they are in no way connected with others. They are neither branches nor departments of the petitioner's establishment. The 2<sup>nd</sup> respondent issued

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Ext.P3 notice under Section 7A(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ('the EPF & MP Act' for short) stating that the petitioner's establishment, as it is a 'courier service' included in the class of establishments to which the EPF & MP Act is applicable, by virtue of notification dated 22.3.2001 and the petitioner was found employing more than 20 persons as on 1.4.2001.

2. The petitioner disputed the liability on the ground that the petitioner had never employed 20 or more persons and hence, the EPF & MP Act is not applicable to the petitioner and requested to conduct an enquiry under Section 7A of the EPF & MP Act, to determine the question of applicability and accordingly, an enquiry was conducted. In the enquiry, the petitioner contended that numerical strength of the establishment is less than 20 and

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that the petitioner has only one office at Kannur with the employment strength of seven and thereby, the EPF & MP Act is not applicable to the establishment. After enquiry, the 2<sup>nd</sup> respondent passed Ext.P7 order, holding that the service agents are branches of the establishment run by the petitioner and consequently the petitioner's establishment is liable to be covered under the provisions of the EPF & MP Act.

3. Aggrieved by Ext.P7 order, though, the petitioner had preferred a statutory appeal before the 1<sup>st</sup> respondent, the 1<sup>st</sup> respondent also confirmed the findings of the 2<sup>nd</sup> respondent and dismissed the appeal, by Ext.P8. The legality and propriety of the findings, whereby the respondents 1 and 2 concurrently found that the petitioner's establishment is covered by the provisions of the

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EPF & MP Act, are under challenge in this writ petition. It is with this averments, this writ petition is filed with a prayer to quash Exts.P7 and P9 orders, passed by 2<sup>nd</sup> and 1<sup>st</sup> respondents, respectively and for a direction to the 2<sup>nd</sup> respondent to consider the matter afresh, in accordance with law.

3. Heard the learned counsel for the petitioner.

4. The learned counsel for the petitioner advanced arguments, assailing the concurrent findings, whereby the respondents found the petitioner liable to pay the EPF contribution for all employees, working in 11 franchisees, under the petitioner's establishment. According to the learned counsel for the petitioner, commission agents, with whom the petitioner has entered into

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such agreements, are neither branches nor departments of the petitioner's establishment. But, the 2<sup>nd</sup> respondent went wrong in holding that the agents are the branches of the petitioner's establishment. Employees strength of the petitioner is only seven and he never employed 35 employees, either directly or indirectly or through contract. The respondents went wrong by holding that the employees employed by the agents are also to be treated as employees of the petitioner, after discarding separate agency agreements executed by the petitioner and different persons for managing their business independently. The crux of the argument is that the respondents 1 and 2 have miserably failed to appreciate the 'employer'- 'employee' relationship, in its correct perspective.

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5. *Per contra*, the learned Standing Counsel for the respondents advanced arguments, to justify the concurrent findings, whereby the petitioner's establishment was found liable to be proceeded against under the EPF & MP Act for the arrear of contribution. According to the learned Standing Counsel, the materials on records seized by the Enforcement Officer, at the time of surprise inspection, the documents and the list of employees produced by the Accountant of the petitioner, are sufficient enough to establish the finding that the alleged franchisees are working, as branches of the petitioner's establishment. It is also contended that there are sufficient evidence to prove unity of management and control, functional integrity of the 11 branches with the petitioner's establishment at Kannur.

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6. In view of the rival contentions, the point to be considered is, whether the respondents are justified in concurrently finding that the petitioner's establishment at Kannur is covered under the EPF & MP Act, as different parties working under agreements like Ext.P1, are the branches of the petitioner's establishment and thereby, the petitioner's establishment is liable to pay contributions for all the employees, working in 11 branches under the control of the petitioner.

7. The question in controversy involved in this Writ Petition centres around Sections 2(f) and 2A of the EPF & MP Act. Going by Exts.P7 and P9, the concurrent finding is that the authorities have tested the facts revealed from the surprise inspection and evidence adduced thereafter, under Section 7A enquiry, in view of statutory mandate

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under the provisions of Sections 2(f) and 2A of the EPF & MP Act. They have concurrently found that there are sufficient evidence to prove the unity of management and control, functional integrity, unity of purpose, in the working arrangement between the main office at Kannur and 11 other branches.

8. As regards unity of management and control, it is seen that all the service agencies are established for running the Professional Couriers service of 'Sri. Sayed Navas V.P.' the proprietor of the petitioner establishment and agreements have been entered between 'Sayed Navas' and the service agents for running his business and the said 'Navas' has got ultimate control over the day-to-day affairs of the service agents. The said 'Navas' is meeting the entire expenses of the business of the service agents and he reserves the right for inspection of

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the premises and the business of the service agents. In the enquiry under Section 7A, the 2<sup>nd</sup> respondent verified the Profit & Loss Account and the Balance Sheet. The charges collected from customers by booking articles received through the service agents daily from their offices are seen accounted fully with the petitioner's main office at Kannur. The expenditure side of the statement shows the salaries and allowances of all the employees and agency charges paid to the service agents and this is the amount utilised by the service agents for the payment of wages to their employees and for the maintenance of their offices since, they do not have any other income. More importantly, it is pertinent to note that the source for payment of wages to the employees under the 'service agents' are the only payment received by them from 'Sri. Sayed Navas' as

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per the agreements and the service agents are barred from making any other income by doing business with any persons other than the 'Professional Couriers' and also barred from deducting any amount from the courier charges collected from the customers. If that be so, the respondents are justified in finding that the employees of service agents are getting wages indirectly from 'Sayed Navas', the employer of the petitioner establishment.

9. At this juncture, it is to be borne in mind that according to Section 2(f) of the EPF & MP Act, 'employee' means any person, who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets, his wages directly or indirectly from the employer or employees for the purpose of coverage under the EPF & MP Act. Here,

the employees of the service agents are employed for wages in or in connection with the work of the establishment of 'Sri.Sayed Navas' and get wages indirectly from 'Sri. Sayed Navas'.

10. According to the Profit and Loss accounts of 'Sri. Sayed Navas', on the income side, he has shown the service charges collected from all agencies, including service tax collection. In the expenditure side, he has shown the salaries and allowances of employees and also agency charges. According to the accounts for the year 2002-03, the total service charges collected is Rs.73,41,478/-, salaries and allowances paid is Rs.2,10,950/-, and agency charges paid is Rs.37,91,036/-. As per the Income Tax Return Saral Form No. 2D, also 'Sri.Navas' has shown the net profit for each year, after deducting all the expenditure, including the

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expenditure of the branches.

11. I have carefully gone through Ext.P1 agreement, produced by the petitioner. Ext.P1 is an agreement entered into between the petitioner and one of the agencies, among the 11 agencies. Among various clauses, clauses 4, 5, 8, 11, 12, 15, 16, 19, 22 and 25 are significant and relevant to establish 'employer'-'employee' relationship between the petitioner and other 11 agencies under the petitioner.

12. According to Clause 4, the agency shall be under obligation to deposit the entire sale proceeds of the day, without any deduction to the account of the petitioner on the very next day. As per Clause 8, the petitioner shall supply stationery to be used by the agency for delivery, booking and for administration for free of charge. The

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stationery to be supplied by the petitioner only be used for the delivery and booking of the documents. According to Clause 12, the agency shall keep a register of consignment notes issued by the petitioner and the balance stock, which shall be kept up to date at all times and shall be made available to the petitioner at all times for verification. As per Clause 13, the petitioner either himself or through his authorised representative shall be at liberty at all times to inspect and verify the premises and records of the agency and take copies of such records to ensure compliance with the various terms of the Agency Agreement. The agency shall offer all necessary help to the petitioner for the said purpose and shall not cause any hindrance to the petitioner in this regard. According to Clause 19, the agency

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shall maintain the office records of all documents, control of consignment notes, ledger books, showing the amount due from the sundry debtors, collection statements, delivery run-sheets and stationeries in the proper or orderly manner and to the satisfaction of the petitioner. According to Clause 16, the agency shall not carry on the business of courier or its agency in his own name or in proprietorship or as director of a company nor shall any courier/agency be permitted to be operated from the place of business from which agency of Professional Courier is operated.

13. On a combined reading of all the above clauses, this Court is of the opinion that ultimate control; both the financial and human resources, are vested with the petitioner. So also, unity of management and control, functional integrity and

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unity of purpose, are obviously evident from the above clauses. The above findings are to be appreciated, in view of the definition under Section 2(f) of the EPF & MP Act.

14. In this analysis, I find that there is no illegality or impropriety in any of the findings, in Exts.P7 and P9 orders and the respondents have correctly and properly appreciated all the evidence collected during the course of enquiry under Section 7A and tested the same with Sections 2(f) and 2A of the EPF & MP Act.

Therefore, there is no reason to interfere with Exts.P7 and P9 orders and this writ petition will stand dismissed accordingly.

Sd/-

K. HARILAL,  
JUDGE

//True copy//

P.A. To Judge

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