

**BEFORE THE EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
AHMEDABAD**

Present - Radha Mohan Chaturvedi,
Presiding Officer (I/c), CGIT-cum-Labour Court,
Ahmedabad,
Date: 13th August, 2024

EPF Appeal (CGITA) No. : 24 / 2020

Arvind Premchand (Punamchand) Parikh,
Residing at : 6/F, Mehul Jain Society No. 2,
Opp. Blind School, Subhanpura,
Vadodara - 390023 Appellant

V/s

The Assistant Provident Fund Commissioner,
Bhaviya Nidhi Bhavan,
Akota Stadium Road, Akota,
Vadodara - 390020 Respondent

Advocate for the Appellant : Shri K. V. Gadhia
Advocate for Respondent : Shri Pathik Acharya

ORDER

1. The brief facts of this appeal are narrated as under. The appellant has preferred this appeal on 04.11.2020 assailing the orders of respondent

passed under section 7-A of the EPF & MP Act, 1952, (hereinafter referred to as the Act) on 02.12.2019 and an order passed under section 7-B of the Act on 07.10.2020. This Tribunal has allowed the application of appellant filed u/s 7-O of the Act on 22.12.2021 reducing the amount of pre-deposit to 40% of the amount determined u/s 7-A / 7-B of the Act vide order impugned. In compliance of this order, the appellant has deposited a sum of Rs. 381735/- as pre-deposit.

2. I have considered written submissions of appellant and respondent filed on 01.11.2023 and perused the records available with pleadings. The appellant has averred in memo of appeal and submitted in its written argument that the respondent has passed the order on 07.10.2020 u/s 7-B of the Act without calling upon the appellant and stating that the application is not filed in time frame and the appellant has not brought any new matter to look into u/s 7-B of the Act. During the enquiry u/s 7-A of the Act which was conducted against the appellant for the period from May 2011 to March 2018, the appellant appeared and filed its reply on 31.07.2019. The main contention of the appellant is that the liability to contribute EPF was of the principal employer and many of the employees were drawing salary above wage ceiling of Rs. 6500/- and therefore, determination of dues is not proper, but the same contention was not considered by the respondent authority. The appellant requested the respondent that M/s Adani Gas Limited who is principal employer, be made a party in the proceedings but the respondent authority has not done so. The appellant has paid dues and the contract was over on 31.03.2016. The Enforcement Officer in his report dated 26.09.2019 has stated that he has checked all the records including salary and attendance register from May 2011 to June 2018. The

appellant further made a representation to the respondent to implead the principal employer as party. The appellant lastly submitted its submissions on 27.11.2019 but the respondent authority did not consider the submission in its right spirit. The review application filed by the appellant on 22.06.2020 has also not been considered and dismissed without application of mind. The respondent authority has included excluded employees who were getting salary more than statutory wage limit. Therefore, the orders passed by the respondent authority are arbitrary, illegal and contrary to the provisions of the Act. Therefore, the appeal may be allowed and the orders impugned may be set aside. The appellant has relied upon a judgement of Hon'ble Bombay High Court - The Municipal Council, Dhamgaon, Distt. Amravati V/s Assistant P. F. Commissioner, 2020 LLR - 177.

3. The respondent in its written submissions has argued that appellant is a covered establishment under the Act bearing code no. VD/BRD/66485. An enquiry was initiated on the basis of complaint received from the employees of the establishment that EPF dues were not being deposited by establishment. After considering representations from establishment, complainants and EPFO department for determining the dues for the period from May 2011 to March 2018 and giving proper opportunities to the parties, an order u/s 7-A of the Act was passed on 02.12.2019 by the adjudicating authority and appellant was directed to deposit the amount determined as Rs. 1251837/-. The appellant filed a review petition also u/s 7-B of the Act which was rejected on 17.10.2020 by the respondent authority as it was filed beyond the statutory period of limitation (45 days). The respondent authority is not empowered to condone the delay in filing review application under the provisions of the Act. The appellant

has not submitted any evidence to substantiate its claim that some of the employees were getting salaries beyond statutory wage ceiling i.e. Rs. 6500/- at the relevant point of time before 01.09.2014. It was seen that all names shown in the muster roll did not appear in the wage register submitted by appellant. This clearly shows that appellant establishment was deliberately maintaining separate wage register to escape determination of dues. Appellant establishment on its own part did not submit any record, denying possessions of records during 7-A enquiry. Upon perusal of contract agreement between appellant and principal employer, it reveals that appellant has overall control and potent say in agreement vis-a-vis employment. The contract documents provided by the appellant during the enquiry clearly show that the contract was an operating contract and responsibility of hiring, maintaining and administration of employees was solely of appellant establishment. The appellant has not been able to establish that the principal employer was in control of recruitment and service condition of employees. The appellant has neither presented any evidence to contrary which may substantiate its case. All the submissions made by appellant were considered and disposed of on merit. There is no substance in the appeal which may be rejected. The respondent has relied upon the following judgements.

- i. Dharangadhra Chemical Works Ltd. V/s State of Saurashtra and ors., AIR 1957 SC 264
 - ii. CESC Limited and ors. V/s Subhash Chandra Bose and ors., (1992) 1 SCC 441
4. I have considered rival submissions made in the form of written arguments and the relevant provisions of the Act in the context of

pleadings and records submitted by the parties. The following points for determination are emerged.

- I. Whether sufficient and proper opportunities to defend were given to the appellant and the submissions made during course of enquiry were properly considered by the respondent authority before passing the order impugned?
 - II. Relief?
5. Point No. I – The appellant has argued that the submissions made and records produced during the course of enquiry were not properly considered by the respondent. A perusal of the records available shows that the appellant filed its reply on 31.07.2019 during the course of enquiry. This reply has been submitted with the pleadings by the appellant in the form of Annexure – ‘D’. The appellant in this reply at Para 6 has only mentioned “that supervisor EPF till August 2014 were not deducted and paid as their PF wages more than prescribe limit under the Act i.e. Rs. 6500/- per month.” Except this, the appellant has not submitted any list of employees which can be termed as excluded employees getting salary more than the statutory wage limit. However, the appellant, with its review application filed on 22.06.2020, has submitted a list marked Annexure A depicting the names of such employees who were getting salary more than the statutory wage limit. It is pertinent to note that this list was only submitted with the review petition after passing the order impugned u/s 7-A of the Act by the respondent authority which was filed beyond the prescribed period of limitation of 45 days. The provisions of the Act do not permit to condone the delay in filing this review petition beyond the period of limitation i.e. 45 days under Para 79-A of EPF Scheme, 1952. The appellant has argued

that delay in filing review petition was due to lockdown imposed during Covid – 19 pandemic conditions by the Government of Gujarat and Central Government as well. But the appellant itself in review petition has mentioned that “applicant was out of station for a religious work and has returned on 22.03.2020. From 23.03.2020, lockdown was imposed by Gujarat Government.” In these circumstances, it is very much clear that the appellant could not file review petition up to 22.03.2020 as he was out of station for some religious work and not due to lockdown imposed. It is important to mention here that the lockdown was announced only from 23.03.2020 and the appellant was not prevented to file review petition within stipulated period of 45 days from the date of order passed u/s 7-A of the Act, had he not gone out of station for some religious purpose. Thus appellant cannot take shelter of imposition of lockdown for condonation of delay as the period of limitation has already been expired on 17.01.2020 prior to imposition of lockdown. In this factual scenario, the respondent authority has rightly treated the review petition filed by the appellant as barred by limitation. In these circumstances, the enclosures filed with review petition on 22.06.2020 could not in any way be considered in favour of appellant.

6. It is not disputed that the appellant establishment is a covered establishment under the provisions of the Act bearing code No. VD/BRD/66485. The allotment of separate code number to an establishment is meant to impose certain legal liabilities upon it with regard to contribution and remittance of employees provident fund amount. A covered establishment cannot escape from its responsibilities imposed by the provisions of the Act. The appellant has not submitted any list of excluded employees before the respondent authority during

the course of 7-A enquiry and submitted such list later on with review petition which was filed beyond limitation period. Hon'ble the Bombay High Court in its judgement passed in The Municipal Council, Dhamgaon, Distt. Amravati V/s Assistant P. F. Commissioner, has held that non-consideration of contention of the petitioner that its employees are excluded employees proves non-application of mind by the EPF authority" does not fortify the argument of the appellant as the appellant has not filed any list of excluded employees before the respondent authority during the course of 7-A enquiry. The list submitted with the review petition u/s 7-B of the Act was submitted beyond the period of limitation which could not be considered by the respondent authority as per Para 79-A of the EPF Scheme, 1952.

7. The appellant has not submitted any proof or evidence to establish that principal employer (M/s Adani Gas Limited) was in control of recruitment or service conditions of the employees engaged by the appellant establishment. Hon'ble the Supreme Court in its judgement Dharangadhra Chemical Works Ltd. V/s State of Saurashtra and ors. has propounded that the prima-facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant." The appellant has not been able to substantiate its stand that the employees engaged by it were controlled and supervised by the principal employer. In these circumstances, the appellant is duty bound to contribute provident fund in respect of its employees.
8. On the basis of above discussions, it is concluded that whatever submitted by the appellant during the course of enquiry was considered properly by the respondent authority and it is not established that the

submissions made by the appellant were not considered before passing the order impugned. Therefore, this point is decided against the appellant.

9. Point No. II : Relief - On the basis of conclusions arrived at Point No. I above, there appears no ground to interfere with the order impugned passed by the respondent u/s 7-A of the Act. Appeal preferred by the appellant appears to be meritless, hence, dismissed.
10. There is no order as to cost. Order pronounced. File may be consigned to record after performing due formalities.

(Radha Mohan Chaturvedi)
Presiding Officer (I/c)
CGIT-cum-Labour Court /
EPF Appellate Tribunal
Ahmedabad