**(2016) 02 KL CK 0180**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No. 20501 of 2011 (k)

Assistant Provident Fund Commissioner APPELLANT

Vs

P. Achuthan Nair and Company RESPONDENT

**Date of Decision :** 11-02-2016

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17B, Section 7A

**Citation :** (2016) 2 KHC 887

**Hon'ble Judges :** Mr. K. Harilal, J.

**Bench :** Single Bench

**Advocate :** Sri. T. Sethumadhavan, Sri. Pushparajan Kodoth, Sri. K. Jayesh Mohankumar, Advocates, for the Respondent No. 1; Sri. E.K. Nandakumar, Sri. K. John Mathai, Sri. P. Benny Thomas and Sri. P. Gopinath, Advocates, for the Respondent No. 3; Sri. Thomas Mathew N

**Final Decision :** Dismissed

## Judgement

K. Harilal, J. - The petitioner herein was the 1st respondent and the 1st respondent herein was the appellant in Ext. P4 order which is under challenge in this writ petition. The case of the 1st respondent is that the Hindustan Petroleum Company Ltd., appointed him as a temporary dealer of the Unit for a specific period only. Before the appointment of the 1st respondent, one M. Subair, the 2nd respondent herein, was the dealer. The 1st respondent took over the establishment and started functioning on 1/5/2003 only. The Employees'' Provident Fund Authorities conducted an enquiry under Section 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short ''the EPF and MP Act'') and assessed the arrear due from the previous owner M. Subair. According to the 1st respondent, he is not the successor or a transferee of the said Subair. Therefore, he is not liable to pay off the arrear of contributions due from the said Subair. After considering the grounds raised in the appeal, the Appellate Authority, the 4th respondent herein, allowed the appeal and exonerated the 1st respondent from the liability under Section 17B of the EPF and MP Act. The legality and propriety of the findings; whereby the 4th respondent exonerated the 1st respondent from the liability, is under challenge in this writ petition.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the 3rd respondent.

3. As rightly held by the 4th respondent, both the transferor and the transferee are jointly and severally liable to pay the arrear of contribution under Section 17B of the EPF and MP Act. When an establishment is transferred, the person to whom the establishment is transferred shall jointly and severally be liable to pay the contribution and other sums due from the former employer/transferor under the provisions of the EPF and MP Act and the Scheme, in respect of the period up to the date of such transfer. In short, both the transferor and the transferee are jointly and severally liable to pay the contribution.

4. Going by Ext.P4, it is seen that the claim relates to the period when the Unit was under the possession of one M. Subair, the 2nd respondent herein. Indisputably, the 1st respondent had not taken the Unit from the said Subair and he has taken the Unit from the HPC Ltd., on lease. A fresh lease arrangement was made with the 1st respondent after terminating the lease arrangement with the 2nd respondent. Needless to say, as rightly held by the 4th respondent, the 1st respondent is neither a successor nor a transferee of M. Subair, the 2nd respondent herein, as he has not taken the Unit from him.

5. Where the owner of an establishment terminates the lease arrangement with one person and enters into a fresh lease arrangement with another person, the latter lessee is neither a successor nor a transferee of the former lessee as there is an absolute cessation of earlier lease and commencement of a fresh lease. So, if the former lessee was an employer falling under Section 2(e) of the EPF and MP Act, by the commencement of fresh lease arrangement made by the owner with the latter, the latter cannot be held jointly liable for the EPF liability of former lessee/employer under Section 17B of the EPF and MP Act, on the reasons that: (1) The transferor is the owner of the establishment; not the former lessee; (2) There is an absolute cessation of earlier lease and commencement of a new lease and (3) The transfer of establishment is not made by the former employer/ lessee; but made by the owner, a stranger to the EPF and MP proceedings. According to Section 17B of the Act, transferee of an establishment will be held jointly liable for the previous liability, only if the transfer of establishment is made by the former employer of the establishment. In other words, where the owner/titleholder transfers the establishment by way of lease to the lessee, after terminating the earlier lease with the former lessee, the latter lessee will not be liable for the liability of the former lessee/ employer under Section 17B of the EPF and MP Act.

6. Here, Hindustan Petroleum Co. Ltd., firstly leased out the dealership to the 2nd respondent, and after terminating that lease, leased out the dealership to

the 1st respondent. So, the 1st respondent is not a transferee of the 2nd respondent. Both transfers were made by the Hindustan Petroleum Co. Ltd., itself. Needless to say, Hindustan Petroleum Co. Ltd., is not the employer. Therefore, the 1st respondent is not jointly and severally liable for the previous liability of the 2nd respondent. I do not find any kind of illegality or impropriety in the above finding. Hence this writ petition is dismissed