

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL**

PRESENT: Justice (Retd.) Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol

EPFA No. 01 of 2016
[ATA 574(15) of 2016]

Alishan Steels Private Limited, Durgapur Appellant.

Vs.

Assistant Provident Fund Commissioner, Durgapur Respondent.

ORDER

Dated: 12.12.2024

Mr. Rajib Mukherjee, Advocate.

Ms. Shreyasi Bhaduri, Advocate.

..... for the Appellant.

Mrs. Mousumi Ganguli, Advocate.

..... for the Respondent.

1. Instant appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act) has been preferred against letter bearing No. ENFSRO/DGP/WB/42829/7A/1852 dated 07.03.2016, rejecting the prayer for review of order under Section 7-A and 7-Q of the EPF Act passed by the respondent on 31.08.2015.

(Contd. Page – 2)

2. Fact of the case, in brief, is that the appellant establishment is covered under the EPF Act and EPF Code No. WB/42829 has been allotted to the establishment. The appellant establishment was earlier known as Glass House Developers Private Limited and by letter dated 08.10.2007 it was informed that the name of the establishment was changed and an Article of Association was submitted along with a copy of certificate of incorporation relating to the change in name of the establishment w.e.f. 24.04.2006. Summons were issued to the appellant establishment on 25.07.2007 for non-remittance of Provident Fund dues by the appellant for the period from April, 2006 to March, 2007. A proceeding under Section 7-A of the EPF Act was drawn up by the Provident Fund Authority which continued from 21.08.2007 to 31.08.2015. Various representatives of the establishment appeared before the Provident Fund Authority and produced documents like Wage Register and copies of Challans. Enforcement Officers inspected the appellant establishment and submitted their report from time to time. After conclusion of hearing the Assistant Provident Fund Commissioner assessed the total evaded dues of Rs. 4,19,427/- (Rupees four lakh nineteen thousand four hundred and twenty-seven only) under Section 7-A of the EPF Act for the period from April, 2006 to March, 2007 along with an interest of Rs. 4,51,568/- (Rupees four lakh fifty-one thousand five hundred sixty-eight only) under Section 7-Q of the EPF Act with a further liability to pay interest under Section 7-Q of the EPF Act from the date of passing the order to the actual date of payment of dues. The appellant establishment did not prefer any appeal within the statutory period of one hundred and twenty (120) days from the date of passing of order on 31.08.2015. On the other hand, the appellant applied on 16.02.2016 for review of impugned order dated 31.08.2015 under Section 7-A of the EPF Act. In their letter bearing No. ENFSRO/DGP/WB/42829/7A/1852 dated 07.03.2016 the Assistant Provident Fund Commissioner, CC-II, SRO, Durgapur rejected the prayer for review on the

ground that the petitioner employer availed the opportunity to defend their case from 21.08.2007 to 31.08.2015 and evidence was recorded and no new evidence has been produced. The appeal has been preferred on 02.06.2016 before the Employees' Provident Fund Appellate Tribunal, New Delhi. It is contended in the Memorandum of Appeal that the impugned order dated 31.08.2015 has been passed without considering the documents, evidence and records produced in course of the proceeding. It is their case that Mr. Balkishan Didwania, one of the Directors of the company in his affidavit, filed before the respondent authority had asserted that Mr. Rakesh Jha, who allegedly signed the document stating that eighty-seven persons were employed is not within the knowledge of the company. Mr. Mahesh Kumar Kandoi and Mr. Subhas Das were appointed as Directors of the company on 07.09.2012 and Mr. Subhas Das who used to look after the affairs of the company was ill for a long time, which is supported by a Medical Certificate. With regard to the activity of the appellant establishment it was stated that the establishment manufacture 7,300 Metric ton of mild steel ingots in a year and for this purpose thirty persons were employed. It is their case that the appellant establishment is registered under Central Excise Department. Balance Sheet, Profit and Loss Account and income and expenditure details of the company for the period from 01.04.2006 to 31.03.2007, which were audited by G. K. Tulyan and Company, a Registered Chartered Accountant Firm, were accepted by the Income Tax Department but the Provident Fund Authority did not consider the same. It is their case that while passing the impugned order the Provident Fund Authority did not verify the representation and submission made by Mr. Rakesh Jha, who was not authorized by the employer company for making such submission and representation. It is the specific case of the appellant establishment that during the period under consideration appellant had employed only thirty workers and all Provident Fund dues under the EPF Act have been deposited. It is asserted that there is no mismatch in the number of employees of the company, who were

Eligible for Provident Fund benefit. Being aggrieved with the impugned order dated 31.08.2015 under Section 7-A of the EPF Act, the appellant establishment filed an application on 16.02.2016 for review of the order but the same was rejected on 07.03.2016. The appellant prayed for revision of the impugned order dated 31.08.2015 which was rejected. Appellant in the instant appeal prayed for setting aside the impugned order.

3. The respondent contested the appeal by filing a reply on 21.11.2016. Objection raised in the reply is that the appeal has not been filed by any authorized person of the establishment and no authorization or resolution of the Board has been issued in favour of Mr. Subhas Das to sign the Memorandum of Appeal. It is contended that the Tribunal has no jurisdiction to entertain the appeal preferred against an order under Section 7-Q of the EPF Act. It is the case of the respondent that the impugned order is a reasoned and speaking order which has been passed after considering all submissions made by the parties and after giving sufficient opportunity. It is asserted that an affidavit filed by one of the directors of the employer establishment cannot nullify the report of the Enforcement Officer and it is denied that Mr. Balkishan Didwania had no knowledge about Mr. Rakesh Jha, who signed the documents relating to the employment of eighty-seven employees. The respondent urged that during proceeding Mr. Balkishan Didwania appeared on 15.01.2008 and disclosed that Mr. Rajendra Kumar Bawalia resigned from service from 30.04.2004, hence could not appear. It is asserted that on 07.02.2008 learned advocate for the establishment submitted a copy of their Balance Sheet along with Profit and Loss Account, Cash Book, Ledger for the month from April, 2006 to March, 2007 and copies of Challan for the months from April, 2006 to March, 2007 which were taken into consideration. It is claimed that during the course of enquiry, the assessing authority sought clarification from the Enforcement Officer regarding seventy-nine employees but the establishment complied in respect of thirty

employees only. Furthermore, clarification was sought on accounting heads, salary, wages, allowances paid to the contractors and security service charges, salary shown in Form 6A and Balance Sheet. On 07.02.2009 clarification regarding maintenance charges was taken on record. The Enforcement Officer calculated evaded Provident Fund dues to the tune of Rs. 4,19,427/- on the basis of documents submitted by the establishment. It is contended that that Provident Fund authority assessed the Provident Fund dues under Section 7-A of the EPF Act to the tune of Rs. 4,19,427/- for the period from April, 2006 to March, 2007 and further demanded interest of Rs. 4,51,568/- under Section 7-Q of the EPF Act.

4. The moot point for consideration before this Tribunal is whether the impugned order dated 31.08.2015 is legally tenable or the same calls for any interference.

5. At the outset it would be apposite to note that the case record of this appeal was received by the Central Government Industrial Tribunal -cum- Labour Court, Asansol on 19.09.2018 on its transfer from the Employees' Provident Fund Appellate Tribunal, New Delhi through CGIT-cum-LC, Kolkata and has been re-numbered as EPFA 01 of 2016. This Tribunal was laying vacant till 31.08.2022. After Notice to the parties the appellant preferred an application on 05.10.2023 for amendment of the Memorandum of Appeal, which was rejected as the appeal had been initially filed against a letter dated 07.03.2016, which sought for a review of order dated 31.08.2015. In fact, the appeal has been preferred against order dated 31.08.2015 but to cover up the period of limitation it has been stated that the appeal has been filed against letter dated 07.03.2016, though no order was passed on that date. According to the provision under Rule 7(2) of the Tribunal (Procedure) Rules, 1997 :

“Any person aggrieved by a notification issued by the Central Government or an

order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/ order, prefer an appeal to the Tribunal.

Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.”

In the present case the appeal has been preferred long after expiry of one hundred twenty (120) days from the date of passing of the impugned order dated 31.08.2015. However, as the appeal has been admitted and it has reached its final stage the same is being considered on its merit.

6. Mr. Rajib Mukherjee, learned advocate for the appellant argued that the order under Section 7-A of the EPF Act has been passed against the appellant establishment in respect of eighty-seven employees, without identifying the beneficiaries. It is submitted that at the relevant time only thirty employees were working under the appellant establishment and this has been clearly mentioned in the affidavit affirmed by Mr. Balkishan Didwania, where he has disowned Mr. Rakesh Jha as the representative of the management. Learned advocate submitted that the Provident Fund authority has miserably failed to assess the Provident Fund dues as it did not consider the documents of the company, the Income Tax Return, Balance Sheets and Wage Registers. It is urged that the impugned order is liable to be set aside.

7. Mrs. Mousumi Ganguli, learned advocate for the respondent argued that the appellant establishment had neglected and failed to remit its Provident Fund dues in respect of eighty-seven employees for the period from April, 2006 to March, 2007. A proceeding under Section 7-A of the EPF Act was initiated and order dated 31.08.2015 was passed after eight years of extended time. Referring to page six (6) of the impugned order, it is submitted that on 25.08.2015

Mr. Mahesh Kumar Kandoi, Director appeared on behalf of the establishment and the Enforcement Officer who represented the department submitted challans related to deposits made along with status of non-payment for the case period which was taken on record. The calculation of dues was made by the Enforcement Officer, which figured at Rs. 4,19,427/-. It is urged that the default was established and the appellant establishment was also directed to pay interest of Rs. 4,51,568/- under Section 7-Q of the EPF Act till the date of order and to pay further interest on the said amount till remittance of the dues. It is urged that there is no merit in the appeal and the same is liable to be dismissed.

8. Having considered the facts and circumstances, impugned order, Memorandum of Appeal, reply of the respondent and the arguments advanced on behalf of both parties, I find that the appellant establishment incorporated as Alishan Steels Private Limited w.e.f. 24.04.2006 was previously known as "Glass House Developers Private Limited". This change of name of the establishment does not affect the subject matter of the case in any manner as the relevant period of non-remittance of Provident Fund dues is from April, 2006 to March, 2007. Summons was issued to the establishment for showing cause and Mr. S. K. Agarwal appeared on behalf of the establishment on 18.09.2007 thereafter Mr. P. K. Roy, advocate appeared on behalf of the appellant establishment and on 15.01.2008 Mr. Balkishan Didwania, Director appeared on behalf of the establishment and submitted an affidavit on 09.12.2009 through Mr. P. K. Roy, advocate. It is stated in the affidavit that the establishment had no knowledge that Mr. Rakesh Jha, represented the employer company before the Enforcement Officer and stated that eighty-seven persons were employed. It is affirmed that only thirty (30) persons were employed. On a close scrutiny of impugned order, I find that the proceeding was initiated on 21.08.2007 and was fixed on several dates till 09.12.2009. It transpires that no date was fixed thereafter till 27.01.2012. No reason has been assigned in the impugned order for not

proceeding with the case for nearly two years. In page six (6) of the impugned order it appears that Enforcement Officer calculated the evaded due @ Rs. 4,19,427/-. There is no reflection in the impugned order that the Enforcement Officer's report was supplied to the representative of the establishment, seeking their observations for verification. It is gathered from the impugned order that Enforcement Officer's Report and documents filed by the establishment formed the basis of the finding of the Provident Fund authority. In their letter dated 28.08.2006 issued to the Director, Alishan Steels Private Limited, Provident Fund Authority disclosed the names of only seventy-nine employees. The assessment of dues appeared to have been made on the basis of eighty-seven employees. In a proceeding under Section 7-A of the EPF Act, for determination of monetary dues from the employer it is mandatory that the officer conducting the inquiry under sub-section (1) of Section 7-A of the EPF Act shall, for the purposes of such inquiry, have the same powers vested in a court under the Code of Civil Procedure and shall receive evidence on affidavit. In the instant case in page six (6) of the impugned order it is stated that the Provident Fund authority has considered the facts and submissions and evidence adduced before him, but there is no specific reference in the order as to what evidence was adduced by the employer or the Enforcement Officer. No evidence has been discussed. The respondent in the impugned order has observed that both parties requested him to conclude the proceeding and in view of the Enforcement Officer's report and submissions made during the proceeding, it was felt that there was sufficient material available on record to conclude the proceeding. Further, it was a long pending case and for the sake of bona fide employees and for the ends of natural justice, the case was concluded and order was kept reserved. It is clear from such observation that no reasoned order has been passed by the respondent authority and no step has been taken by him to ascertain the actual number of employees working in the establishment during the period from April, 2006 to March, 2007. The impugned order does not reflect

whether after the affidavit of Mr. Balkishan Didwania, filed by the establishment on 09.12.2009, the respondent authority ventured to ascertain the veracity of its contents and the number of employees actually working in the establishment and whether Mr. Rakesh Jha was examined as a witness to support his disclosure before the Enforcement Officer. The respondent authority instead of arriving at any finding on the basis of legal evidence, has reached a conclusion on the basis of surmise, conjecture and subjective assessment. The impugned order is neither a reasoned nor a speaking order, therefore same is not legally tenable and is liable to be set aside.

9. In the case of **West Bengal Power Development Corporation Limited vs. Union of India and Others [C.W.P. No. 3032 (W)/ 2008]**, the Hon'ble High Court at Calcutta held that :

“ the APFC has saddled the petitioner with a huge statutory liability coupled with its inevitable other statutory consequences, including penal action, in a most casual manner and in breach of the principles of natural justice. The report not proved by anyone was made the sole basis of the s. 7A order. This is an arbitrary way of deciding a quasi-judicial proceeding.”

To my mind the respondent authority had an obligation to supply authenticated copy of the Enforcement Officer's Report and follow the procedure for admitting the same in evidence under Section 7-A (2) and 3-A also provide opportunity to the employer for cross-examination so that discrepancy, if any, in such report are brought out by way of cross-examination.

10. In my considered view the Provident Fund Authority would not be able to come to a clear finding as to the number of beneficiaries i.e., the employees whose Provident Fund dues have not been paid by the establishment, without collecting proper evidence as to the number of employees, which oscillates between thirty to eighty-seven. The impugned order dated 31.08.2015 passed by

the Assistant Provident Fund Commissioner, Durgapur against the appellant establishment is set aside. The case is remanded back to the Provident Fund authority for deciding the matter afresh by assessing the Provident Fund dues for the period from April, 2006 to March, 2007 after identifying the beneficiaries and their actual number, keeping in mind the provision of Section 7-A (2) and (3A) of the EPF Act. The entire procedure be completed within three (3) months from the date of communication of the order.

Hence,

O R D E R E D

that the appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is allowed on contest. The impugned order dated 31.08.2015 under Section 7-A and 7-Q of the EPF Act is set aside. The case is remanded back to the Assistant Provident Fund Commissioner, Durgapur with a direction to rehear the parties within a period of three (3) months from the date of communication of this Order and after giving opportunity to both the parties to adduce evidence in accordance with law laid down in EPF Act, pass a fresh order. Let copies of the Order be communicated to the parties under Rule 20 of the Tribunal (Procedure) Rules, 1997.

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.