

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

NO. CGIT/LC/EPFA-78/2017

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

**Bharat Industries works,
61,Industrial Estate, Nandni Road,
Bhilai District,
Durg (C.G.)**

APPELLANT

Versus

**The Regional Provident Fund Commissioner,
M.P., Indore and Another.**

RESPONDENT

(J U D G M E N T)

(Passed on this 16th day of February-2021)

1. The present appeal is directed against the order dated 10-3-1995, passed by the Respondent/Authority whereby the Respondent/Authority has held the Appellant/company liable to pay amount of Rs.8,84,864/- as provident fund dues of employees within the period of March 1987 to June 1992 with regards to works done by the Contractor through their employees.

2. The facts connected in brief are that the Appellant/Company is a partnership Company in structural and mechanical engineers having their office in Bhilai, District Durg. They were awarded certain contract works which were to be executed at Korba of their clients M/s Bharat Heavy Electricals and M/s. Larsen & Toubro Ltd. for the period 1987 to 1992. For this purpose the appellant entered into an agreement with another firm namely Bharat Industrial works(Nagpur) to execute and carry out the work assigned. The appellant are registered in Madhya Pradesh with the Respondent Provident Fund

Commissioner, Indore whereas M/s Bharat Industrial Works(Nagpur) to whom the contract was given is registered with the Provident Fund Commissioner, Nagpur. The workers were employed by the Sub-contractor M/s Bharat Industrial Works , Nagpur and the present appellant never employed the workers directly. Since the Sub-Contractor Company was itself registered with the Provident Fund organization, it was under the legal obligation to pay provident fund with regard to the employees who worked there. It is further stated that the Sub-Contractor i.e. M/s Bharat Industrial Works, Nagpur did deposit the provident fund dues with the Provident Fund Commissioner in Nagpur-Maharashtra inspite of that the Respondent/Authority issued notice to the present appellant on 22-10-1992 and intimated regarding the proceedings under Section 7-A of the Act, said to have been initiated for the recovery of the provident fund dues in connection with the contractor employees working with the appellant. It is the case of the appellant company that they submitted reply dated 6-11-1992 and stated these facts also the fact that the sub-contractor Bharat Industrial Works Ltd. Nagpur had deducted the contribution and had been depositing the provident fund regularly with the Provident Fund Commissioner in Nagpur. The appellant Company further provided the documents regarding this to the Respondent/Authority as well as the Enforcement Officer who visited their units. Again the respondent issued a notice dated 28-1-1993 raising the same facts which was replied and the facts stated above were reiterated . Again the letter dated 26-6-1993 was issued to the Respondent/Authority by the Appellant Company in pursuance of this notice dated 15-6-1993 for non-production of records, wherein it was specifically stated that the Sub-Contractor as mentioned above have deposited the employees provident fund dues with the Regional Provident Fund Commissioner, Nagpur and has been regularly depositing the same. It was also stated in letter dated 11-5-1994 issued by the Appellant Company to the Respondent/ Authority wherein it was stated that the workman were not employed directly by the appellant company, they were employees of the contractor who had his own provident fund registration and had been depositing their dues regularly. The statement showing various deposits made from

time to time with challans made by the Sub-Contractor was also filed with the office of Respondent/Authority but the Respondent/Authority without caring to look into the record, illegally held the Appellant/Company liable to deposit the employees provident fund dues and fix the amount under appeal against law and fact without identifying the beneficiaries. It is further stated that the impugned order is non-speaking also and it cannot sustain the scrutiny of law. The finding of the Respondent/Authority is against law and fact, accordingly the Appellant/Company has prayed for setting aside the impugned order.

3. The documents Annexure-1 to Annexure-10 have been filed with the Memo of Appeal which shall be referred to as and when required.
4. In its counter, the Respondent/Authority has defended the impugned order with a claim that, it is according to law and based on facts and evidence on record. Also, it has been stated that no record was given to the Enforcement Officer at the time of his visit. The Enforcement Officer mentioned this fact in his report dated 10-8-1995. A show cause notice was issued in the light of Inspection Report submitted by the Enforcement Officer. The Appellant/Company did not respond and other notice dated 22-10-1992 was issued by the Assessing Officer requiring the Appellant/Company to appear before him with documents/records. Different dates as mentioned in paragraph- 2.5 of counter was fixed for hearing. The Respondent/Authority further admits that with response to notice letter dated 6-11-1992, 26-6-1993, 11-5-1994, 19-7-1994 and 28-11-1994 were received from the office of Appellant/Company. The establishment was directed on 2-12-1994 to submit complete record on 4-1-1995 but none appeared on behalf of appellant/company. Again the Assessing Officer issued a letter dated 10-1-1995 to the Appellant/Company to appear before him with records, but none appeared, thus the appellant/establishment failed to attend inquiry and produce complete records. In such a circumstance, the impugned order was passed on the basis of the material on record.

The Respondent/Authority has specifically denied that any document /letter dated 28-1-1993, statement of remittance, copy of challan and letter dated 11-2-1995 were received in the office of Respondent/Authority. It is also stated that since the appellant failed to prove its contentions through documentary evidence and did not produce complete documents before the Enforcement Office at the time of his visit as mentioned by him in his Inspection note dated 22-10-1992, the impugned order was passed on the basis of material on record which does not warrant any interference. Accordingly it has been prayed that the appeal be dismissed.

5. Affidavits in support of counter and three documents copy of two reports of Enforcement Officer and a copy of agreement have been filed by Respondent/Authority to be referred to as and when required.
6. At the time of arguments, parties were given opportunity to file written arguments though the appeal could have been dismissed at the date of argument itself due to non-presence of appellant but since the pleadings are complete and have been exchanged, it is in the interest of Justice to dispose the appeal on merits just to give a quietus to the lis. However today learned counsel for respondent appeared and requested that his arguments be heard. Hence, before passing order, his arguments were heard. Perused the record.
7. **The point for determination which arises in the present appeal is whether the finding of the Respondent/Authority holding the present Appellant Company responsible for payment of employees provident fund dues is correct in law and fact or not?**
8. As the perusal of the impugned order reveals, the Respondent/Authority found that the Appellant Company did not appear before it and did not produce documents in support, hence it appeared to the Respondent Authority that the Appellant Company is not interested in contesting the case and proceedings started ex-parte

against the Appellant Company. It further reveals that the Enforcement officer confirmed in his report that an amount of Rs. 8,84,864/- was due from the employer in relation to M/s Bharat Industrial Works Bhilai i.e. Appellant company on the basis of the verification of record. Further more, its order reveals that the report of the Enforcement Officer is the basis of the finding ,under attack in the present appeal.

9. The case of the Appellant Company is that the job was given to another contractor M/s Bharat Industrial Works Nagpur, hereinafter referred to as the “Nagpur Company” who executed the work through its employees. The Nagpur Company was itself registered with the Provident Fund Commissioner in Maharashtra-Nagpur and has consistently paid and deducted employees provident fund as well as their contribution and deposited with EPFO at Nagpur. It has been stated, by the Appellant Company that this fact was informed to the Respondent Authority, in reply to the notices the Respondent/Authority issued during the inquiry, but the Respondent/Authority did not care to take note of these replies. The Respondent Authority has in its counter ,on this point submit that that there is no record or receipt of any statement of remittance, copy of challan of deposit of provident fund in their office, hence they denied the receipt of the reply and documents regarding deposit of provident fund by the Appellant company in reply of notice. None of the parties have filed any affidavit in support of their appeal or counter. The Appellant Company has filed the copy of reply of notices before this Tribunal which are(Annexure A-3), Annexure A-4), (Annexure-5), (Annexure-6), statement of deposit of provident fund and photocopy challans of deposit copies served on Respondent/Authority they nowhere say that these statement and deposits are not genuine, hence it will be taken that in fact that the Nagpur Company, the contractor has deposited the provident fund dues of their employees engaged to execute the work of Appellant Company.

10. To me, it appears that the proper course would have been, that when an agreement to execute the work between the Appellant Company and Nagpur Company surfaced during the inquiry, as it appears from the photocopy of agreement between the Appellant Company and Nagpur Company filed the respondent itself. The Nagpur Company became a proper party for adjudication of its dispute. Meaningless to say here that the settled proposition of law is that the inquiry under Section 7(A) of the Act is a judicial proceeding and the Respondent Authority has powers, given to Civil Court in Civil Procedure Code, while conducting the inquiry. The Respondent Authority committed error in law in not impleading the contractor company of Nagpur which militates against the legality of the impugned order, resulting into miscarriage of justice, in the case in hand.

11. As it has been observed earlier that the basis of the impugned order is the report of the Enforcement Officer. Photocopy of the report of the Enforcement Officer is filed by the Respondent Authority along with its counter as (Annexure R-1) and (Annexure R-2). Annexure R-1 is the inspection note dated 10-8-1992. Firstly it mentions that the complete documents were not made available, secondly according to the Enforcement Officer there were approximately more than 100 employees working on the site. There is nothing on record to show that as to what documents were sought for by the Enforcement Officer out of which, what documents were made available to him and which of the documents were not made available to the Enforcement Officer, in spite of requisitioning. There is nothing on record to indicate as to what steps did the Enforcement Officer take with respect to requisitioning of the documents which were not made available by the Appellant Company to the Enforcement Officer. This makes the report of the Enforcement Officer completely ambiguous and vague. The Respondent Authority had acted upon such a vague report in which names of the beneficiaries were not mentioned, their number was a guess work and what documents were not provided by the Appellant Company is also not mentioned. Hence, I am constrained to hold that the finding of the Respondent/Authority holding the

Appellant Company responsible for payment of employees provident fund dues in the order under appeal is not justified in law and fact and requires to be set aside. Accordingly, the appeal deserves to be allowed with costs.

ORDER

On the basis of the above discussion the appeal is allowed with costs. The impugned order dated 10-3-1995 passed by the Respondent Authority is set aside. Any deposit made under Section 7(o) of the Employees Provident Fund & Miscellaneous Provisions Act,1952 be returned to the Appellant Company within 30 days from the receipt of the order by the Authority before whom the amount was deposited.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:16/2/2021