

**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. 08 of 2015
[ATA 1317(15) of 2015]

M/s. Banerjee Enterprise, Asansol. Appellant
Vs.	
Assistant Provident Fund Commissioner, Durgapur. Respondent

O R D E R

Dated: 27th July, 2023

Mr. S. K. Khanna, Adv.,	
Mr. C. K. Chandra, Adv.,	
Mr. B. Banerjee, Adv. for the Appellant.
Mrs. Mousumi Ganguli, Adv. for the Respondent.

1. Present appeal has been preferred under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act) against the impugned order dated 29.09.2015 passed by the Respondent in a proceeding under Section 7-A of the EPF Act, whereby the appellant establishment has been directed to pay Rs.10,08,798/- towards Provident Fund dues of its employees and Rs.7,56,773/- towards interest under Section 7-Q of the EPF Act for the period from 12/2004 to 09/2010.

2. Details apart, the fact of the case leading to this appeal is that the appellant establishment is covered under the EPF Act and Provident Fund Code No. WB/42999 was allotted to it. The appellant establishment is a contractor firm under the principal employer, The Indian Iron & Steel Company, Burnpur (hereinafter referred to as IISCO). On 04.11.2010 summons was issued to the appellant establishment initiating a proceeding under Section 7-A of the EPF Act for non-payment of Provident Fund dues, Pension Fund contribution, Administrative/Inspection charges to the Fund, and Insurance Fund contribution for the period from 12/2004 to 09/2010, fixing 26.11.2010 for appearance, hearing and production of relevant documents.

3. The inquiry was initiated on the basis of the Enforcement Officer's report that the appellant failed to provide proof of compliance from the date of coverage. No copy of the Enforcement Officer's report was enclosed with the summons. Therefore, the appellant had no opportunity to respond to the summons. On 29.09.2015 the Respondent passed the impugned order on the basis of the report / deposition of the squad of Enforcement Officers dated 16.09.2015 without supplying any copy to the appellant to make submission and rebut the contentions of the squad report. It is the case of the appellant that the impugned order was passed without giving opportunity to the appellant to cross-examine the Enforcement Officer who assessed the dues on the basis of staff salary without identifying the beneficiaries and determining the eligibility of the workers. It is contended that the Respondent assessed the dues without following the provisions under Section 7-A (2) of the EPF Act and passed a non-speaking, cryptic order devoid of reasons, in violation of the principles of natural justice, in an arbitrary manner and the same is liable to be set aside.

4. The grounds of appeal raised by the appellant is that natural justice was denied due to non-supply of copy of Enforcement Officer's report of inspection conducted on 12.05.2010 which formed the basis of inquiry under Section 7-A

of the EPF Act and non-supply of squad report deprived the appellant from cross-examination the Enforcement Officer. It is the case of the appellant that at the time of inquiry the Provident Fund authority is vested with the powers of the Civil Court but the Respondent neither supplied Enforcement Officer's report with the summons nor any evidence was adduced permitting the appellant to cross-examine the witness to find out the basis of the assessment.

5. The appellant admitted that it had voluntarily applied for coverage of its employees under the EPF Act but the Provident Fund authority cannot compel the appellant to deposit the amount assessed by the Respondent without identifying the workman on mere head counts. It has been urged that the Respondent should have assessed the Provident Fund dues after determining eligibility of the workers. The appellant prayed for setting aside the impugned order dated 29.09.2015 and grant such other relief as may be deemed fit and proper.

6. The Respondent contested the appeal by filing a reply. It is contended that the department i.e. the Central Board of Trustees under Employees' Provident Fund Organization is a necessary party but the appellant has impleaded the Assistant Provident Fund Commissioner, an authority under Section 14-B of the EPF Act and thereby violated Rule – 11 (8) of the Tribunal (Procedure) Rules, 1997. It is further contended that there has been delegation of power through resolution passed in the 199th meeting held on 04.04.1989 and the law officers, the Regional Provident Fund Commissioner and all Assistant Provident Fund Commissioners (legal) were delegated the power to institute, file, conduct, execute and defend all legal proceedings by or against the Central Board of Trustees of the Employees' Provident Fund Organization. Therefore, the appellant department was a necessary party.

7. According to the respondent the appellant did not deposit Provident Fund contribution regularly and intimation was received that the establishment failed

to contribute Provident Fund dues from the date of its coverage i.e. 02.12.2004. It is asserted that notice under Section 7-A of the EPF Act was issued to the appellant on 04.11.2010 for assessment of the dues in respect of the employees who were present before the Enforcement Officer during inspection. It is denied that the Enforcement Officer's report was not supplied to the appellant. The Respondent asserted that the dues under Section 7-A of the EPF Act was assessed after considering Enforcement Officer's report and documents submitted by the appellant establishment, such as wage and payment statement produced on 19.02.2015, Provident Fund payment made under Provident Fund Code of IISCO, Enforcement Officer's report relating to evading payment of Provident Fund dues, and salary / wages of the employees for the case period. Sufficient opportunity was granted to the appellant establishment to represent their case and there has been no violation of natural justice. After going through the report of the Enforcement Officer, the Respondent authority observed that IISCO, the principal employer had certified that the payment against the workers engaged through M/s. Banerjee Enterprise, in the premises of SAIL-ISP, Burnpur for the period from 2004-05 to 04/2007, had been received by the Provident Fund Trust but the establishment failed to submit any proof of compliance regarding payment made for that period. Due to lack of materials in support of payment, the Provident Fund authority assessed Rs.1,09,980/- for the period 2007-08, Rs.19,96,368/- for the period 2008-09, and Rs.18,32,586/- for the period 2009-10 against the appellant establishment under Section 7-A of the Act and interest under Section 7-Q of the EPF Act. The Respondent urged that there is no substance in the appeal and the same is liable to be dismissed with cost.

8. The moot point for consideration in this appeal is whether the impugned order suffers from any illegality, irregularity or impropriety, calling for any interference.

9. Learned advocate for the appellant submitted that the appellant establishment is covered under the EPF Act and was summoned in connection with a Section 7-A proceeding for non-payment of Provident Fund dues for the period from 12/2004 to 09/2010. Learned advocate drew my attention to the impugned order where it has been recorded that on 16.09.2015 none appeared for the establishment and no written submission was received. The squad of Enforcement Officers appeared on behalf of the department and submitted their Final Report along with evaded dues of Rs.10,08,798/- and evaded salary/wages of Rs.39,38,934/- for the case period and after verifying relevant records, the proceeding was concluded with an observation that it was a long pending case and going through relevant records and squad report it was revealed that IISCO, the principal employer certified the payment against the workers engaged by M/s. Banerjee Enterprise (WB/42999) in the premises of SAIL-ISP, Burnpur for the period from 2004-05 to 04/2007. Learned advocate further argued that copy of squad report was not served upon the representative of the appellant establishment and no opportunity was given to cross-examine the Enforcement Officer to verify the truth. Learned advocate contended that the impugned order is not sustainable in the eye of law.

10. In reply the learned advocate for the respondent argued that ample opportunity was provided to the appellant but they failed to prove that payment has been made towards Provident Fund dues.

11. The Respondent contended that the appeal is not maintainable without impleading the department as a party. It is evident from Rule 11(8)(ii) of the Tribunal (Procedure) Rules, 1997 that appeal can be heard if Notice of appeal has been served on the authority which passed the order against which the appeal has been filed. Therefore, the appeal having been filed against the Assistant Provident Fund Commissioner, Sub-Regional Office, Durgapur is maintainable as he has passed the impugned order. I find that the appeal has

been filed within the period of limitation from the date of receiving the order on 26.10.2015. Accordingly, the appeal is found maintainable.

12. I have carefully considered the memorandum of appeal, reply submitted by the respondent, copy of summons issued by the Provident Fund authority on 04.11.2010, the impugned order dated 29.09.2015 and the argument advanced by the learned advocates of the respective parties. The summons in the proceeding is in respect of the period from 12/2004 to 09/2010. The impugned order disclosed that on 26.11.2010 representative of the establishment submitted payment statement from 05/2007 to 09/2010 and submitted a letter stating that they have made Provident Fund compliance through IISCO up to 04/2007 and made separate compliance from 05/2007 onwards. The appellant also submitted list of ninety-one (91) employees along with Provident Fund Account numbers but failed to submit summoned records and requested to allow some time. The hearing was adjourned to 17.12.2010 when none appeared and it was further adjourned to 21.01.2011. the Enforcement Officer submitted interim report on 28.03.2011 wherein, it was mentioned that the employment strength of the appellant establishment reached twenty (20) on 11/2003 but EPF covered w.e.f. 02.12.2004. it was further stated that the Provident Fund deduction was made from 01/1999 to 04/2007 and the same was deposited through IISCO (WB/161). The appellant establishment worked as a contractor prior to 05/2007 but the establishment failed to submit proof of compliance prior to 05/2007.

13. It is evident from the impugned order that in the interim report the Enquiry Officer on one hand has mentioned that Provident Fund deductions have been made and deposited through IISCO from 01/1999 to 04/2007 and on the other hand went ahead to record that prior to 05/2007 the establishment made compliance but failed to submit proof of compliance. It transpires from the impugned order that though the interim report dated 28.03.2011 state that the

appellant establishment had deposited the Provident Fund dues up to 04/2007 through IISCO under their Provident Fund code WB/161, on 29.07.2015 the Enforcement Officer of the department asked the representative of the establishment to submit records in connection to the payment of Provident Fund dues made under Provident Fund code of IISCO along with other relevant documents. The payment of Provident Fund dues up to 04/2007 is countenanced from the observation that Provident Fund deductions have been made and deposited through IISCO from 01/1999 to 04/2007. Therefore, it is clear that that interim report of the Enforcement Officer was ambiguous and self-contradictory. A squad was formed for submitting the final report and to verify the documents of establishment. On 16.09.2015, in absence of the representative of the appellant establishment and IISCO the final squad report was submitted and without giving any opportunity to the appellant, the contents of the report was accepted. It is clear from the impugned order that no evidence was recorded according to the provisions under sub-section (2) and (3A) of Section 7-A of the EPF Act. It also appears that the employees in respect of whom the contribution was assessed by the Respondent were not identified and their names do not transpire from the four corners of the order.

14. 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 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.

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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. ”

To my mind the Provident Fund authority failed to exercise the power vested in it under sub-section (2) and (3A) of Section 7-A of the EPF Act. It was impending upon the respondent authority to examine the witness to prove the contents of the Enforcement Officer's report and provide opportunity to the appellant establishment to cross-examine such witness, if necessary. Before assessing the amount, which had to be deposited as Provident Fund in respect of the employees of the appellant establishment, the commission was duty bound to identify such persons in whose favour such contributions are to be made. It has been stated in the impugned order that the establishment had submitted a list of ninety-one employees along with their Provident Fund Account. If such information was included in the report of the Enforcement Officer, the same should be produced as evidence and opportunity should have been granted to the appellant establishment to refute and verify the same.

15. Having considered the mode and manner in which the proceeding was concluded, I have no hesitation to hold that the Respondent authority has failed to exercise its jurisdiction which resulted in violation of natural justice. Under such facts and circumstances the impugned order is not found tenable and the same is set aside on contest. The appeal is allowed and the case is remanded to the respondent for passing a fresh order after following the established procedure.

Hence,

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that the appeal under Section 7-I of the EPF Act is allowed on contest. The impugned order dated 29.09.2015 passed by the Assistant Provident Fund Commissioner is set aside. The EPF case is remanded back to the Respondent authority with a direction to hear the case afresh in 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 in accordance with the law under sub-section (2) and (3A) of Section 7-A of the EPF Act, preferably within a period of three (3) months from the date of communication of the order. The appellant is directed to effectively participate in the proceeding before the Employees' Provident Fund Authority on all dates fixed. Pre-deposit under Section 7-O of the EPF Act, if made in compliance with order dated 13.11.2015 shall be adjusted at the time of assessment of dues. 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.