

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

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

**EPFA No. 02 of 2016**  
[ATA No. 710(15)/2016]

**Steel Authority of India Limited in respect of  
Durgapur Steel Plant, Durgapur.**

..... Appellant.

Vs.

**(1) Assistant Provident Fund Commissioner (Ex-Com), Durgapur**

**(2) Durgapur Steel Plant Sports Association, Durgapur.** ..... Respondents.

**O R D E R**

**Dated: 14<sup>th</sup> July, 2023**

Mr. Madhab Banerjee, learned advocate ..... for the Appellant.

Mrs. Mousumi Ganguli, learned advocate ..... for the Respondent No. 1.

**1.** This appeal has been preferred by the appellant under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act) against impugned order dated 29.12.2015 passed in a proceeding under Section 7-A of the EPF Act, levying Provident Fund dues of Rs.16,46,740/- and interest of Rs.7,02,983/- under Section 7-Q of the EPF Act for sixteen ad hoc teachers of Durgapur Steel Plant School for the period from 07/2008 to 02/2015 and Provident Fund dues of Rs.4,33,784/- and interest of Rs.4,25,809/- for twelve Swimming Pool volunteers / employees of Durgapur Steel Plant Sports Association (hereinafter referred to as DSPSA) for the period from 08/2002 to 06/2011.

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**2.** The appellant is the Steel Authority of India Limited (hereinafter referred to as SAIL), representing Durgapur Steel Plant (hereinafter referred to as DSP) one of its units at Durgapur, West Bengal. The prologue of the appellant's case is that DSP has a separate exempted Provident Fund Trust known as DSP Provident Fund Trust with Provident Fund Code No. WB/9528 for its regular employees and a Provident Fund Code No. WB/9528-C for its contract labours.

**3.** Respondent No. 2 is a sports and cultural association, managed by the employees and ex-employees of DSP and is affiliated to Durgapur Sub-Divisional Sports Association, Sidhu Kanu Indoor Stadium, Durgapur -713216 like other sports clubs and associations in Durgapur. It is the case of the appellant that DSPSA / Respondent No. 2 is a non-profit association and it has no connection with DSP and is not a part of appellant establishment.

**4.** Bereft of the prefatory details, the dispute in issue giving rise to this appeal is that only on 31.03.2015 a summons was issued to the appellant DSP, vide Letter No. ENF/Ex-Com/WB/DGP/9582/C/322-B/20823 dated 31.03.2015 initiating a proceeding under Section 7-A of the EPF Act on the self-same issue which had already been raised on two earlier occasions. In the said summons it was mentioned that two complaints were received from ad hoc teachers of DSP\School and some employees under DSP swimming pool managed by DSPSA for extension of Provident Fund benefits mentioned to them as employees of DSP. It is contended by the appellant that copies of complaints were not enclosed with the summons nor did it contain any material of the complaint. Proceeding was initiated for determination of Employees' Provident Fund dues payable to the Swimming Pool workers from 08/2002 till 06/2011, contrary to the order dated 28.03.2011 and 22.07.2014 of the Provident Fund Authority at Durgapur in which direction was given for extension of Provident Fund benefits prospectively.

5. The appellant urged that details of beneficiaries were not disclosed in the Notice and the amount liable to be paid as Provident Fund dues was not specified. Although the Enforcement Officer of the department held inspection, the report of such inspection was not provided along with the Notice to enable the appellant to submit their objection. The appellant contended that though the Swimming Pool workers were engaged by DSPSA / Respondent No. 2 they were not summoned.

6. According to the appellant, respondent no. 1 did not have any material for issuing summons against the appellant. On 14.05.2015 the appellant submitted its reply to the summons dated 31.03.2015 contending that the swimming pool was not operated by the appellant and was managed by DSPSA. The swimming pool was a non-profit organization working for welfare and benefit of people of DSP and the ex-employees worked voluntarily and were paid honorarium. Furthermore, the swimming pool remained open for only six months in a year and no order is liable to be passed against DSP for payment of Provident Fund for the ex-employees of the swimming pool, managed by DSPSA / Respondent No. 2.

7. The case was adjourned to 19.06.2015 and 20.08.2015 to deal with dispute regarding ad hoc teachers. Respondent No. 1 without supplying copy of the Enforcement Officer's report to the appellant passed the impugned order on 29.12.2015, holding the appellant liable to extend the Provident Fund benefits to the ad hoc teachers of DSP Schools and all employees of swimming pool under DSPSA on the ground that they are very much employees of the appellant and has been directed to pay a sum of Rs.20,80,524/- on account of total Provident Fund dues under Section 7-A of the EPF Act and a sum of Rs.11,28,792/- on account of interest under Section 7-Q of the EPF Act.

**8.** Record reveals that the appellant filed an application dated 22.01.2016 under Section 7-B (1) of the EPF Act, praying for review of the order dated 29.12.2015. Notice was issued on 07.03.2016 fixing 01.04.2016 for hearing. Since no new material or evidence was found the application for review was dismissed by Respondent No. 1 on 03.05.2016. The order passed on review has not been challenged in this appeal.

**9.** The appellant has disputed the applicability of the EPF Act to the Swimming Pool workers and ad hoc teachers of DSP School. The grounds of appeal set out in the Memorandum of Appeal inter-alia are that no notification has been issued by the commission that the swimming pool or any establishment operating as swimming pool under DSPSA is covered under the provisions of the Act nor has the commission recorded the applicability of the EPF Act to the Swimming Pool workers and the ad hoc teachers of the DSP Schools.

**10.** It is urged by the appellant that the Assistant Provident Fund Commissioner has recorded his findings without any evidence or materials brought on record by any of the parties, ignoring the mandate of Section 6 of the EPF Act which provides that the contribution paid by the employer shall be 10% of the basic wages for the time being payable to each of the employees. It is contended that the basic wages of the ad hoc teachers and the Swimming Pool employees have not been brought on record nor did the persons claiming extension of the Provident Fund benefits to them have adduced any evidence in course of the proceeding. The appellant asserted that under sub-section 3(A) of Section 7(A) of the EPF Act the Provident Fund Commissioner is obliged to collect all evidence, being the legal duty on his part to determine the “applicability dispute” as well as the amount due, but the facts of the present case would show that the Assistant Provident Fund Commissioner failed to exercise the jurisdiction vested in him by law. It is pointed out by the appellant that the

employees have adduced no evidence to decide the applicability dispute and the Commissioner ought to have held the enquiry for collecting materials.

**11.** In support of their argument the appellant has relied upon a decision of the Hon'ble High Court of Judicature at Bombay, in the case of **Shubham Knit Wear Private Limited, Mumbai vs Regional Provident Fund Commissioner and Others [Appel No.1026 of 1997 in W.P. No. 2193 of 1993]**, wherein it was held that :

*“In order to constitute a branch, an administrative unit must constitute a component of the main organisation or system. Where two units or establishments are independent – independence being defined with reference to parameters such as management, finance, supervision and administration, one cannot be regarded as a branch of the other.”*

The contention of the appellant is that when management, finance, supervision and administration of two establishments are different, then they cannot be considered as one unit. In the present case it is argued that DSPSA is managed independently, as such it cannot be considered as one unit of the appellant establishment.

**12.** The appellant also relied upon a decision of the Hon'ble Supreme Court of India in the case of **Food Corporation of India vs Provident Fund Commissioner and Others [(1990) 1 SCC 68]**, in which it was held that the assessing officer, who is the statutory authority, is obliged to collect evidence and material before any order is made under Section 7-A of the EPF Act and his duty is independent and regardless of material brought by the establishment or the employee.

**13.** Based upon such contention the appellant has prayed for setting aside the impugned order dated 29.12.2015 (Annexure A-12) and to declare that the

appellant is not liable to pay any amount determined under Section 7-A and 7-Q of the EPF Act.

**14.** The Assistant Provident Fund Commissioner, Durgapur contested the appeal by filing a reply. It is contended that the appellant has not impleaded the department of Central Board of Trustees or Employees' Provident Fund Organization, therefore, the appeal is liable to be dismissed. It is urged that Notice / summons dated 31.03.2015 was issued for initiating a proceeding under Section 7-A of the EPF Act for assessing Provident Fund dues of the appellant for the period from 08/2002 to 06/2011 for the Swimming Pool workers and for the period from 17.07.2008 to 02/2015 for the ad hoc teachers working under DSP Schools. The appellant was asked to appear before the commission on 23.04.2015.

**15.** It is the case of Respondent No. 1 that the complaint for non-extension of Provident Fund benefits was received from the workers engaged in the swimming pool of DSP and after examination of records the Enforcement Officer found that the workers were eligible to be covered under the EPF Act. On 23.04.2015 none appeared for the appellant and time was allowed. The ad hoc teachers submitted their representation and Mr. S. Halder, Enforcement Officer was asked to submit his report along with due status. On 14.04.2015 Mr. Amit Kr. Dutta, Assistant Manager (Education) as well as authorized representative of the establishment appeared and admitted that the ad hoc teachers were being paid salary by DSP authority but their Provident Fund had not been deducted. Mr. Vinayak Sharma, AGM (Personnel IPM and Sports) appeared and prayed for non-extension of Provident Fund benefits to the employees / workers attached to the swimming pool. Mr. Sankar Halder, representative of the department and Enforcement Officer was directed to submit his report on 19.06.2015 after verifying all the records.

**16.** Mr. Amarendra Singh, General Manager (Education) and Mr. Chandan Ghosh, Assistant Manager (Personnel, IPM and Sports) appeared on behalf of the establishment and prayed for time to submit relevant records. Mrs. Jayashree Pal, teacher along with other had remained present. On 16.07.2015 none appeared for the appellant establishment and prayed for adjournment. Out of twenty-eight (28) employees of the appellant twelve (12) were ex-employees of the swimming pool maintained by DSPSA and sixteen (16) of them were ad hoc teachers in School engaged by DSP as principal employer but the benefits of the EPF Act were not extended to them. It is claimed that having regards to the facts and the report submitted by the Departmental Enforcement Officer hearing was concluded on the basis of available records.

**17.** An application for 7-B (1) of the EPF Act for review of the order was submitted by the appellant on 22.01.2016. Notice was issued on 07.03.2016 and on 28.04.2016 as no new matter or evidence was produced the review application was rejected and the order dated 29.12.2015 passed in 7-A proceeding was found good.

**18.** Respondent No. 2 remained unrepresented in this appeal.

**19.** The moot point for consideration is whether the ad hoc teachers who served in DSP Schools and the Swimming Pool employees engaged by DSPSA are employees of DSP and if the benefit of Provident Fund should be extended to them. It is also to be determined if the Provident Fund Commissioner has been able to assess the Provident Fund dues of the employees on the basis of evidence adduced during inquiry.

**20.** Mr. Madhab Banerjee, learned advocate for the appellant, DSP argued that the persons employed in the swimming pool are workers of DSPSA and they are

not employees of DSP. Therefore, the appellant, DSP is not liable to contribute towards Provident Fund for such persons engaged by DSPSA. It is submitted that the employees in swimming pool maintained by DSPSA were paid honorarium and the swimming pool was operated seasonally for a particular period of the year and the appellant has no employer-employee relationship with them. Learned advocate further argued that in the summons dated 31.03.2015 the Provident Fund authority did not mention the Provident Fund dues, payable by the appellant. Therefore, the appellant did not have any opportunity to refute the claim. Moreover, in course of the proceeding no evidence was adduced by the ad hoc teachers or the representative of Swimming Pool employees regarding their appointment or basic wage. It is claimed that the final report was submitted by Mr. S. Halder, Enforcement Officer only on 05.11.2015 along with the status of dues of Provident Fund allegedly evaded by the employer during the case period. The report was submitted in absence of representative of appellant establishment and without any further hearing the Assistant Provident Fund Commissioner passed the impugned order against the appellant establishment on the basis of the Enforcement Officer's report. It is contended on behalf of the appellant that the impugned order has been passed in violation of natural justice, in a mechanical manner and contrary to law for which it is liable to be set aside.

**21.** Mrs. Mousumi Ganguli, learned advocate for the Respondent No. 1 argued that the appellant establishment is covered under the EPF Act and have been allotted Provident Fund Code Nos. WB/9528 and WB/9528-C for its regular and contractual employees respectively. On the basis of inquiry held by the Enforcement Officer and complaint received from ad hoc teachers of DSP and Swimming Pool workers of DSPSA, it is evident that the appellant has evaded the payment of Provident Fund dues toward such employees, who are twenty-eight in number. Sixteen of the employees being ad hoc school teachers of DSP and

twelve were workers of the swimming pool of the establishment under the Management and control of DSP. Notice was initially issued to the establishment for making deposits but as there was non-compliance to such earlier Notice, summons was issued for initiating a proceeding under Section 7-A of the EPF Act for assessment of dues. Learned advocate argued that sufficient opportunity was given to the appellant during the proceeding under Section 7-A of the EPF Act and the case was taken up on eight dates for hearing. On 23.04.2015, 16.07.2015, 24.09.2015, 15.10.2015, and on the last date i.e. 05.11.2015 none appeared for the appellant establishment. Thereafter on consideration of the relevant materials and documents produced by the parties and considering the final report of the Enforcement Officer, the impugned order was passed, directing the appellant to deposit Rs.20,80,524/- under Section 7-A of the EPF Act and an interest of Rs.11,28,792/- under Section 7-Q of the EPF Act. The appellant was directed to pay the said amount within fifteen days from the date of receipt of the order. Learned advocate contended that the impugned order suffers from no illegality and the appellant is obliged to deposit the Provident Fund dues along with the interest in accordance with law.

**22.** I have considered the rival contentions of the learned advocates for the appellant and Respondent No. 1, in the backdrop of the contents of memorandum of appeal and the reply submitted by the Respondent No. 1. I have also traversed the summons dated 31.03.2015 (Annexure A-9), issued by the Assistant Provident Fund Commissioner addressed to the Manager (F & A), DSP, the impugned order dated 29.12.2015 (Annexure A-12), passed in a proceeding under Section 7-A of the EPF Act as well as order dated 28.04.2016 and 03.05.2016 (Annexure A-22 and A-23), arising out of a review application under Section 7-B (1) of the EPF Act preferred by DSP.

**23.** The Respondent No. 1 has challenged the maintainability of the appeal on

the ground that the department of Employees' Provident Fund Organization has not been made a party in this appeal and only the adjudicating officer, who is a quasi-judicial body is impleaded as the respondent. In this context Respondent No. 1 submitted that by virtue of their Resolution adopted in 199<sup>th</sup> meeting dated 04.04.1989, power has been delegated to the Law Officer of the Regional Provident Fund Commissioner and the Assistant Provident Fund Commissioner (Legal) to institute, file, conduct, execute and defend all legal proceeding by or against Central Board of Trustees / Employees' Provident Fund Organization. In this appeal the Assistant Provident Fund Commissioner, Durgapur has been impleaded as respondent and has submitted his reply. Therefore, the Assistant Provident Fund Commissioner, Durgapur is competent to represent and defend the department. Accordingly, the appeal is found maintainable under the law.

**24.** The Memorandum of Appeal, apart from its annexures extends to seventy pages. Detailed reference has been made to various correspondence between the appellant and Respondent No. 1 which took place prior to issuance of summons for non-extension of Provident Fund benefits to some employees. The appellant has constantly disowned its relationship with the Swimming Pool employees of DSPSA on a plea that they are ex-employees of DSP, who worked on honorarium basis and were engaged by DSPSA which functions as an independent establishment, affiliate to Durgapur Sub-Divisional Sports Association and in no way connected with appellant establishment. So far as the ad hoc teachers of DSP Schools are concerned there is no specific denial by the appellant that they are not the employees of DSP and it was admitted that their salary was paid by DSP.

**25.** Appellant asserted non-applicability of the EPF Act to such employees on the ground that the number of such ad hoc teachers and Swimming Pool employees are separately less than twenty (20) and did not fulfill the criteria for

application of the Act to them under Section 1(3) of the EPF Act as people involved in different category of work and belonging to different establishment have been clubbed together to fulfill the requirement for application of the Act by increasing the number of employees to more than twenty. It is evident that the applicability dispute of the EPF Act to the ad hoc teachers and Swimming Pool employees is the predominant contention. A public notice can be taken of the facts that the appellant establishment is a steel producing industry which employed thousands of workers for its operation and production. The appellant establishment for this purpose is required to provide accommodation to its employees, look after maintenance of the Township, run schools for the purpose of providing basic education to the children of the employees either directly through DSP's own Schools managed by them or providing facilities to Private Schools affiliated to different Boards to set up their schools with independent Management. It also runs and manages hospitals for extending medical facilities to the employees and maintains park, swimming pool, and community centre for recreation and social welfare for the employees and their family members. All these establishments are under the control of appellant establishment except private and independent Schools and Clubs. These Educational Institution, Club, hospital, Township maintenance, and Offices cannot be considered to be independent institutions which are managed and controlled by the appellant establishment.

**26.** Constant attempts have been made by the appellant to segregate the Swimming Pool workers from the control of DSP on a plea that they are under the control of DSPSA. Mr. Banerjee, learned advocate for the appellant produced a copy of the Constitution of the Central Sports Association, Durgapur Steel Plant, where, Article 5 (b) of the constitution declared that : *"Management shall mean 'Management of the Durgapur Steel Plant."* There is no whisper of DSPSA in the constitution. Since the function of the swimming pool was managed by

the Sports Association, I have no hesitation to hold that the workers of DSPSA are / were employees of DSP for the purpose of their coverage under the EPF Act. Therefore, the argument of appellant disowning such employees is unsustainable and unacceptable.

**27.** The appellant relied upon a decision of the Hon'ble High Court of Judicature at Bombay in the case of **Shubham Knit Wear Private Limited, Mumbai vs Regional Provident Fund Commissioner and others [supra...]** and tried to impress that when management, finance, supervision and administration of two establishments are different, then they cannot be considered as one unit. In this context I find that present case can be distinguished from the referred decision as the finance supervision and Management of Swimming Pool workers and ad hoc teachers are not independent of the Management of the appellant establishment. Therefore, I hold that the decision relied upon does not apply to the facts of the present case.

**28.** The appellant did not deny that ad hoc teachers are the employees of the DSP Schools. Therefore, it is established from such facts and circumstances that the teachers as well as Swimming Pool workers are employees working under the Management and control of Appellant / DSP. Considering the huge number of employees of the appellant establishment I hold that the provisions of the EPF Act have been extended to the appellant establishment which employes more than twenty persons. The appellant establishment already stands covered by the EPF Act bearing Code Nos. WB/9528 and WB/9528-C. Therefore, the provisions of the EPF Act ought to have been extended to the ad hoc teachers and Swimming Pool workers. Mr. Sankar Halder, the Enforcement Officer in his final report dated 05.11.2015 identified twelve ex-employees of the swimming pool of DSPSA and he has also taken into consideration the details of salary/ wages received from various dates from 07/2002 to 06/2011. Eleven of those ex-employees

submitted their declaration regarding salary made before the Judicial Magistrate, 1<sup>st</sup> Class and Mr. Sanjoy Dubey, an ex-employee submitted his declaration regarding salary made before The Executive Magistrate. Similarly, the Enforcement Officer identified sixteen ad hoc School Teachers of DSP School and their period for which they have served. Appointment letters, salary statements of those teachers were also produced. The Enforcement Officer calculated the dues payable to all such employees towards Provident Fund and submitted his report. On 05.11.2015 at the time of submitting report by the Enforcement Officer none appeared for the appellant establishment. They were aware that the proceeding was fixed up on 05.11.2015 but did not participate without any reason, as a result the contents of the Enforcement Officer's report were accepted without any opportunity to the appellant establishment to submit their objection against the final report, nor did they express their option to cross-examine the employees identified for extension of the benefit regarding their engagement, tenure of employment or basic pay.

**29.** The appellant establishment ought to have been made liable for payment of Provident Fund dues to the workmen after the claim regarding appointment of such employee under DSP, their basic pay and the period for which the amount was due was decided on the basis of evidence. It is overtly apparent that no such opportunity was extended to the appellant establishment. At the same time, it needs to be considered that the appellant establishment did not participate in the proceeding deliberately even after Notice and thereby rendered the proceeding futile by its acts, negligence and omission which is unacceptable in cases of Public Sector Unit. The evasive conduct of the appellant establishment to participate in the proceeding is strongly deprecated.

**30.** The other limb of appellant's argument is that the impugned order assessing the amount payable under Section 7-A and 7-Q of the EPF Act are

without foundation and is not based upon any material evidence. In support of its argument learned advocate for the appellant relied upon a decision of the Hon'ble Chhattisgarh High Court in the case of **Sunshine Caterers Pvt. Ltd. vs Employees Provident Fund Appellate Tribunal and Another [W.P. (L) No. 6264 of 2011]**, which referred to a decision of the Hon'ble Supreme Court in the case of **Food Corporation of India vs Provident Fund Commissioner and Others [(1990) 1 SCC 68]** and held that :

*“ The Provident Fund Commissioner by virtue of the provision contained in sub-section (3A) of Section 7A of the EPF Act is obliged to collect all evidence being the legal duty on his part to determine the applicability dispute as well as the amount due, but the facts of the present case would show that the APFC failed to exercise jurisdiction vested in him by law. If the employer and employee both have failed to lead evidence, to decide the applicability dispute, the Commissioner ought to have held enquiry and ought to have collected material independently and decided the applicability dispute to reach on conclusion that Commission Vendors are employees of the petitioner, but he failed to do so and merely on the basis of memo submitted by the Railway Vendors Welfare Association firstly held the Commission Vendors to be the employees of the petitioner within the meaning of Section 2 (f) of the EPF Act and then determined the dues by assuming Rs.50/- per day as average earning ignoring the mandate of Section 6 of the EPF Act without any legal evidence available on record to hold so and thereby the finding recorded with respect to applicability dispute as well as determination of provident fund dues becomes vulnerable being based on no evidence and is in teeth of the provisions contained in sub-section (3A) of Section 7A of the EPF Act and thus, runs contrary to the law laid down by Their Lordships of the Supreme Court in Food Corporation of India (supra) and followed in Bharat Heavy Electricals Ltd. (supra) as well.”*

**31.** In order to consider the above argument, it would be pertinent to refer to

the provisions of Section 6 of the EPF Act, which lays down as follows:

*“ The contribution which shall be paid by the employer to the Fund shall be ten per cent of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor), and the employees’ contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten per cent of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.”*

The mandate of Section 6 of the EPF Act is therefore clear and it enjoins the employer to contribute 10% of the Basic Wages payable to each of the employees for the time being. On a close scrutiny of the impugned order dated 29.12.2015 it is gathered that representative of ad hoc teachers in DSP Schools as well as representative of Swimming Pool workers under DSP had appeared on 23.04.2015, 14.05.2015, 19.06.2015, 16.07.2015, 20.08.2015, 24.09.2015, 15.10.2015, and 05.11.2015. However, there is no reference in the impugned order that Basic Pay of employees were furnished or taken into consideration for determining 10% of the Basic Wages [2(b)] of such employees, to be paid by the employer. It is also evident that the Provident Fund commissioner did not take recourse to the provisions of sub-section (2) and (3A) of Section 7-A of the EPF Act for determination of amount due from employer. I find that the Commissioner did not record any evidence on affidavit nor consider any evidence adduced during such inquiry and other documents on record. Respondent No. 1 thereafter having fixed the case on eight dates passed the impugned order without any proper inquiry as envisaged in Section 7-A (2) and 3-A of the EPF Act. In the instant case the Provident Fund Commissioner ought to have exercise his authority to ensure attendance of authorized representative of the appellant establishment and after supply of a copy of the final report submitted by the

Enforcement Officer on 05.11.2015, given him opportunity to cross-examine any of the identified employees who filed affidavits on the point of their engagement / appointment, basic pay and the period for which they have been rendering service. Non-compliance of such provisions lead to violation of natural justice and I am inclined to hold that the impugned order of Respondent No. 1 is arbitrary and unsustainable in the eye of law.

**32.** In this context it would be pertinent to refer to the law laid down in the following cases :

- (i) In **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 was held that :

*“ 12. The APFC was under an obligation to ask the departmental representative presenting the case of the organisation to examine witness to prove the report and the contents of the report. The petitioner was entitled to cross-examine such witness and give evidence in proof its case and also to disprove the case of the organisation.”*

- (ii) In the case of **Central Tool Room and Training Centre vs Employees' Provident Fund Organisation and Others [W.P.A. 734 of 2022]**, the Hon'ble Calcutta High Court while reproducing 7-A (2) of the EPF Act observed that any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code. It was held that :

*“ 20. This 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 7A of the Act. In the case in hand, the authority has failed to exercise such power that was necessary for adjudicating the issue. Borrowing wisdom from the authority in West Bengal Power Development Corporation Limited (supra), this Court is of the view that the proceeding was*

*conducted in a most casual manner and decided against the petitioner arbitrarily, thereby violating the principles of natural justice.”*

- (iii) In the case of **Bata India Limited vs Union of India and Others [W.P. No. 4377 (W) / 2008]** under similar circumstances the adjudicating authority had relied upon the squad report and arrived at a conclusion on the basis of the squad report, however, copy of the said squad report was not supplied to the petitioner. It was held by the Hon'ble High Court at Calcutta as follows :

*“ 4. In my view, this course adopted by the provident fund authorities is contrary to the principles of natural justice. The principles of natural justice envisages that a fair procedure should be followed during adjudication. The petitioner needs to be informed that the adjudicating authority is going to rely upon the squad report which might go against the petitioner. This duty cannot be escaped by contending that the copy of the said report was not asked for, which recording, however, has been disputed by the management.*

.....

*6. There cannot be any two opinion that if ultimately on examination of facts it is found that the so-called associates are in reality the contractors and an artificial device has been created to circumvent the provisions of the Act, the Provident Fund Authorities are within their right to claim such amount towards provident fund dues from the writ petitioner, but the fact remains that there has to be a proper adjudication of the issue. The observations made by the Provident Fund Commissioner with regard to associates in the impugned order can apply only provided a definite finding is arrived at as to the true identity of these G3 associates as in reality contractors. The doctrine of identification is applicable in the instant case and only on ascertainment of the true identity of the associates any final order could be passed. The petitioner cannot be fastened with liability on the basis of a report of which no opportunity is given to the petitioner to contradict the same and it was only*

*on this ground that I am inclined to give opportunity to the petitioner only to deal with the squad report dated 20th June, 2007 and the authority concerned shall adjudicate the issue upon furnishing a copy of the said squad report to the petitioner and decide the matter in accordance with law. ”*

Since the impugned order is bereft of any material so far as determination of dues toward 7-A and 7-Q of the EPF Act are concerned, I find and hold that the impugned order is not sustainable in the eye of law. Therefore, it is necessary that the employees to whom the benefit of the EPF Act is extended are identified along with their basic pay from time to time and the period for which such contributions are due under Section 7-A of the EPF Act as well as interest payable thereon for the delay, under Section 7-Q of the EPF Act.

**33.** In view of my foregoing discussion, the materials on record and the provisions of law, I hold that the Assistant Provident Fund Commissioner, Durgapur has failed to exercise his jurisdiction. Accordingly, the appeal under Section 7-I of the EPF Act is allowed on contest against Respondent No. 1 and ex-parte against Respondent No. 2. The impugned order dated 29.12.2015 is set aside and the case is remanded back to Respondent No. 1. The Provident Fund Commissioner is directed to hear the case afresh, giving opportunity to the parties to adduce evidence through affidavit as laid down in Section 7-A (2) (c) and Section 3-A of the EPF Act, provide opportunity to cross-examine the witnesses who submitted affidavits and also consider report from the Enforcement Officer, if necessary, and decide the case afresh on the basis of materials and evidence adduced during inquiry.

Hence,

**O R D E R E D**

that the appeal under Section 7-I of the EPF Act is allowed on contest

against Respondent No. 1 and ex-parte against Respondent No. 2. The impugned order dated 29.12.2015 passed by Respondent No. 1 under Section 7-A of the EPF Act is set aside.

The case is remanded back to the Assistant Provident Fund Commissioner, Durgapur with a direction to hear the case afresh in the light of the observation made herein above and pass a fresh order after giving opportunity to the appellant and other stake holders to present their case and decide the same preferably within a period of three (3) months from the date of communication of the order. The appellant herein is directed to effectively participate in the proceeding before the Employees' Provident Fund Authority on all dates fixed. Let copies of the Order be communicated to the parties under Rule 20 of the Tribunal (Procedure) Rules, 1997.

Sd/-

**(ANANDA KUMAR MUKHERJEE)**

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