CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, JABALPUR

EPF Appeal No.- 121/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

The District Marketing Officer
M/s Chhattisgarh Cooperative
Marketing Federation Limited
Through –
District Marketing Officer,
Raigarh, District-Raigarh (C.G.)

Appellant

V/s

1. **Assistant, Provident Fund Commissioner**
   Office of: Employees Provident Fund Organization,
   Regional Office block D,
   Scheme No. 32,
   Indira Gandhi Vyavasaik Parisar,
   Pandri, Raipur (C.G.)

2. **M/s Sharamik Kamgar Sahakari Samiti Maryadit,**
   Kabir Chowk Gandhi Nagar Raigargh,
   Contractor District marketing Office
   District Marketing Officer, Raigarh, District-Raigarh (C.G.)

Respondents

With

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Appellant

V/s

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   Office of: Employees Provident Fund Organization,
   Regional Office block D,
   Scheme No. 32,
   Indira Gandhi Vyavasaik Parisar,
   Pandri, Raipur (C.G.)

2. **M/s Sukh Lal Khunte,**
   Contractor District marketing Office
   District Marketing Officer, Raigarh,
   District-Raigarh (C.G.)

Respondents

Shri Praveen Yadav	:	**Learned Counsel for Appellant in EPFA/121/2017 & EPFA/122/2017.**
Shri Harshit Patel	:	**Learned Counsel for Respondent Authority in EPFA/121/2017.**
Shri Abhijeet Shrivastava	:	**Learned Counsel for Respondent Authority in EPFA/122/2017.**

JUDGMENT

(Passed on 17th day of July, 2026)

These two appeals have been filed by a Raigarh Unit of the Marketing Federation, through the District Marketing Officer of Raigarh Unit**. Since the facts connected in these two appeals and disputes involved are identical, these two appeals are being disposed by a common judgment.**

The facts connected are mainly that the Establishment is covered under the Act and has been allotted a PF code. It is engaged in purchase of paddy through procurement centers, situated at different places in District Raigarh. It gets its work done through Contractors, engaged for loading & unloading of paddy. They employed Hammals as per the work agreements. The Hammals worked for loading & unloading as well stocking the paddy and are paid by the Contractors.

In appeal No. EPFA/121/2017, the Raigarh Unit of the Appellant Establishment had awarded work of loading & unloading and stocking of paddy to the Contractor M/s Shramik Kamgar Sahakari Samiti Respondent No.2, the Establishment was contractor was itself covered under the Act as per work agreement. The Contractor had to employ Hammals and pay their wages and was required to deposit their provident fund amount. Hence, it was the liability of the Contractor to deposit the PF Amount because the Hammals were not appointed by the Appellant Establishment. The Respondent Authority issued notice dated 24.10.2013 for alleged delay in deposit of PF dues of Hammals i.e. the Contract Workers engaged by the Contractor under the work agreement with the Appellant Establishment for loading & unloading and stocking of paddy. It is further the case of the Appellant Establishment that they appeared and stated these facts stating that the bills of Contractor were paid on as and when produced, hence there was no delay on their part in payment of bills of the Contractor. The Contractor, who had to deposit the PF dues, failed to deposit it, hence the Appellant Establishment could not be said with the responsibility of PF dues of Hammals who were initially employed by the Contractor. But the Respondent Authority recorded a finding that the Appellant Establishment and Contractor both are jointly and severally liable for penal damages and interest u/s 14B and 7Q of the Act and also held the assessed amount recoverable jointly and severally from the Appellant Establishment and Contractor, hence this appeal.

In the appeal No. EPFA/122/2017, Appellant Establishment had engaged Contractor M/s Shukh Lal Khunte, the Establishment of the Contractor was also covered under the Act and had been allotted separate PF No.

Notice was issued to the Respondent Authority on 21.11.2013 u/s 14B of the Act in Appeal No. EPFA/122/2017 with respect to delayed deposits of PF dues of Contract workers, the Hammals for the period January 2011, February 2011, March 2011, January 2012, February 2012 and March 2012. They appeared before the Respondent Authority and stated that they have released the bill raised by the Contractor as and when it was produced before them by the Contractor. For example, the Contractor had submitted bill on 09.02.2011 and payment was made to him on 22.02.2011. Hence, there was no delay in paying the Bills of the Contractors, thus the delay in deposit of PF dues was made only by the Contractor. In the work agreement also, the deposit of PF dues was the duty of the Contractor. The Respondent Authority passed impugned order holding the Appellant Establishment and the Contractor both jointly and severally liable and assessed the amount with an observation that it was recoverable from the Appellant Establishment and Contractor jointly and severally, hence this appeal.

The grounds of appeal in both the cases are almost the same, they are mainly that the impugned finding and assessment are incorrect in law and facts as they have been recorded by the Respondent Authority ignoring the fact that the Hammals employed by Contractors were not the employees of the Appellant Establishment and Appellant Establishment is not their employer. The Respondent Authority also ignored the fact that the bills raised by the Contractors were paid in time by the Appellant Establishment.

In their counter to these two appeals, the Respondent Authority took as case that, the Act is of social security legislation, it is applicable on establishment engaging 20 or more persons on any day, which do not have adopted any other PF scheme equally beneficial. The dues are to be deposited by the Employer, by the 15th of the next month regarding the employees, who have worked in the establishment and has earned the wages. In failure to deposit the legitimate dues of the workers, the Authority initiates assessment and recovery proceeding under Section 7A, 8B and 8G of the Act. After deposit of principle amount, action is initiated for levy of interest under Section 7Q and 14B of the Act on the amount which was not paid within time recovered by the Appellant Establishment. Since, it is a beneficial legislation, any provision capable of two interpretation, one favoring the beneficiary shall be accepted. It is further the case of Respondent Authority that, the Appeal against order under Section 7Q is not maintainable, as it is a separate order. Also that, the impugned finding under Section 14B of the Act as well Assessment has been recorded by the Respondent Authority after an enquiry, in which the Appellant Establishment participated. He never raised any objection during the enquiry. He was granted full opportunity to have his say. Hence, the impugned order is correct in law and fact and does not warrant any interference.

The Contractors, who have been the Respondent No.2 in these two appeals, did not appear in spite of notice.

In EPFA/121/2017, I have heard argument of Learned Counsel Mr. Praveen Yadav for the Appellant Establishment and Mr. Harshit Patel, Learned Counsel for Respondent Authority and in EPFA/122/2017, I have heard argument of Learned Counsel Mr. Praveen Yadav for the Appellant Establishment and Mr. Abhijeet Shrivastava, Learned Counsel for the Respondent Authority and I have gone through the record as well.

On perusal of records in the light of rival; arguments, the point which arises for determination is as follows –

Whether the finding of the Respondent Authority that the Appellant Establishment and the Contractors are jointly and severally liable to pay penal damages and interest u/s 14B and 7Q of the Act for the delayed deposit of Contract Workers/Hammals, engaged by the Contractors to work for and the site of Appellant Establishment as well as the assessment has been recorded correctly in law and fact.

On the very outset, it is clear that since the findings and assessment is with regard to interest and penal damages u/s 7Q and 14B of the Act by way of Composite order, the Appeal with respect to finding and assessment u/s7Q of the Act is also held maintainable before this Tribunal in the light of Judgments of ***<u>the Hon'ble Supreme Court in the case of</u>***

Organo Chemical Industries and Another v/s Union of India and Others (1979) 4 SCC 573..

Section 16 of the Act is being reproduced as follows –

16. Act not to apply to certain establishments.—

(1) This Act shall not apply—

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;

(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether

prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.

The word 'employees' has been defined under Section 2(f) of the Act, which is also being reproduced as follows –

(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person—

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;

Section 1(3), 4 and 5 of the Act also relevant in this respect, these provisions are also being reproduced as follows –

1(3) Subject to the provisions contained in section 16, it applies—

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf: Provided that the Central Government may, after giving not less than two months'

notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

Para 30 and 36 of the Employees Provident Fund Scheme, 1952 are also being reproduced as follows –

30. Payment of contributions

(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

36. Duties of employers

(1) Every employer shall send to the Commissioner, within fifteen days of the commencement of this Scheme, a consolidated return in such form as the Commissioner may specify of the employees required or entitled to become members of the Fund showing the [basic wage, retaining allowance (if any) and dearness allowance including the cash value of any food concession] paid to each of such employees: Provided that if there is no employee who is required or entitled to become a member of the Fund, the employer shall send a 'NiL' return.

(2) Every employer shall send to the Commissioner within fifteen days of the close of each month a return-

(a) in Form 5, of the employees qualifying to become members of the Fund for the first time during the preceding

month together with the declarations in Form 2 furnished by such qualifying employees, and

(b) [in such form as the Commissioner may specify], of the employees leaving service of the employer during the preceding month: Provided that if there is no employee qualifying to become a member of the Fund for the first time or there is no employee leaving service of the employer during the preceding month, the employer shall send a 'NIL' return.

(c) Provided further that a copy of the forms as mentioned in clauses (a) & (b) above shall be provided by the employer to concerned employees immediately after joining the service or at the time of leaving the service, as the case may be.

(3) [Omitted]

(4) Every employer shall maintain an inspection note book in such form as the Commissioner may specify, for an Inspector to record his observation on his visit to the establishment.

(5) Every employer shall maintain such accounts in relation to the amounts contributed to the Fund by him and by his employees as the Central Board from time to time, direct, and it shall be the duty of every employer to assist the Central Board in making such payments from the Fund to his employees as are sanctioned by or under the authority of the Central Board

(6) Notwithstanding anything hereinbefore contained in this paragraph, the Central Board may issue such

directions to employers generally as it may consider necessary or proper for the purpose of implementing the Scheme, and it shall be the duty of every employer to carry out such directions.

From the aforesaid provisions it is established that, even the Contractor employees or casual employees are also employees for the purpose of the Act and since they are not covered under any PF scheme, they will be covered under the Act. Hence, the submission from the side of Appellant Establishment in this respect cannot be accepted that these contractor employees are not covered under the Act.

In the light of above discussion and findings, the impugned finding and assessment of the Respondent Authority that the Appellant Establishment being Principal employer and the Contractors, both are jointly and severally liable for payment of interest and penal damages as assessed in the impugned orders in the two appeals i.e. EPFA/121/2017 & EPFA/122/2017 has been recorded correctly in fact and law. The appeal is held liable to be dismissed.

ORDER

Appeal No. EPFA/121/2017 & EPFA/122/2017 are dismissed.

No order as to cost.

Date:- 17/07/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 17/07/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)