

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,
JABALPUR

NO. CGIT/LC/EPFA-11-2021

PRESENT: P.K.SRIVASTAVA
H.J.S.(Retd.)

M/s Doubletick Media Private Limited
Thr.Director Siddharth Kapoor
E-3/10, Nupur Kunj, Arera Colony
Bhopal (M.P.)

APPELLANT

Versus

Regional Provident Fund Commissioner,
Bhavishya Nidhi Bhawan,
59, Arera Hills,
Bhopal (M.P.)

RESPONDENT

Shri Pranay Choubey : Learned Counsel for Appellant.

Shri J.K.Pillai :Learned Counsel for Respondent.

(J U D G M E N T)

(Passed on this 23rd day of June-2021)

- 1.* The present appeal is directed against the order dated 9/3/3021 passed by the respondent under Section 7A of the Employees Provident Fund & Misc. Provisions Act,1952(hereinafter referred to

as the word 'Act.')

whereby the appellant has been directed to pay Rs.15,58,076/-(Fifteen lakhs, fifty eight thousand and seventy six) as provident fund dues for the period 07/2018 to 12/2020 in respect of 22 employees including the complainant.

2. During hearing on admission, both the parties agreed that this appeal may be disposed at the admission stage itself, hence with the consent of parties the appeal has been heard on the point of its maintainability at the admission stage and is being disposed.

3. Learned Counsel for Appellant has submitted that the amount has been demanded vide letter dated 9-3-2021 by the Respondent Authority only on the basis of inspection report of Inspecting Authority dated 1-3-2021. The procedure has not been followed. No adjudication of the amount has been done. The demand has been raised without hearing the appellant by the Respondent Authority and hence the impugned demand notice requires to be quashed, as it is against law.

4. Learned Counsel for Respondent has submitted that the impugned demand notice against which the appeal has been preferred is only a demand notice and if the appellant has any grievance against the demand notice, he can file an objection under Section 7A of the Act before the Respondent Authority, who will pass an order under

Section 7A after hearing both the parties. No recovery is going to be made by coercive means on the basis of this demand notice in question.

5. Section 7A of the Employees Provident Fund & Misc. Provisions Act, 1952 requires to be referred here which is as follows:-

[7A. Determination of moneys due from employers. - 5[(1) The Central Provident Fund commissioner, any Additional Central Provident Fund Commissioner, any deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,-

(a) In a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) Determine the amount due from any employer under any provision of this Act, the Scheme or the 1[Pension] Scheme 2[or the Insurance Scheme], as the case may be,

And for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]

(2) 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 section 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860).

(3) No order 1[*] shall be made under sub-section (1), unless 2[the employer concerned] is given a reasonable opportunity of representing his case.**

3[(3A) 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 employers, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

4[(4) Where an order under sub-section (1) is passed against an employer ex-parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry ; Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer. withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex-parte order.

(5) No order passed under this section shall be aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.

6. It is clear from perusal of Section 7A that the Provident Fund Commissioner may demand the amount due from any employer and no order shall be made under this provision unless the employer has been given a reasonable opportunity of representing his case, hence

in the case in hand also the appellant/establishment is at liberty to dispute the demand raised, if it wishes so before the Respondent Commissioner who will conduct an inquiry in this respect, after giving a reasonable opportunity of hearing to the parties.

7. Hence in the light of the aforesaid observations, the appeal is disposed at the stage of admission itself, with a direction to the Respondent/Authority to decide the objections of appellant/establishment, to be filed within 30 days from today, after giving the appellant/establishment a reasonable opportunity of hearing.

ORDER

Appeal stands disposed of.

No order as to costs.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:23/6/2021