

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

NO. CGIT/LC/EPFA-50/2019

PRESENT: P.K.SRIVASTAVA

H.J.S.(Retd.)

M/s Kushwah Security force Pvt. Ltd.

A-31, Dwarka Dham Colony, Karond,

New Jail Bypass road, Bhopal(M.P.)

APPELLANT

Versus

The Employees Provident Fund Organisation

Through Regional RPFC,

Regional Office, 59, Arera Hills,Bhopal(M.P.)

RESPONDENT

(J U D G M E N T)

(Passed on this 25th day of February-2021)

- 1.* Under challenge in the present appeal is the order dated 27/9/2019 passed by the Respondent Authority holding the appellant liable to

pay employees provident fund dues assessed Rs. 69,99,234(sixty nine lakhs, ninety nine thousand, two hundred thirty four) with a finding that the appellant company is guilty of non-deposit of certain dues according to the provisions of Employees Provident Funds and Miscellaneous Provisions Act,1952, herein after referred to as by the work”Act”.

2. Facts connected in brief are that the appellant establishment is a private limited company incorporated under Section 7(2) of the Companies Act,2013. It was granted license to run the business of private security agency which was issued to them on 27-8-2015 The provisions of the Act are applicable to the Corporation and Provident Fund Code No.MP/BPL/1360484 was allotted to the Company by the Respondent. According to the appellant , it provides security and allied services to Government and private establishments in Bhopal and other offices. It got contract from Accountant General Office, Bhopal for providing security and allied services which was inforce from April-2016 till March-2017. It also got contract from M.P.State Aids Control Samiti, Bhopal from April-2017 to March-2018 for the same work. Apart from this , it used to provide security guards at different places under control of M.P.Sports Department and V-Mart. The copy of work orders are attached with the memo of appeal. There was a complaint made by the Office of M.P.State Aids Control Samiti to the Respondent Authority alleging that the appellant company was not depositing the provident fund dues in respect of certain employees who were

engaged on contract basis through the appellant company. Four employees alleged to have been contract employees of the appellant company, working in the office of Accountant General , Bhopal also made same complaint that their EPF dues were not deposited and they were not made Members of the EPF Scheme. To ascertain the correctness of the complaints, the Respondent initiated an inquiry under Section 7-A of the EPF Act. A Three member squad visited the establishment of appellant on 2/4/19 and directed the appellant to produce salary and attendance register of the employees, Profit & loss Account and balance sheet, cashbook, Ledger, voucher of payment of salary, list of employees engaged with the Principal employer or through contractors and their compliance status, copy of all work orders and challan paid statement. According to the appellant, the relevant documents were supplied by them to the squad. The documents supplied were copy of income tax returns, audited balancesheets, work orders, schedule of financial statement of the financial year 2016-2017 and 2017-2018 and paid pf challan vide its letter dated 4-6-2019 and 20/6/19. It is further the case of the appellant that during the pendency of the inquiry, the office of Additional Director General of Police informed the respondent vide letter dated 1/5/2019 about the alleged irregularities in depositing the provident fund contribution by the appellant with respect to security guards engaged with Sanchalaya, Khel and Yuva Kalyan, Bhopal and V-Mart, Bhopal. Hence the coverage of inquiry was extended from April-2006 to May-2019 . the Inspection squad submitted its report with allegations of non-deposit of provident fund dues as per Rules on 7-5-2019 to the Respondent Authority, copy of which was

never supplied to the appellant establishment inspite of demand and another report, prepared by the squad in a slip shod manner determining the provident fund dues for the period April-2016 to March-2018 on the basis of salaries to the security guards mentioned in profit and loss Accounts and dues for the period from April-2018 to May-2019 on the minimum wages with respect to the employees of which information was provided by the Office of the Additional Director General of Police(Private Security Agencies), was submitted to the Respondent Authority who assessed the total dues to be paid at Rs.75,38,888/- after reducing the amount of provident fund already paid which is Rs.5,39,654/-, the amount became Rs.69,99,234/- which was held payable by the appellant company to the Respondent. According to the appellant company, the amount was wrongly assessed.

3. The grounds of appeal , taken in the memo are mainly that the whole proceedings are vitiated as Inspection Policy Circular No.MIS-2(4)/CAIU/Web-portal/2014-15 dated 26/6/2014 were not followed by the Respondent Authority in the proceedings also that the steps taken by the Authority with regard to identification of the workers are not transparent in the impugned order and nor in the Inspection Report. Also that the expenditure shown as wages in balance sheet has been acted upon without verifying the actual part . Accordingly the appellant has observed in the case of **Food Corporation of India and Provident Fund Commissioner 1989(II)L.L.N.987**, Hon'ble the Apex Court has observed that "the main question is

whether the Commissioner exercised his powers vested in him to collect the evidence or not? And not that whether one failed to produce evidence ,which was not done in the case in hand and the finding of the Respondent authority are bad in law and fact. Accordingly the other grounds are that the Respondent Authority wrongly assumed the wages applying the Minimum Wages Act,1948 which has no application with regard to the proceedings of the present Act, copy of the complaints and the copy of the inspection report was not supplied to the appellant, the order under appeal was filed and passed and in a slip shod and hurried manner, without applying its judicial mind , hence is bad in law. Further more the impugned order was passed without applying judicial mind, hence bad in law on this score also. The Respondent Authority failed to appreciate the fact that there were other Contractors also who had supplied man power to the agencies and that regarding the not extending benefit to the four employees , their KYC proceedings were on , hence they could not be enrolled with the Provident Fund Organisation. Accordingly, the appellant has prayed that the impugned order be set aside and the appeal be allowed.

4. Defending the impugned order the Respondent Authority has stated in the counter to the affidavit that the complaint received by the M.P.State Aids Control Samiti stating that the appellant company had been engaged by them to supply man power relating to cleaning, security and other works . In order to get their bills settled the

appellant company submitted copy of EPF-Electronic-cum-Challan Return(ECR) on the name of the establishment mentioned as Kushwaha Security Force Pvt. Ltd. but the EPF code mentioned as MPBPL0026704, where as the EPF Code mentioned in the passbook of the employees was MPBPL001360484. A show cause notice was issued by the respondent on 28-8-2018 to the Director of the appellant company to submit his clarification. Certain other employees also filed complaint stating that they have worked in the appellant company but have not been given this benefit despite that they were eligible employees under the Scheme. An inquiry under Section 7-A of the Act was initiated and all the concerned parties were directed to appear on 10-10-2018. In the meanwhile another complaint dated 20-11-2018 was also received from the office of Accountant General, Bhopal stating the appellant company was engaged in the supply of cleaning workers, MTS staff, car drivers and security guards from April-2016 to March-2017, had not remitted the EPF dues, despite payment being released by the office. Hence a squad of three Enforcement Officers was constituted who made inspection of the appellant premises in the light of the complaints aforesaid. During the course of inquiry, another complaint dated 1-5-2019 was received from the Office of the Additional Director General of Police, Private Security Agencies & SISF, Bhopal that as per Rules 16(7) of the M.P.Private Security Agency(Regulation)Act,2012 the license holder has to submit the supervisors/security guards information in the prescribed format. That apart from the places mentioned in the format, the agency also appointed guards at other places. Another complaint dated 16-4-

2019 received from the Office of Directorate of Sports and Youth Welfare, MP, TT Nagar Stadium, Bhopal w.e.f 28-7-2017, apart from this they had also engaged 12 security guards at V-Mart , Jehangirabad and Sonagiri, Bhopal but did not mention it in their quarterly statement, hence showing less number of guards. Also it was found, that the appellant deposited provident fund contribution of very few employee and sometimes only of one employee. The investigation Report made by the Police Inspector of Additional Director General Office on 18-4-2019 substantiating the charges was also filed with the respondent Authority. It is the case of the respondent Authority that the Squad visited the establishment and submitted its inspection report dated 7-5-2019 which he informed that M/s M.P Rajya Aids Control Samiti has submitted the copy of ECR for the month of July-17 to February-2018 along with the bills submitted by the appellant company to the EPFO vide letter dated 5-6-2018 ,was verified and it was found that the name of the appellant company was their in the ECR but the establishment I.D. MPBPL0026704000 mentioned was that of M/s Quality Fuel Station, hence establishing fraud and forgery in preparing the documents. A police FIR was also registered in this respect. It is submitted that the squad has also reported that the Office of Additional Director of Police, Private Security Agency, it was found that in the ECR of January-2019 to March-2019, eleven employees were shown. It was found that these ECR were false and forged as it were not corroborated in Unified portal. In the report of the squad, it was also mentioned that the complaint received by M.P.Aids Control Samiti and office of Accountant General where also found

correct and also complaints received from individual employees were found correct. It was found that the appellant company had not made any payment and not extended pf benefits of its employees since September-2018. During the inquiry the squad report was supplied to the appellant Authority but he did not assign any logic or reason to show it incorrect by any supporting evidence though the representative of the appellant company had made an endorsement on the report that, he does not agree with the report. Accordingly, the final assessment of Rs.69,99,234 was made. Thus according to the respondent, the order in question does not warrant any interference, as it has been passed as per law and procedure, based on evidence.

5. The appellant has filed rejoinder also, almost reiterating its stand.
6. I have heard the arguments of Shri Pranay Choubey, learned counsel for appellant and Shri J.K.Pillai, learned counsel for the respondent. I have gone through the records as well.
7. The main argument of learned counsel for the appellant is that the impugned order is bad in law and fact as it was against the circular mentioned in the memo of appeal. Secondly the scope of inquiry travelled beyond the issues identified at the stage of initiation. If there was any new fact coming out, there should have been a separate inquiry, hence the extension of the inquiry period was

against law causing prejudice to the appellant. The inquiry was initiated without establishing prima facie a case for initiation of inquiry or assessment, hence bad in law because the fishing and roving inquiry, as it could not have been initiated only on the basis of complaint. The inquiry was not transparent. The learned counsel has relied on Case law **Food Corporation of India vs. Provident Fund Commissioner 1989(II) L.L.N 987** and has submitted that assumptions of minimum wages based on assessment on the basis of the balance sheet and profit and loss account was also against law because Minimum Wages Act has no application and also that liability of principal employer was not fixed which is also an illegality committed by the Respondent Authority.

8. The learned counsel for the respondent has submitted the impugned order and stated that when the inquiry is initiated on a complaint as it happened in the case in hand, there is no need and occasion to follow the aforesaid circular. The appellant was given full opportunity to defend itself during the squad inspection and inquiry. Assumption of minimum wages on the basis of Minimum Wages Act also cannot be faulted in law because no employer is supposed to give wages less than the minimum wages to its workers. Learned counsel further submits that the findings are based on sound facts and principle of law, thus do not warrant any interference and the appeal is liable to be dismissed.

9. After having gone through the record, in the light of rival arguments , the following points come up for determination in the case in hand:-

(1)Whether the finding of the Respondent/Authority that Appellant/Establishment has defaulted payment of provident fund dues as per law and is liable to be pay provident fund dues is justified in law and fact?”

(2)Whether the amount assessed is justified in law and fact.”

10.POINT NO.1:-

The finding on this point for determination has been attacked by learned counsel for the appellant on ground firstly that it was violative of the circular. Secondly, the Principles of natural justice were not followed and inquiry was not transparent. As it is established that there were multiple complaints received by the Respondent Authority regarding violation of the Provident Fund Act, detailed earlier and inquiry was initiated on the basis of complaints multiple in nature hence, the Respondent was justified in law to initiate this inquiry and there was no occasion for him to follow the circular. In this respect for initiating an inquiry, the circular applies to the inquiry which are suo motu initiated by the Respondent/Authority. As regards the second attack, it is established from the report of Inspection Squad that there were violations of the Act in not fully depositing the provident fund dues

, not extending the provident fund benefits to the employees , producing false evidences in the form of ECR's to show deposit with the firm were found forged. Copy of this Inquiry Report was given to the appellant establishment, is also established from the record. It is also established that appellant could not rebut the report and findings recorded in the report, as it is apparent from the perusal of the record, hence the finding of the Respondent Authority on this point is fully justified in law and fact. **Point for determination No.1 is responded accordingly.**

11. POINT NO.2:-

The appellant side has attacked the amount firstly on the point that this amount was collected on the basis of Minimum Wages Act and wages were determined as Minimum Wages payable to employees as stated in the Memo of Appeal . Secondly the inquiry period was extended for assessment.

12. As regards, the first argument, it comes out from the perusal of the record that the appellant establishment provided only the profit and loss account and copy of ECR from April-2017 but did not produce other records. The appellant establishment also produced the wages in total paid from April-2016 to March-2017 and April 2017 to March-2018 and deposited the challan from April-2016 to May-2019. The wages have been calculated on the basis of total wages paid in every month. From the wages applying the minimum wages

liable to be paid to each employees , the number of employees has been calculated and this has been tallied for with the challan paid details for the period April-2016 to May-2019. This procedure cannot be faulted in law and fact because this has been made on the basis of available record. Accordingly the amount assessed also does not warrant any interference by this Tribunal as it is correct in law and fact. **Accordingly Point No.2 has been answered.**

13. On the basis of the above discussion the appeal lacks merits and is liable to be dismissed with costs.

ORDER

Appeal stands dismissed with cost.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:25/2/2021