

**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. 07 of 2023

Alpla Construction, Durgapur

..... Appellant.

Vs.

Assistant Provident Fund Commissioner, Durgapur

..... Respondent.

O R D E R

Dated: 24.04.2025

Mr. Asish Kumar Maji, Adv.

..... for the Appellant.

Mrs. Mousumi Ganguli, Adv.

..... for the Respondent.

1. Present appeal has been filed under Section 7-I of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act) against the impugned order dated 30.06.2023 passed by the respondent under Section 7-A of the EPF Act, whereby the appellant establishment has been directed to remit Rs. 3,64,702/- (Rupees three lakh sixty-four thousand seven hundred two only) towards Provident Fund dues in respect of its employees for the period from January, 2009 to March, 2018.

2. In nutshell, the fact of the case is that the appellant establishment was covered under the EPF Act w.e.f. 01.01.2018 and was allotted Provident Fund Code No. WB/DGP/1682271. Summons bearing No. WB/RO/ENF/WB/DGP/1682271/7A/CC-III/4195 dated 28.11.2018 was issued to the proprietor of Alpha Construction for coverage and determination of the Provident Fund of the appellant establishment for the period from January, 2009 to March, 2018, fixing 21.12.2018 for appearance of the appellant with relevant records. Authorized representative of the establishment appeared on behalf of the establishment on 12.03.2019 and submitted copies of F/26AS for the Financial Year 2016-17 and 2017-18. The representative of the appellant establishment was directed to submit all other documents mentioned in the Summons. Hearing of the case was adjourned to several dates and Mr. Abdul Khaliq Ansari, Area Enforcement Officer informed on 29.07.2022 that the establishment did not submit additional documents, due to which the same could not be verified. On 06.04.2023 the Enforcement Officer submitted his report. The sum and substance of his report is that ten employees, who were working with Alfa Construction under Tara Mercantile Private Limited and PH & Company submitted a complaint that their Provident Fund for the period from January, 2009 onwards has not been deposited by their employer. It is further stated that Employees' State Insurance Corporation Code (hereinafter referred to as ESIC Code) was allotted to Alfa construction with a coverage from 01.11.2010. The Enforcement Officer further recorded that Durgapur Chemicals Limited had issued certificate to the effect that the EPF compliance in respect of Alpha Construction has been done under Durgapur Chemicals Limited Employees' Provident Fund Trust up to the month of December, 2017 but the Alfa Construction has been covered by ESIC w.e.f. 01.11.2010 having more than twenty employees. Summons were issued to the companies and the establishments were directed to produce Salary and Wage Register, Books of Accounts, etc. for verification and submission of report. After verification of

record of Provident Fund Trust of Durgapur Chemicals Limited it was found that all the employees have Provident Fund account number in the Trust Fund except the complainants namely, Swapn Ghosh, Suku Ruidas, Joy Gopal Bahattacharjee, Arun Ghosh, Goutam Bauri, Mongal Dhara, Mithu Mondal, Palash Kundu, Biswanath De and Mintu Ghosh. It was reported that the employees joined on or after July, 2012 and Provident Fund dues have been calculated from July, 2012 to March, 2018. According to Mr. Abdul Khalique Ansari (Enforcement Officer) Alfa Construction complied the EPF Act under its own Provident Fund code w.e.f. January, 2018 in respect of its employees except Joy Gopal Bahattacharjee, hence the wages of only Joy Gopal Bahattacharjee was taken into consideration for calculating dues up to March 2018, excluding the employees having Provident Fund account in the Durgapur Chemicals Limited Provident Fund Trust, the unpaid Provident Fund dues for the above period has been calculated as Rs. 3,64,702/-.

3. In the impugned order dated 30.06.2023, the respondent in page no. 8 has observed that since the establishment had engaged more than the threshold limit of employees on 01.11.2010 as per Return of ESIC, it was compulsorily and statutorily coverable from the date the department was directed to prepone the date of coverage w.e.f. 01.11.2010. It is observed that considering all aspects in the case as well as the submissions made by the Enforcement Officer and the document produced with report along with the submissions made by the establishment during the proceeding, the report of the Enforcement Officer on different dates was sufficient to conclude the case and based on such report the Provident Fund dues under Section 7-A of the EPF Act for the period from January 2009 to March 2018 was assessed as Rs. 3,64,702/-.

4. Instant appeal has been preferred on 29.09.2023. On 11.01.2024 the appeal was admitted with a direction to deposit fifty percent (50%) of the

assessed amount of Rs. 3,64,702/- in favour of Provident Fund Commissioner, Durgapur. The appellant establishment deposited Rs. 1,82,351/- through Demand Draft No. 638357 dated 24.01.2024 in favour of Regional Provident Fund Commissioner, City Centre, Durgapur 1, which has been directed to be kept in a Fixed Deposit in a nationalize bank at Durgapur until disposal of the appeal.

5. The point in controversy for determination in this appeal as agitated in the Memorandum of Appeal is that there is no whisper in the impugned order that the appellant was covered under the EPF Act during the period of assessment or failed to pay contribution towards Provident Fund amount of the employees engaged by the appellant. It is inter-alia contended that there is no reflection in the report of the Enforcement Officer as well as in the impugned order about the identity of the beneficiaries for whom the dues have been assessed. It is further contended that the Assistant Provident Fund Commissioner passed the order mechanically relying upon the report of the Enforcement Officer without impleading Durgapur Chemicals Limited, the principal employer and Tara Mercantile Private Limited, a contractor firm under which the appellant worked as sub-contractor. It is urged that the principal employer was equally liable and if the contractor firm defaulted in depositing the Provident Fund contribution of the employees or delayed in depositing the same, the principal employer would be bound to contribute the same. It is their further case that since inception, Durgapur Chemicals Limited authority used to deduct the Provident Fund contribution from the contractor labourers engaged through different contractors and the deducted amount used to be maintained in the Provident Fund Trust Account and there was no scope for depositing dual Provident Fund contribution in the respective accounts of the employees engaged by the appellant. Appellant asserted that only ten employees raised Provident Fund claim before the respondent but they never raised any demand before the

principal employer for non-contribution of Provident Fund dues by the appellant establishment as such the assessment is required to be made only in respect of ten employees. It is urged that the employer-employee relationship should be established before assessing the Provident Fund dues. According to the appellant the impugned order is bad in law and the same is liable to be set aside.

6. Respondent contested the appeal by filing a reply on 09.05.2024. It is the case of the respondent authority that during the course of hearing the appellant establishment was asked to submit all the relevant documents including Wages and Salary Register for determining the Provident Fund and allied due. After granting several opportunities the establishment was unable to produce the same. The present appellant having failed to produce the documents, respondent relied upon the returns which were uploaded in the ESIC Portal for the entire period. The wages / salary which were uploaded in the return of ESIC were below the threshold limit of wages on which Provident Fund dues are required to be remitted. According to the respondent the appellant establishment was a contractor establishment under Durgapur Chemicals Limited and it was required to contribute either to the Provident Fund trust fund of Durgapur Chemicals Limited or in the statutory fund under Employees' Provident Fund Organisation. It was verified by the Enforcement Officer that the concern establishment did not make any contribution and was liable to made a remittance. It is their case that although the employees were given benefits of ESIC, they were deprived of their Provident Fund and allied benefits. It is the case of the respondent that the appellant establishment was covered under the EPF Act under Section 1(3)(b) of the EPF Act from the date of reaching the threshold limit of twenty employees under the EPF Act on 01.11.2010 as it is evident from the return submitted at ESIC. The appellant establishment is therefore covered under the EPF Act from 01.11.2010 instead of 01.01.2018. It is urged that the appeal is without merit and the same is liable to be dismissed.

7. The short question for consideration before the Tribunal is whether the impugned order passed by the respondent, in respect of assessment of the Provident Fund dues against the establishment under Section 7-A of the EPF Act is tenable under the law or the same suffers from any illegality ?

8. Mr. Asish Kumar Maji, learned advocate for the appellant argued that the appellant establishment is covered under the EPF Act only from 01.01.2018 but the Provident Fund authority without issuing any Notice to show cause and without providing any opportunity to the establishment to explain their position initiated a proceeding for recovery of Provident Fund dues for the period from January, 2009 to March, 2018 i.e., prior to the period of covered under the EPF Act. It is vehemently argued that the Provident Fund authority without identifying the beneficiaries acted on the basis of return submitted before the ESIC for November, 2010. It is argued that the appellant establishment is a contractor firm and the employees were engaged under Durgapur Chemicals Limited, which is the principal employer but Durgapur Chemicals Limited has not been impleaded in the proceeding, though the principal employer is responsible for making payment for employees deployed through a contractor.

9. Mrs. Mousumi Ganguli, learned advocate for the respondent, in reply, argued that ample opportunity was given to the appellant establishment to produce their documents and to establish that the Provident Fund contribution has been made during the period. It is argued that the Return of the appellant establishment before ESIC reveals that in November, 2010, forty-two employees were working under the appellant establishment in respect of whom contributions were made before ESIC. In absence of any material produced by the appellant, it can be presumed that the same number of employees were engaged by the appellant during the period from November, 2010 and no other statement has been produced to show that the number of the employees was

reduced below the threshold limit. Mrs. Ganguli urged that the impugned order, assessing Provident Fund dues is in respect of the ten employees only and the order suffers from no illegality.

10. On a conspectus of the Memorandum of Appeal, reply, impugned order, Enforcement Officer's report and on consideration of the arguments advanced by the learned advocates for the appellant and respondent it appears that the instant proceeding was initiated by the respondent on the basis of summons dated 28.11.2018. The Provident Fund contribution under Section 6 of the EPF Act has been claimed for the period from January, 2009 to March, 2018, preponing the date of coverage from 01.01.2018. Several opportunities were extended to the appellant for submitting necessary particulars for assessing the Provident Fund dues but the appellant did not furnish the relevant particulars. The Enquiry Officer in his report has stated that on the basis of ESCI return and the document as produced by the establishment, excluding the employees having Provident Fund account in Durgapur Chemicals Limited Employees' Provident Fund Trust, assessed the Provident Fund dues as Rs. 3,64,702/- in respect of ten employees. Since the establishment has been registered under ESIC from November, 2010, in page no. 2 of Enforcement Officer's report dated 06.04.2023 it has been stated that on verification of record of Provident Fund Trust of Durgapur Chemicals Limited it was observed that all employees have Provident Fund account number in the Trust fund except the ten complainants Swapan Ghosh, Suku Ruidas, Joy Gopal Bahattacharjee, Arun Ghosh, Goutam Bauri, Mongal Dhara, Mithu Mondal, Palash Kundu, Biswanath De, Mintu Ghosh, Ratan Kumar Roy, Ripon Dhali, Ratan Pal and Swapan Shil for whom salary / wages has been paid as per gross wages shown in the ESIC return for the purpose of calculation of dues. In the instant case no representation has been made by the appellant establishment contending that any of the ten above-named employees have discontinued to work under the establishment from any particular date.

11. In page no. (8) of the impugned order respondent has based his assessment solely on the Enforcement Officer's report, which reflects that the establishment engaged more than the threshold limit of employees on 01.11.2010 as per ESIC return and the establishment is compulsorily and statutorily liable under the EPF Act from that date. In the concluding paragraph the respondent without assigning any reason held that after due application of mind he assessed the Provident Fund dues for the period from January, 2009 to March, 2018 as Rs. 3,64,702/-. The impugned order is absolutely silent as to why the coverage was reckoned from January, 2009 instead of 01.11.2010, which was found by the Enforcement Officer as the point of initiation of coverage as per return submitted before ESIC. This finding of the respondent extending the period of coverage from 01.11.2010 to January, 2009 is without any reason or basis.

12. For the purpose of holding enquiry under Section 7-A for determination of money due from the employer, the procedure to be followed has been laid down under sub-section 2 and 3-A of Section 7-A of the EPF Act.

It is specified in sub-section 2 of Section 7-A of the EPF Act as follows :

“The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and 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 (45 of 1860). ”

Sub-Section 3-A of Section 7-A of the EPF Act lays down :

“ Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record. ”

It is therefore incumbent upon the officer conducting the enquiry to receive evidence of Enforcement Officer on affidavit and the employer establishment challenging the report is given opportunity to cross-examine the Enquiry Officer to test the veracity of the report. An enquiry based upon Enquiry Officer's report only cannot be sustained.

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

(i) 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 :

“ 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 referring to Section 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. ”

14. In the light of the ratio of the decisions discussed above and the power vested in the Provident Fund authority under sub-section 2 and 3-A of Section 7-A of the EPF Act, I am of the view that the respondent authority failed to exercise the jurisdiction by not examining any witness to prove the contents of the report of the Enforcement Officer. Furthermore, the Assistant Provident Fund Commissioner was duty bound to identify the beneficiary in respect of whom and the period for which the Provident Fund dues were required to be deposited by the appellant firm. The impugned order does not disclose the name of the ten employees in respect of whom the Provident Fund dues were not deposited since the date of their eligibility. Under the facts and circumstances, I hold that the impugned order dated 30.06.2023 is not found tenable and the same is set aside. The appeal is allowed on contest. The case is remanded to the respondent for passing a fresh order after providing opportunity of hearing to the appellant.

Hence,

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

impugned order dated 30.06.2023 passed by the Assistant Provident Fund Commissioner, Durgapur is set aside. The EPF case is remanded back to the respondent authority with a direction to hear the case afresh in the light of my observation made above and pass a fresh order after giving opportunity to the appellant establishment and other stake holders to present their case and decide the same according to the provisions of law laid down for the said purpose. The respondent is directed to complete the entire proceeding preferably within a period of six months from the date of communication of the order. The amount deposited under Section 7-A of the EPF Act before Regional Provident Fund Commissioner, City Centre, Durgapur be returned to the appellant establishment. The appellant is directed to participate in the proceeding before the 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.