

**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 2019**

**M/s. Manik Chandra Kundu, Bankura** ..... Appellant.

Vs.

**Assistant Provident Fund Commissioner, Durgapur** ..... Respondent.

**ORDER**

**Dated: 23.02.2024**

Mr. S. K. Khanna, Adv.,  
Mr. Chanchal Kumar Chandra, Adv., and  
Mr. Bibhas Banerjee, Adv. .... for the Appellant.

Mrs. Mousumi Ganguli, Adv. .... for the Respondent.

1. Appellant has preferred this appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as EPF Act) assailing the impugned order dated 10.12.2018 passed by the respondent in a proceeding under Section 7-A of the EPF Act. The fact of the case in short is that M/s. Manik Chandra Kundu (proprietor of Saraswati Biri) situated at Ramsagar, District- Bankura is covered under the EPF Act and a Provident Fund Code No. WB/DGP/46699 was allotted to the establishment. Due to non-payment of Provident Fund dues for the period from its set up till

10/2007 a proceeding under Section 7-A of the EPF Act was started. On earlier occasion the respondent in a proceeding under Section 7-A of the EPF Act passed an order dated 29.09.2015 against the appellant establishment for not depositing the Provident Fund dues in respect of its employees for the period from its setup to 10/2007, assessing the dues to Rs. 23,104/- and an amount of Rs. 22,195/- under Section 7-Q of the EPF Act from the date of coverage till 10/2007. The order was challenged before The Employees' Provident Funds Appellate Tribunal, New Delhi (hereinafter referred to as EPFAT, New Delhi) in ATA No. 1363(15) of 2015. In the earlier appeal the appellant contended that the establishment never engaged more than ten employees and the respondent on the basis of Enforcement Officer's report dated 31.08.2007 covered the appellant establishment under the EPF Act through coverage letter dated 10/11.09.2007 w.e.f. 03.07.2007 which was improper and the order was liable to be set aside. The Provident Fund authority in reply contended that during physical verification it was found that twenty-one (21) employees were working in the establishment whose list was prepared by the Enforcement Officer, as such the establishment is covered under the provisions of the EPF Act. The EPFAT, New Delhi at the first instance by order dated 10.11.2016 found from the Enforcement Officer's report that there were two list of employees, ten (10) employees in the 1<sup>st</sup> list and eleven (11) employees in the 2<sup>nd</sup> list. It was observed that before confirming the coverage of the establishment the respondent never confirmed about employment of eleven (11) employees under the appellant and the period of their employment in the establishment. The order dated 29.09.2015 was set aside and the matter was remanded back to the respondent with a direction that the respondent shall join those eleven (11) persons in the enquiry and shall grant opportunity of cross-examination to the appellant establishment and thereafter pass a speaking order.

2. After the matter was sent back on remand with a specific direction,

Summons bearing No. RO/DGP/ENF/WB/46699/CC-I/1581 dated 08.02.2018 was issued to the establishment and asked to represent their case on 08.03.2018. In course of the proceeding the Enforcement Officer again submitted its report dated 02.04.2018 disclosing the address of eleven persons who were in employment with the appellant on 03.07.2007. Dispute was raised by the appellant but the Enforcement Officer without any supportive documentary evidence reported that the persons worked under the establishment. Statements of eleven workmen were recorded in absence of the appellant and the said person submitted their Employment Identity Card which were taken on record in the proceeding. The said workmen were not examined in the proceeding on 10.05.2018 but the respondent held that the identity of eleven workmen were established and they were working in the establishment from 03.07.2007. It was concluded that the establishment was correctly covered from 03.07.2007 as the number of employees working in the establishment was twenty or more. The respondent authority upheld its earlier order dated 29.09.2015 under Section 7-A of the EPF Act.

3. Being aggrieved with the impugned order the present appeal has been preferred against the order dated 10.12.2018 in a proceeding under Section 7-A of the EPF Act, on the grounds inter-alia that the impugned order has been passed in contravention of the order of remand dated 10.11.2016 passed by the EPFAT, New Delhi in ATA 1363 (15) of 2015 where the respondent was required to give opportunity to the appellant to cross-examine the eleven persons said to be employees in the proceeding under Section 7-A of the EPF Act. The respondent on the other had taken statement of eleven persons on 10.05.2018 keeping the appellant in the dark and no opportunity of cross-examination was provided to the appellant. It is further urged that the order was passed without considering any evidence and only by relying upon statement of eleven persons recorded by Enforcement Officer. It is contended that amount assessed under Section 7-A

has been made without deciding applicability of the Act upon the establishment. Referring to the Enforcement Officer's report dated 31.08.2007 the appellant pointed out that only five out of eleven persons were found by the squad at the time of physical verification but the impugned order has been passed arbitrarily, whimsically and without assigning any reason. According to the appellant the impugned order has been passed in violation of principles of natural justice by denying opportunity to the appellant to cross-examination the Enforcement Officer who purportedly visited the appellant establishment on 03.07.2007 and submitted reports on 31.08.2007 and 02.04.2018. the appellant prayed for setting aside the impugned order dated 10.12.2018 and grant such relief as the Tribunal may deem fit and proper.

4. Respondent contested the appeal by filing reply, stating therein that the respondent provided opportunity to the establishment at the time of hearing and passed a reasoned order on the basis of document and evidence. The responded asserted that a Provident Fund Code was allotted to the appellant establishment for its coverage under the EPF Act w.e.f. 03.07.2007. It is argued that the establishment had a strength of twenty-one employees at the relevant time and the appellant in their letter dated 05.11.2007 raised a dispute regarding applicability of the EPF Act upon the establishment. A proceeding under Section 7-A has been initiated and order was passed on 29.09.2015. The establishment preferred an appeal before the EPFAT, New Delhi which passed an order dated 10.11.2016 directing the respondent to join the eleven persons in the enquiry and grant opportunity of cross-examination to the appellant and thereafter pass a speaking order. Provident Fund Authority issued an U.O. Note to the Enforcement Officer on 12.04.2018 to collect the residential addresses of eleven employees and direction was given to the establishment for submission of relevant documents like, attendance Register, Cash Book and Vouchers, Payment Register / Pay Bill, General Ledger, Trading and profit and loss Account

and Balance Sheet, statutory Return(s) in F/12A and so forth. The Enforcement Officer in his letter submitted the address of all eleven employees. Copy of the Enforcement Officer's report dated 02.04.2018 was supplied to the establishment and Notice was issued to the eleven employees to appear for hearing on the next date. On 05.04.2018 names of said eleven employees were included in the list of employees for considering the strength of employees for the purpose of coverage of the establishment. The eleven employees appeared and declared themselves to be employees in the establishment from 03.07.2007 as Biri Workers and they were getting salary / wages @ Rs. 78/- per thousand biris. Names of the said eleven employees are (i) Subrata Laha, (ii) Sunil Maji, (iii) Anath Maji, (iv) Sujit Majhi, (v) Ajit Maji, (vi) Hablu Maji, (vii) Biswajit Maji, (viii) Shanti Singh, (ix) Aditya Maji, (x) Narayan Bouri, and (xi) Bharat Maji. Mr. Gautam Kumar Das, Enforcement Officer submitted his report that he already examined the employees and they have declared that they were working in the establishment and getting wages. Since the strength of the employees in the establishment was more than twenty, it came under the coverage of the EPF Act w.e.f. 03.07.2007. The proceeding was adjourned to 14.06.2018 and thereafter the matter was fixed on 05.07.2018, 09.08.2018, and 13.09.2018. Since, the eleven workmen were already examined by Mr. Gautam Kumar Das, Enforcement Officer, the respondent authority concluded the proceeding of the case and upheld the 7-A order issued by the Assistant Provident Fund Commissioner on 29.09.2015. The respondent urged that there is no merit in the appeal and the same is liable to be dismissed.

5. Mr. S. K. Khanna, learned advocate for the appellant accompanied by Mr. Chanchal Kumar Chandra, learned advocate appeared on 21.09.2023 and advanced their argument. The salient points of the argument advanced on behalf of the appellant is that in ATA No. 1363(15) of 2015 by order dated 10.11.2016 the EPFAT, New Delhi set aside the earlier impugned order dated 29.09.2015

with a direction that the respondent shall join those eleven persons in the enquiry and shall grant opportunity of cross-examination to the appellant. Learned advocate for the appellant drew my attention to the page 47 of the Memorandum of Appeal and argued that though names of eleven persons were noted as employees, only five had put their signatures and thumb impressions. Therefore, the number of employees working in the establishment on 03.07.2007 were fifteen in number and not twenty-one as has been mentioned in the coverage letter of the establishment dated 11.09.2007 or in the impugned order. Referring to the order dated 10.05.2018 learned advocate for the appellant argued that eleven persons said to be employees of the establishment were summoned and they had appeared but there is nothing to show that the total number of the persons employed were twenty or more. Learned advocate argued that no opportunity was given to the appellant establishment to cross-examination those eleven persons and no further date was fixed before passing the impugned order on 10.12.2018. It is claimed that no reasoned order has been passed by the respondent authority and the impugned order is liable to be set aside. In support of his argument learned advocate relied upon the ratio of the decisions in the case of (i) **M/s Kranti Associates Private Limited and Another vs. Masood Ahmed Khan and Others [(2010) 9 SCC 496]**, (ii) **West Bengal Power Development Corporation Limited vs. Union of India and Others [C.W.P. No. 3032 (W)/ 2008]**, (iii) **Central Tool Room & Training Centre vs. Employees' Provident Fund Organization and Others [W.P.A. 734 of 2022]**, and (iv) **Chandan Rai vs State of West Bengal and Others [FMA 97 of 2019]**, and (v) **Automobile Association Upper India vs. The Presiding Officer Labour Court II and Another [130 (2006) DLT 160]**.

6. Mrs. Mousumi Ganguli, learned advocate for the respondent in reply argued that the appellant establishment was brought under the coverage of the EPF Act as the number of employees were found to be twenty-one. It is argued

that at the first instance challenging the order under Section 7-A dated 29.09.2015, it was contended that eleven employees could not be identified by the establishment. In the appeal the order was set aside with a direction to join the eleven persons and provide opportunity to the appellant to cross-examine them. Learned advocate argued that all the eleven employees were identified by the Enforcement Officer and in his report, he stated that he has examined all the employees and they confirmed that they were working in the establishment at that time and getting wages. The respondent authority after considering the documents and records submitted before the Enforcement Officer once again held that the establishment was covered under the EPF Act w.e.f. 03.07.2007 and directed the appellant to comply earlier order dated 29.09.2015 passed in the proceeding under Section 7-A of the EPF Act. It is urged that the appeal is liable to be dismissed.

7. The stage is now set for considering the merit of the appeal. Perused the Memorandum of Appeal, Reply filed by the respondent and the impugned order dated 10.12.2018. Also considered the argument advanced on behalf of the appellant and the respondent. The crux in issue is whether the appellant establishment has been rightly covered under the EPF Act for the purpose of remitting Provident Fund dues in respect of its employees. Section 1(3) of the EPF Act provided that the EPF Act shall applies to the establishment where the number of employees is twenty or more. Initially Notice was issued to the appellant establishment on 11.09.2007. It was informed that on the basis of inspection of the records of the establishment conducted by Enforcement Officer on 03.07.2007 the establishment of M/s. Manik Chandra Kundu, engaged in Biri industry was included in Schedule 1 Class of establishment in the EPF Act, as the establishment had employed twenty-one persons on 03.07.2007. The Provident Fund authority under Section 1(4) of the EPF Act notified the application of the Act upon the establishment and issued a Provident Fund Code

No. WB/DGP/46699. A proceeding under Section 7-A of the EPF Act was started against the establishment for non-payment of Provident Fund dues for the period from its setup till 10/2007. Amount payable under Section 7-A and 7-Q of the EPF Act were assessed by the respondent. Same was challenged before the EPFAT, New Delhi in Appeal No. 1363 (15) of 2015. The appeal was disposed of on 10.11.2016 returning a finding that before confirming the coverage, respondent never identified the eleven employees to confirm their period of employment with the appellant. The order was set aside and the matter was returned to the respondent. After the matter was remanded, Notice dated 08.02.2018 was issued to the proprietor of M/s. Manik Chandra Kundu, asking them to appear on 08.03.2018 with relevant document for taking part in a proceeding under Section 7-A of the EPF Act. On careful consideration of the order passed by the respondent it appears that eleven employees, whose names were included in the employment strength for the purpose of ascertaining the coverage of the establishment under the EPF Act Summons were issued for appearance on 10.05.2018. In Page-2 of the order it has been stated that identity of eleven employees working in the establishment on 03.07.2007 were established and Mr. Gautam Kumar Das, Enforcement Officer of the department submitted that he already examined the employees who were getting wages from the establishment. The respondent on the basis of such report concluded that establishment was correctly covered under the EPF Act w.e.f. 03.07.2007 and directed the employer to comply the earlier order dated 29.09.2015 under Section 7-A of the EPF Act issued by the Assistant Provident Fund Commissioner.

8. It is evident from the impugned order that the respondent authority neither provide opportunity to the establishment to cross-examine the Enforcement Officer, who submitted the report dated 02.04.2018 nor the eleven persons who were included in the list as employees of the establishment. The



burden of proof rested on the Provident Fund authority to establish that on 03.07.2007 twenty or more employees were on the payroll of the appellant establishment. The person who were said to be employees ought to have been examined and opportunity should have been given to the appellant establishment to cross-examine the said persons to ascertain their identity. In absence of such proof, the report of the Enforcement Officer cannot be treated as sacrosanct for the purpose of extending the coverage of the EPF Act over the establishment. In catena of decisions, the Hon'ble Supreme Court of India as well as various Hon'ble High Courts have clearly laid down that the onus of proof lies upon the Provident Fund authority to establish the identity of the employees for the purpose of extending coverage of the Act.

9. In the case of **M/s Kranti Associates Private Limited and Another vs. Masood Ahmed Khan and Others [(2010) 9 SCC 496]**, the Hon'ble Supreme Court of India held that reasons must reveal a rational nexus between the materials which are considered and the conclusion reached. Order passed by a quasi-judicial authority or even an administrative authority, affecting the rights of parties, must be a speaking order supported with reasons. In the instant case the matter was remanded back to the Provident Fund authority by order dated 10.11.2016 for deciding the matter afresh by passing a reasoned order, which has not been fulfilled.

10. 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 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. The direction issued in the remand order dated 10.11.2016 has not been complied.

11. It is further necessary to comply the provisions of 7-A(2) of the EPF Act for the purpose of adducing evidence. In the case of **Central Tool Room & Training Centre vs. Employees' Provident Fund Organization and others [W.P.A. 734 of 2022]**, the Hon'ble High Court at Calcutta held that the provision of law vests the same powers on the authority as are vested in a Court under the Code of Civil Procedure in dealing with a proceeding under Section 7-A of the EPF Act. I find that the respondent authority did not comply the direction of remand and no opportunity of cross-examination was afforded to the appellant. Therefore, the conclusion drawn by the respondent that on the relevant date twenty-one employees worked at the establishment does not hold good for want of evidence. I also find that the respondent in the impugned order has directed the employer establishment to comply the earlier order dated 29.09.2015 passed under Section 7-A of the EPF Act. It is to be borne in mind that the order dated 29.09.2015 has been set aside and it is non est. The respondent authority failed to comply the directions made in the remand order of EPFAT, New Delhi by not recording evidence, not affording scope of cross-examination of the eleven persons shown as employees in Enforcement Officer's Report and for not passing a fresh reasoned order.

9. In view of the facts and circumstances and my above discussion, I hold that the impugned order is bad in law and the same is not tenable due to want of evidence and non-compliance of order of remand dated 10.11.2016. The

impugned order is therefore set aside on contest. Let the matter be remanded back to the respondent for hearing the matter afresh after serving Notice upon the appellant establishment. In determining the question of coverage of the establishment the concerned employees should be identified and the appellant establishment should be given opportunity to cross-examine the Enforcement Officer and the persons claiming to be employees under the establishment. If after reasonable opportunity extended to the appellant, they prefer not to participate in the proceeding for cross-examination, legal presumption may be drawn against them. A speaking order shall be passed afresh after completion of the proceeding preferably within a period of two (2) months from the date of communication of this order

Hence,

**ORDERED**

that the appeal under Section 7-I of the EPF Act is allowed on contest against respondent. The impugned order dated 10.12.2018 passed by the respondent against the appellant in a proceeding under Section 7-A of the EPF Act is set aside. The matter is remanded back to the respondent for compliance of earlier remanded order dated 10.11.2016. The respondent shall grant opportunity of cross-examination to the appellant establishment and thereafter pass a speaking order. The matter may be disposed of preferably within a period of two (2) months from the date of communication of this 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.