

**BEFORE THE 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.

ATA No. 458(4)2015

M/s. Kataria Gas Service

Appellant

VS.

APFC-Delhi

Respondent

ORDER DATED:- 20/09/2022

Present:- Shri S.P Arora & Sh. Rajiv Arora, Ld. Counsels for the Appellant.
Shri Rajesh Kumar, Ld. Counsel for the respondent.

This appeal challenges the orders passed by the APFC Delhi on 28/11/2014 u/s 7A and the order dated 15/04/2015 u/s 7B of the EPF and MP Act 1952 (herein after referred to as the Act) assessing Rs 4,39,249/- payable by the appellant establishment towards deficit PF dues of it's employees for the period 06/1999 to 07/2009. The plea of the appellant taken in this appeal is that it is a proprietorship concern running a cooking gas agency and covered under the provisions of the Act. Summon dated 30/10/2009 was issued to the establishment to appear and participate in the inquiry to be held on 20/11/2009 u/s 7A of the Act, as it was noticed that there is deficit in deposit of PF dues for the aforesaid period.

The appellant establishment appeared and filed all the details of the deposit of PF contribution for verification of the Respondent. The authorized representative of the establishment informed that the statutory compliance has been made properly and there is no omission on the part of the establishment. Though all necessary cooperation

was rendered by the appellant and all the records were produced and all relevant legal positions were pointed out, the commissioner ignoring the written submission of the establishment and the grounds taken therein and by accepting the report of the EO in toto, passed the cryptic and unreasonable order. The appellant has further stated that the basis of the inquiry was the complaint made by Bharatiya Engineering and General Mazdoor Union alleging that the establishment is not making the PF contribution on the minimum wage but on the actual wage paid. The said complainant during the inquiry by the commissioner did not appear to substantiate the allegation. But the commissioner while accepting the report of the EO took a wrong view of the matter and concluded that the PF contribution is payable considering the minimum wage notified by the Govt. from time to time and not on the actual wage paid. He also made assessment on a wrong notion that PF contribution is also payable for the accounting charges paid to the free lance accountants assisting the establishment though they are not in the pay roll. All the objection taken in this regard in the written submission filed during the inquiry was rejected and the report of the EO was accepted for passing the impugned order. The commissioner also made no effort of identifying the beneficiaries in respect of whom the assessment was made. Being aggrieved an application for review was also filed by the appellant invoking the provisions of sec 7B of the Act. But the same was rejected in a technical manner without application of mind. Hence by filing the appeal the appellant has prayed for setting aside the impugned orders on the ground that the orders are patently illegal.

The respondent filed reply refuting the stand taken by the appellant. The main objection taken by the Respondent is that the appeal is not maintainable for not adding the complainant union a party, as the said complaint was the basis of the inquiry. The Respondent has further pleaded that the report of the enforcement officer and the submission of the establishment were given due consideration for passing the impugned orders. All other grounds taken by the appellant has been denied.

During course of argument the learned counsel for the appellant by placing reliance in the case of **Himachal Pradesh State Forest Corporation VS Assistant PF Commissioner, 2008-III LLJ SC 581** and in the case of **Food Corporation of India VS RPF, 1990LLR, 64, SC** submitted that the commissioner while discharging the function of a quasi judicial authority has been vested with the power of enforcing attendance of witnesses and production of documents

required for adjudication. Since identification of beneficiaries is a pre requisite for assessment u/s 7A of the Act, efforts should have been made for the same. But the commissioner acted illegally while making the assessment without identifying the beneficiaries. He also argued that the assessment made on the minimum age payable is illegal. To support his argument he elaborated that the EPFO on 23/05/2011 had issued a circular directing assessment splitting of the age at the rate of the minimum wage notified by the appropriate Govt. but the said circular was withdrawn by circular dated 2nd Dec 2011, in view of the challenge made and the SLP pending before the Hon'ble SC in the case of APFC vs. G4 Security Services. Copies of the said circulars have been placed on record. No rebuttal argument was advanced on behalf of the respondent in this regard.

The report of the EO has been placed on record. In the said report the EO has recommended for assessment on the charges paid to the Accounting professionals whom the appellant has stated to be free lance professional not in his pay Roll. It is seen that the commissioner made no effort of summoning those professionals or the persons who were denied the benefit as per the complaint of the Union. On the contrary the impugned order shows that the complainants did not appear to participate during the inquiry. This clearly leads to a presumption that on the basis of an unverified complaint and in deviation of the departmental circular not to proceed on the basis of unverified complaints, the commissioner passed the short and cryptic order in which he has failed to mention as to why the report of the EO was accepted. It is also not evident from the order that the EO had made a deposition during the inquiry, thereby giving opportunity to the establishment to the stand taken by the EO. The copy of the written submission made by the establishment during the inquiry has been placed on record. Though on behalf of the Respondent in the reply filed it has been stated that all the grounds taken in the reply were duly considered, surprisingly, none of the points raised in the written submission has been dealt in the impugned order.

It is not understood why the commissioner has not given any finding on the inadequacy of the deposit made by the establishment. If at all he was of the opinion that the establishment is required to make more deposit, his order should have reflected the reason for the same including the basis of the calculation and the beneficiaries in respect of whom the deficient or no deposit was made. In absence of a finding to that effect the one and only conclusion is that the commissioner has passed the order without application of mind and without identifying the beneficiaries, which makes the impugned order not sustainable in

the eye of law. The law is well settled that assessment under EPF &MP Act cannot be made as if the liability is at par with Tax. It is well settled that the EPFO is the custodian and Trustee of the subscribers and is duty bound to return the contribution to the subscribers. The purpose of the legislation is not to levy the amount as if Tax. Hence identification of the employees who are the beneficiaries for the subscription is a must before the assessment of the dues is made. Besides the view taken by the Hon'ble SC taken in the case of Himachal Pradesh State Forest Corporation referred supra, a similar view has also been taken by the Hon'ble High Court of Bombay in the case of **CBT, EPFO vs. M/S Shakambari Ginning and Pressing Factory, Akola and Another ,2019 LLR,81.**

In this appeal, the impugned order not only suffers from non identification of the beneficiaries, but also lacks the reason behind the assessment on the minimum wage rate though much before the date of the impugned order in the year 2014, the circular was withdrawn in the year 2011. No reason in support of that action has been mentioned in the impugned order. Hon'ble SC in the case of **Kranti Associates Pvt. Ltd vs. Sh. Masood Ahmed Khan and others, (2010)9 SCC 496,** have held that

“insistence on reason is a requirement for both judicial accountability and transparency. If a judge or quasi judicial authority is not candid enough about his decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principle of incrementalism. Reason in support of decisions must be cogent, clear and succinct. A pretence of reason or rubber stamp reason is not to be equated with a valid decision making process”

The impugned order besides non identification of beneficiaries also suffers from want of reasons which makes the same not sustainable in the eye of law and entails to be set aside. Hence, ordered.

ORDER

The appeal be and the same is allowed. The impugned order passed u/s 7A and 7B of the EPF and MP Act is hereby set aside. Consign the record as per rules.

Presiding Officer

**BEFORE THE 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.

ATA No. D-2/21/2022

M/s. Kinjal Enterprises Through Meenakshi Appellant

VS.

APFC-Noida Respondent

ORDER DATED:- 20/09/2022

Present:- Shri S.K Khanna, Ld. Counsels for the Appellant.
Shri Narender Kumar, Ld. Counsel for the respondent.

The appeal challenges orders passed by the APFC Noida u/s 14B and 7Q of the EPF&MP Act, wherein the appellant has been directed to deposit Rs 5,40,467/- as damage Rs 4,20,859/- as interest for delayed remittance of EPF dues of it's employees for the period 04/2019 to 02/2020. Notice being served on the respondent, learned counsel for the respondent appeared and participated in the hearing on admission and the prayer for grant of interim stay on the execution of the impugned order.

Perusal of the record and office note of the registry reveals that the impugned orders was passed on 10/12/2021 and the appeal was filed on 27/05/2022, i.e beyond the prescribed period of limitation. Hence the registry has reported about the delay in filing the appeal. A separate petition has been filed for condonation of delay. Hearing was held on the said petition. The learned counsel for the Respondent

though submitted that the Tribunal has a limited power for extending the limitation up to 120 days only, fairly conceded on the extension of limitation allowed by the Hon'ble SC in suo motto WPC No 3/2020 on account of the outbreak of COVID 19. There being no other defect pointed out, the delay is condoned and the appeal is admitted.

In the appeal, prayer has been made for an interim order of stay on the execution of the impugned order pending disposal of the appeal.

The appellant has stated that the impugned order is illegal and arbitrary since the proceeding was conducted ex parte without taking appropriate steps for service of summons. He also pointed out that the remittance in many instances as per the calculation sheet was made after delay of two or three days. Though there was a grant of five days as the grace period after the due date for making the remittance, the same was ignored on the pretext that the circular relating to the grace period has been withdrawn. But the fact remains that the said circular was issued with the approval of the Govt. of India and the CPFC has no power to withdraw the same. The appellant thereby submitted that he has a strong case to argue and fair chance of success.

It has been explained that the appellant was diligently making deposit of PF contribution of all the employees. But for delay on the part of his clients in clearing the Bill, delay in remittance had occurred for some time. However as soon as the bills are cleared remittance was made. For the ex parte proceeding held the appellant could not get the opportunity of explaining the mitigating circumstances. The commissioner without considering the grace period allowed and only for the reason of delay in remittance, passed the impugned order which is not based on any reason supporting the finding.

In his reply the learned counsel for the respondent submitted that the impugned order has been passed imposing damage for delay in remittance which spans over almost year depriving the employees of their lawful rights. He also submitted that any order of stay on the execution of the order shall be prejudicial to the employees and defeat the purpose of the legislation. Moreover it is not the case of the appellant that the employees share was not deducted from the wage of the employees.

To this the learned counsel for the appellant took serious objection that the said finding of the commissioner in the impugned order is not base on any record and the order was passed in a mechanical manner without any finding on mensrea.

On hearing the submission made by both the counselson the prayer for interim stay, it is found that the establishment has made delay in remittance, but there is no material to prima facie believe that the employees' share was ever deducted and retained by the appellant. Thus considering the factors like the period of delay and the amount of damage assessed, it is felt proper to pass an order of interim stay on the execution of the impugned order pending disposal of the appeal. If there would not be a stay on the execution of the impugned order passed u/s 14B of the Act, certainly that would cause undue hardship to the appellant. But at the same time it is held that the stay shall not be unconditional. Hence, it is directed that the appellant shall deposit 30 % of the assessed damage, as a pre condition for grant of stay till disposal of the appeal, within six weeks from the date of communication of the order by depositing challan, failing which there would be no stay on the impugned order passed u/s 14B. The respondent is directed not to take any coercive action against the appellant in respect of the impugned order passed u/s 14B till the compliance is made. It is made clear that there would not be any stay on the order passed u/s 7Q of the Act passed separately and at this stage of admission, no opinion can be formed if both the orders are composite in nature. Call on 21st November, 2022 for compliance of the above stated direction and reply by the Respondent.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/34/2022

M/s. Sanko Gosei JRG Automotive India Pvt. Ltd.
Through Sh., S.K Gupta, Ld. Counsels for the Appellant

Appellant

Vs.

RPFC-Gurgaon
Through Sh, S. N Mahanta, Ld. Counsel for the Respondent

Respondent

ORDER DATED :- 20.09.2022

Arguments on the admission of the appeal heard and concluded.
List the matter on 07.11.2022 for pronouncement of order on the same.
Meanwhile, the Respondent authority is directed not to take any coercive
measure for recovery of the amount as mentioned in the impugned order
till next date of hearing.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/15/2022

M/s. Sadhu Auto Parts Pvt. Ltd. Appellant
Through Sh. J.R.. Sharma & Sh. Bhupesh Sharma, Ld. Counsel for the Appellant

Vs.

APFC, Faridabad Respondent
Through Sh. Chakardhar Panda, Ld. Counsel for the Respondent

ORDER DATED :- 20.09.2022

The Ld. Counsel for the Appellant filed the compliance order dated 01.08.2022. Accordingly, the appeal stands admitted and there shall be stay on operation of the impugned order till finalization of the appeal. List the matter again on 18.10.2022 for filing reply to the appeal by the Ld. Counsel for the Respondent.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/10/2022

M/s. Sandha & Company Appellant
Through Sh. J.R Sharma & Sh. Bhupesh Sharma, Ld. Counsels for the Appellant

Vs.

RPFC- I, Gurugram Respondent
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 20.09.2022

The Ld. Counsel for the Respondent submitted the rejoinder to the appeal. Taken on record. Copy of the same stands supplied to the Ld. Counsel for the Respondent. Now, list the matter on 24.11.2022 for final arguments.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. 219(16)2015

M/s. Inductis (India) Pvt. Ltd. Appellant
Through Sh. Anil Bhasin & Sh. Kamal Kant Tyagi, Ld. Counsel for the Appellant

Vs.

APFC, Gurgaon Respondent
Through Sh. Abhishek Mishra, Ld. Counsel for the Respondent

ORDER DATED :- 20.09.2022

Final arguments in this matter heard and concluded. List the matter on 07.11.2022 for pronouncement of order on the same.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/25/2021

M/s. RBS Services India Pvt. Ltd. Appellant
Through:- Ms. Suchita Chaudhry, Ld. Counsel for the Appellant

Vs.

RPFC, Gurugram Respondent
Through Sh. B.B Pradhan, Ld. Counsel for the Respondent

ORDER DATED :- 20.09.2022

Due to paucity of time the matter could not be taken up. List the matter on 20.10.2022 for final arguments.

Presiding Officer