

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

**NO. CGIT/LC/EPFA-175/2017**

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

**Nagar Nigam Bhopal**

**APPELLANT**

**Versus**

**The Regional Provident Fund**  
**Commissioner,Bhopal**

**RESPONDENT**

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**Shri Pranay Choubey** : **Learned Counsel for Appellant.**

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

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**( J U D G M E N T )**

**(Passed on this 5<sup>TH</sup> DAY OF JANUARY-2022 )**

1. Under challenge in this appeal is order dated 11-12-2015 passed by the Respondent Authority whereby the Respondent Authority has held the Appellant Establishment liable for payment of employees provident fund dues of employees of contractors who were not covered and were not allotted separate employees provident fund Code within the period January-2011 to January-2013 and further computed the amount under Section 7A of Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word "Act", to the tune of Rs.54794598, directing the appellant establishment to deposit the aforesaid amount within 15 days of the impugned Judgement.

2. . Facts connected with the appeal are mainly that, the Appellant Establishment is covered under the Employees Provident Fund And Misc. Provisions Act,1952 and the Employees Provident Fund Scheme 1952 there under and has been allotted employees provident fund Code by Respondent. The Appellant Establishment has been depositing the employees provident fund dues regularly with regards to its employees who are on regular rolls and also engaged on contractual basis. The Appellant Establishment has further engaged a large number of contractors to execute various civil works who have done these works under the contractor through their employees, hence there has never been a relation of master and servant between the employees of the contractor and the Appellant Establishment, at any time. The contracts were on Principal to principal basis. The Appellant establishment having no control over the man power engaged by the independent contractor for executing the job work awarded by the Appellant Establishment. An inquiry under Section 7A of the Act was initiated by the Respondent Authority. The Appellant Establishment responded to the notice issued by the Respondent Authority and put up a case that these inquiries should be initiated against the contractors who were independent establishments themselves because it were the contractors who had engaged the man power for execution of the contract and paid them wages on their account, they had maintained all the records in this respect and they are under liability to deposit the employees provident fund dues. The Appellant Establishment also submitted a list of these contractors which were total 118 in numbers who were awarded different contracts for different works. 32 of them had their separate employees provident fund Code allotted by the Respondent Authority and rest did not have their employees provident fund code allotted to them by the Respondent. It was further the case of the Appellant Establishment that allotment of employees provident fund Codes and ensuring compliance of the provisions of the Act was a duty of the Respondent Authority and the Appellant Establishment could not be held liable for them. According to the Appellant Establishment, the Respondent Authority passed the impugned order brushing aside the objections raised by the Appellant Establishment

and wrongly recording the finding that the Appellant Establishment was liable as Principal Employer to deposit the employees provident fund dues regarding employees of 86 Contractors who did not have separate employees provident fund Code, without following the due procedure and without providing full opportunity of hearing to the Appellant Establishment and also without identifying the beneficiaries, thus the Respondent Authority also committed error in law in computing the amount, hence this Appeal.

3. The grounds taken in the memo of Appeal are mainly that the impugned order is against law and fact, passed by the Respondent Authority without giving reasonable opportunity of hearing to the Appellant Establishment particularly with respect to the report of Enforcement Officer dated 13-3-2015 and 27-11-2015 that the impugned order is not a speaking and reasoned order and the amount has been computed on assumption made by the Enforcement Officer in his report, copy of which was never provided to the Appellant Establishment, hence the Respondent Authority committed error in law in passing the impugned order. Also the impugned order has been passed without identification of beneficiaries, hence the Respondent Authority has committed error in law, in passing the impugned order.
4. In its counter/reply to the appeal, the Respondent Authority has defended the impugned order with a case that there were three types of employees found to have been employed by the Appellant Establishment. They were No.1 Regular employees ; No.2 Daily wage casual employees directly employed by the Appellant Establishment: No.3 Contractual employees engaged through contractors. The first category of employees are covered under the Employees provident fund Pension Scheme of Madhya Pradesh Government. As regards, the second category of employees, separate assessment order was passed on 13-2-2012 for the period of January-2011 to September-2011. The impugned order and inquiry

relates to only third category of employees, who were contractual employees engaged through contractors within the period January-2011 to January-2013 for which notice was issued to the Appellant Establishment . The Appellant Establishment submitted a list of 118 contractors who were allotted works of different category by the Appellant Establishment and executed the contract work through the other employees. 32 of these 118 contractors were covered under the Act . The remaining were not covered under the Act, hence the present inquiry was limited only those contractors who were not covered in the Act and were not allotted separate employees provident fund Code. The amount was computed by the Enforcement Officer in his report. The Appellant Establishment was given ample opportunity to represent its case. According to the Respondent Authority, the Appellant Establishment will be deemed employer for the workers engaged through contractors and is under liability to deposit all the employees provident fund dues within time. The Respondent Authority has specifically denied the allegations of Appellant Establishment that copy of report of Enforcement Officer was not given to the Appellant Establishment and the Appellant Establishment was kept deprived of opportunity of filing objection on it. According to the Respondent Authority, this fact is already mentioned in the impugned order. It is further the case of the Respondent Authority that the computation of the amount is not arbitrary rather it was done on the basis of records available and produced by the Appellant Establishment before the Enforcement Officer.

5. No Rejoinder has been filed by the Appellant Establishment.
6. I have heard argument of Shri Pranay Choubey, learned counsel for the appellant and Shri J.K.Pillai, learned counsel for the Respondent. I have perused the record as well.

7. The Appellant has filed written argument also, which is taken on record. I have perused the written arguments.
8. Following points arise in the present appeal for determination on perusal of record in the light of rival arguments :-

**No.1 Whether the finding of Respondent authority holding the appellant establishment liable to deposit employees provident fund dues of the employees of the contractors not covered in the employees provident fund Scheme can be faulted in law or fact or not?”**

**No.2 Whether the Respondent Authority has erred in law in ascertainment of dues?”**

9. **POINT FOR DETERMINATION NO.1:**

It has been submitted by learned counsel for the Appellant Establishment that since the workers were not employed by the Appellant Establishment, rather they were engaged by the respective contractors who were given the contract of executing certain works allotted to them by the Appellant Establishment which was on Principal to Principal basis, no relationship of employer and employee ever existed between such workers and the appellant establishment, hence the appellant establishment cannot be held liable to deposit the employee provident fund dues of such workers as held by the Respondent Authority. Learned Counsel for the Respondent Authority has countered this argument. He has referred to Section 1(3) and Section 2(e) and 2(f) of the Act which is 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 6 [Twenty] or more persons are employed, and**

**(b) To any other establishment employing 1[twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:**

**2[(e) “Employer” means-**

**(i) In relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and**

**(ii) In relation to any other establishment, the person who, or the authority which, has been ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing directing or managing agent, such manager, managing director or managing agent;]**

**(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 3[an establishment] and who gets his wages directly or indirectly from the employer, 4[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 Apprentice Act, 1961 (52) of 1961) or under the standing orders of the establishment];**

*10.* As it is clear from Section 2(f ) that ‘employee’ for the purposes of this Act also include any person who is employed by the contractor in connection with the work of the establishment, hence the employees employed by the contractors in connection with the work of appellant establishment allotted to the contractors by the Appellant Establishment’ will be deemed to be employees of the Appellant Establishment for the purposes of this Act. Contractor is the primary employer and the Appellant Establishment will be the Principal Employer because the contractor has been awarded by the appellant establishment in which the employees were employed by the contractor.

*11.* Perusal of Section 1(3)of the Act also establishes that the Act shall be applicable to every establishment which is notified in the official Gazette with employees not less than 20 persons with it.

12. It has been submitted by the learned counsel for the appellant establishment that there is nothing on record to show that any one of these contractors had employed more than 20 persons at a time. Hence they could not be held covered under the Act but this argument also cannot be accepted in the light of argument of learned Counsel that for the purposes of application of this Act, the total number of employees i.e. regular employees, contractual employees, employees of contractors shall be included. It is nobody's case that number of the total employees including the regular employees, contractual employees and employees of contractors is or was less than 20 in the Appellant Establishment.

13. The impugned finding is with respect to employees of those contractors who did not have separate employee provident fund code and were not under the purview of the Act. From the above discussion, it is established now that such type of workers shall also be considered as employee of the appellant establishment for the purposes of this Act. Rule 30 of Employees Provident Fund Scheme 1952 deals with the payment of employee provident fund dues to be made by the employees which is 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 [www.epfindia.gov.in](http://www.epfindia.gov.in) 43 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.**

*14.* Hence' in the light of the above discussion, the finding of the Respondent Authority that the appellant establishment is under legal obligation in the Act to deposit the employee provident fund dues of the employees of the contractors not covered in the Act cannot be faulted in law or fact and is hereby affirmed. **The point for determination No.1 is answered accordingly .**

**15. POINT FOR DETERMIANTION NO.2:-**

As the impugned order reveals that the Respondent Authority has made the two reports of the Enforcement Officer the basis of computation of employee provident fund dues. It has been submitted by learned counsel for the Appellant that the Appellant was not given opportunity of hearing on these reports because copy of these reports was not supplied to the Appellant Establishment at the time of hearing hence they were deprived of putting up their objection on these reports. It is the case of the Respondent that these reports were supplied as it is evident from the perusal fo the impugned order. I have gone through the impugned order, there is no mention of supply of copy of reports of Enforcement Officer to appellant establishment in the impugned order. Hence, it is established that the Respondent relied on reports of the Enforcement Officers on the point of assessment of amount without affording an opportunity of hearing/filing objection on these reports, which is against settled principle of natural justice, thus committed error in law.

*16.* Another argument of learned counsel for the appellant is that the assessment was made without identifying the beneficiaries. It was a lump sum assessment which is discouraged by department.

*17.* Learned Counsel has relied on following case laws on this point wherein it has been held that the contributions can be claimed only for the beneficiaries who can be identified.



1. **Sandeep Dwellers Vs Union of India, 2007(1) LLJ 518.**
  2. **Himachal State forest Corporation Vs. RPF Commissioner (2008) LLR 980.**
  3. **Group 4 Securitas Guarding Ltd. & Another Vs. Employees Provident Fund Appellate Tribunal & Ors., (2012) LLR 22 Delhi.**
  4. **Mantu Biri Factory(P) Ltd. And Anr. Vs. the Regional Provident Fund Commissioner and Anr.(1994) 2 CHN 75 Calcutta.**
  5. **Shrirampur Education Society Vs. Regional Provident Fund Commissioner (2014) 2 LLJ 539.**
  6. **Himachal Pradesh State Forest Forest Corporation Vs. RPFC (2008) 5 SCC 756.**
18. The learned counsel for the respondent submits that the impugned order make it amply clear that the records like muster roll, register of wages, wage slips etc. were not made available by the Appellant Establishment to the Respondent Authority in spite of specific demand notice. The two reports of the Enforcement Officer also states the same fact. This is also clear from the perusal of the inspection report that the Enforcement Officer has taken 20% of the amount paid to the contractor as wage component, He has assumed that 20% of the amount is the wage component that would have been paid to the employees by the contractors. The counter to the appeal, including the two reports of Enforcement Officer and impugned order do not mention the basis of these assumptions, hence it can be safely concluded, that this assumption of 20% as wage component by Enforcement Officer is arbitrary and is without basis.
19. Perusal of impugned order shows that the Respondent Authority has observed that the Appellant Establishment being Principal Employer is

under liability to maintain the following registers as provided in Contract Labour (Regulation & Abolition) Act, 1970 The Contract Labour (Regulation And Abolition) Central Rules, 1971. These registers are:-

- 1.Musterl Roll
- 2.Register of Wages
- 3.Register of deductions
- 4.Register of overtime
- 5.Register of Fines
- 6.Register of Advances.
- 7.Wage Slip
- 8.Balance Sheet.

20. He has further referred to Section 35 of the Contract Labour (Regulation & Abolition) Act, 1970, which is as follows:-

**35. Power to make rules.—(1) The appropriate Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:— (a) the number of persons to be appointed as members representing various interests on the Central Board and the State Board, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies; (b) the times and places of the meetings of any committee constituted under this Act, the procedure to be followed at such meetings including the quorum necessary for the transaction of business, and the fees and allowances that may be paid to the members of a committee; (c) the manner in which establishments may be registered under section 7, the levy of a fee therefor and the form of certificate of registration; (d) the form of application for the grant or renewal of a licence under section 13 and the particulars it may contain; (e) the manner in which an investigation is to be made in respect of an application for the grant of a licence and the matters to be taken into account in granting or refusing a licence; (f) the form of a licence which may be granted or renewed under section 12 and the conditions subject to which the licence may be granted or renewed, the fees to be levied for the grant or renewal of a licence and the deposit of any sum as security for the performance of such conditions; (g) the circumstances under**

which licences may be varied or amended under section 14; (h) the form and manner in which appeals may be filed under section 15 and the procedure to be followed by appellate officers in disposing of the appeals; (i) the time within which facilities required by this Act to be provided and maintained may be so provided by the contractor and in case of default on the part of the contractor, by the principal employer; (j) the number and types of canteens, rest-rooms, latrines and urinals that should be provided and maintained; (k) the type of equipment that should be provided in the first-aid boxes; (l) the period within which wages payable to contract labour should be paid by the contractor under sub-section (1) of section 21; (m) the form of registers and records to be maintained by principal employers and contractors; (n) the submission of returns, forms in which, and the authorities to which, such returns may be submitted; (o) the collection of any information or statistics in relation to contract labour; and (p) any other matter which has to be, or may be, prescribed under this Act. (3) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 1 [(4) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.]

21. Rule 74 to 78 of The Contract Labour (Regulation And Abolition) Central Rules, 1971, requires to be mentioned here which are being reproduced as follows:-

#### **REGISTERS AND RECORDS AND COLLECTION OF STATISTICS**

**74. Register of contractors.—**Every principal employer shall maintain in respect of each registered establishment a register of contractors in Form XII.

**75. Register of persons employed.—**Every contractor shall maintain in respect of each registered establishment where he employs contract labour a register in Form XIII.

**76. Employment Card.—(i) Every contractor shall issue an employment card in Form XIV to each worker within three days of the employment of the worker. (ii) The card shall be maintained up to date and any change in the particulars shall be entered therein.**

**77. Service Certificate.—On termination of employment for any reason whatsoever the contractor shall issue to the workman whose services have been terminated a Service Certificate in Form XV.**

**78. Muster Roll, Wages Registers, Deduction Register and Overtime Register.—1 [(l) (a) Every contractor shall in respect of each work on which he engages contract labour,— (i) maintain a Muster Roll and a Register of Wages in Form XVI and Form XVII respectively: Provided that a combined Register of Wage-cum-Muster Roll in Form XVIII shall be maintained by the contractor where the wage period is a Fortnight or less; (ii) maintain a Register of Deduction for damage or loss, Register of Fines and Register of Advances in Form XX, Form XXI and Form XXII respectively; (iii) maintain a Register of Overtime in Form XXIII recording therein the number of hours of, and wages paid for, overtime work, if any; (b) Every contractor shall, where the wage period is one week or more, issue wage slips in Form XIX, to the workmen at least a day prior to the disbursement of wages; (c) Every contractor shall obtain the signature or thumb impression of the worker concerned against the entries relating to him on the Register of Wages or Muster Roll-cum-Wages Register, as the case may be, and the entries shall be authenticated by the initials of the contractor or his authorised representative and shall also be duly certified by the authorised representative of the principal employer in the manner provided in rule 73. (d) In respect of establishments which are governed by the Payment of Wages Act, 1936 (4 of 1936) and the rules made thereunder, or Minimum Wages Act, 1948 (11 of 1948) or the rules made thereunder, the following registers and records required to be maintained by a contractor as employer under those Acts and the rules made thereunder shall be deemed to be register and records to be maintained by the contractor under these rules, namely:— 1. Subs, by G.S.R. 948, dated 12th July, 1978. The Contract Labour (Regulation and Abolition) Central Rules, 1971 (a) Muster Roll; (b) Register of Wages; (c) Register of Deductions; (d) Register of Overtime; (e) Register of Fines; (f) Register of Advances; (g) Wage slip; (3) Notwithstanding anything contained in these rules, where a combined or alternative form is sought to be used by the contractor to avoid duplication of work for compliance with the provisions of any other Act or the rules framed thereunder for any other laws or regulation or in cases where mechanised pay rolls**

**are introduced for better administration, alternative suitable form or forms in lieu of any of the forms prescribed under these rules, may be used with the previous approval of the Regional Labour Commissioner (Central)].**

22. Perusal of these rules establishes that the responsibility of maintaining these registers with regard to employees is on the contractors and not on the Principal Employer which is the Appellant Establishment in the case in hand. Being the Principal Employer the Appellant Establishment is under obligation under Rule 74 to maintain a register of contractors in Form-12. Hence the observation of Respondent Authority that the appellant establishment was obligated to maintain these registers and produce them before the Respondent Authority has no strength of law, it is only based on conjectures and summarizes.

23. In the light of these factual backdrop, there appears force in the argument of learned counsel for the appellant that the Respondent Authority must have issued notice to the respective contractors, list provided by the appellant establishment and asked them to produce these registers to ascertain the number of employees engaged, their wages for computation of employees provident fund dues and other details of these employees. Consequently, it is held that by relying on Inspection Reports of Enforcement Officer on the point of computation of employees provident fund dues, **firstly**, without giving the appellant establishment an opportunity of hearing and **secondly**, by not ascertaining the identity of beneficiaries in spite of having opportunity to ascertain it from the registers of contractors, whose details were known to the Respondent Authority during the proceedings, the Respondent Authority has committed error in law. Point for determination NO.2 is answered accordingly.

No other point has been pressed.

24. Consequently the appeal deserves to be allowed partly.

**ORDER**

The Appeal is allowed partly. The finding of the Respondent Authority holding the Appellant Establishment liable to pay the employees provident fund dues of employees of contractors not covered in the Act is confirmed. Finding regarding the computation of dues is set aside. The Respondent Authority is directed to ascertain the employees provident fund dues in the light of observation made in the Appeal.

No order as to costs.

**(P.K.SRIVASTAVA)**

**PRESIDING OFFICER**

**JUDGMENT SIGNED , DATED AND PRONOUNCED.**

**(P.K.SRIVASTAVA)**

**PRESIDING OFFICER**

**Date:5-1-2022**