

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

NO. CGIT/LC/EPFA-183/2017

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

M/s Bhilai Builders(P)LTD.
Shop No.B/2/11,Ravi Bhawan
Jaistambh Chowk,
Raipur(C.G.)

APPELLANT

Versus

The Assistant Provident Fund Commissioner
Block D Scheme No.32,
Indira Gandhi Vyavsaik
Parisar Pandri, Raipur

RESPONDENT

(J U D G M E N T)

(Passed on this 9th day of March-2021)

1. The present Appeal is directed against the order dated 00-3-2016 passed by the Respondent Authority holding the Appellant Establishment liable to pay employees provident fund dues between the period 2006-2007 to 2014-2015 to the tune of Rs.12,60,754.

2. Facts connected in brief are that according to the Appellant Establishment it is a company duly registered under the Companies Act 1957 as amended in the year 2013 and is engaged in the business of construction activities. It is the case of the Appellant that the Respondent Authority illegally issued a notice on 11-3-2008 stating that on the basis of balance sheets it was found that a substantial amount in the form of wages and salary has been disbursed by the appellant company and sought explanation as to why the Employees Provident Fund and Misc. Provisions Act,1952 hereinafter referred to as the word'Act' be not enforced against the appellant since April-2006 and inspection was also carried out by

the Enforcement Officer of the Respondent Authority on 20-3-2008. Some documents were served by the Enforcement Officer which were duly provided by the Company vide its letter dated 15-3-2008 wherein it was stated that the entire operation of the company was done by 8 to 10 employees which was already brought into the notice of the Respondent, hence the company was not covered under the provisions of the Act. The list of employees, balance sheets, duly filled questionnaire form was sent to the Enforcement Officer. It is further alleged that the Respondent Authority kept silent from the year 2008 to 2014 and another letter dated 17-6-2014 was sent to the appellant establishment informing the appellant that the appellant company has to be registered under the Act, though there was nothing to show that the company was qualified for being registered under the Act. The Respondent Authority further allotted illegally Provident Fund Code bearing No.CG/19712 vide its letter dated 17-6-2014, which is against law and was arbitrary. The Respondent Authority further issued a notice dated 19-2-2015. Another letter also was issued on 13-5-2015. The Appellant Company representative appeared before the Respondent on 2-6-2015 along with the copy of balance sheets sought by the Respondent authority and also the salary details of its employees between the period 2006 to 2014 as well the Auditor Reports for this period, with a case that there were only less than 20 employees working with the company, hence the company was not covered under the provisions of the Act, hence the Registration with the Respondent Authority allotting Provident Fund Code be cancelled. It was also stated that since last 5 to 7 years no construction activity was going on . This is also the case of Appellant Establishment that, the report of Enforcement Officer was never provided to the Appellant and the impugned order was passed behind the back of Appellant by illegally calculating the provident fund and other dues.

3. The grounds of appeal, taken by the Appellant are mainly that, the order of Respondent Authority, holding the appellant company liable

under the provisions of the Act, is against law as there were never 20 or more than 20 employees, working in the company at any point of time, as it was evident from the documents, namely balance sheets, salary details and income-tax returns. The Respondent proceeded on incorrect assumptions and presumptions in recording this finding which is against law. Other grounds are that the impugned order and proceedings were malafide, in gross violation of the principles of natural justice. The Respondent Authority failed to appreciate the evidence of appellant establishment, hence committed error in law. The proceedings were vitiated due to illegality due to non-supply of report of the Enforcement Officer and documents on which the Enforcement Officer relied in his report. The impugned order is bad in law, also on the ground, that it is a non-speaking and unreasonable order, based on conjectures and surmises, hence contrary to law.

4. In its counter to the appeal, the Respondent Authority has defended the impugned order and finding with a case that on the basis of documents provided which are mainly the Balance sheets for the period 2006 – 2007 to 2014 – 2015, there are contradictions in the details of salary disbursed as shown in the salary details and balance sheets. The wages distributed as mentioned in the balance sheets and no details of persons to whom the wages were distributed, were given inspite of reminders, hence holding the persons to whom the wages were distributed as employees of the appellant establishment, as per the Act. The Appellant establishment was rightly held liable to pay employees provident fund dues on wages also. Accordingly, the Respondent has prayed that the Appeal be answered against the Appellant.
5. At the stage of arguments, Mr. Praveen Namdeo, learned counsel appeared for the appellant establishment and Shri J.K.Pillai, learned counsel for the respondent. Arguments of both the learned counsel were heard. Learned Counsel for appellant establishment has filed

memorandum of argument, which is on record. I have perused the record as well.

6. On perusal of the record, in the light of the rival arguments, reveals that there is following point for determination:-

“Whether the finding of the Respondent Authority holding the Appellant Establishment liable to pay the employees provident fund dues under the Act on the basis of wages paid by the Appellant is justified in law and fact or not?”

7. A comparative study of the balance sheets for the period of 2006-2007 to 2014-2015 as mentioned in the counter of Respondent Authority is being reproduced as follows:-

Payment under head Salary & Wages available in audited Balance Sheets(2006-2007 to 2014-2015).

	Amarpara Project	Raipur	Ganjpara Project	Durg		
Year	Wages	Salary	Wages	Staff Salary	Total	
2006-2007	4390700	102000	2252300	709120	7454120	
2007-2008	1477975	102000	0	668000	2247975	
2008-2009	Not available					
2009-2010	880288	102000	0	74430	1726588	
2010-2011	468479	102000	0	710867	1281346	
2011-2012	94014	102000	0	688267	884281	
2012-2013	431610	102000	0	671700	1205310	
2013-2014	592450	0	0	780000	1372450	
2014-2015	10150	0	0	792000	802150	
Grand Total	8345666	612000	2252300	5764254	16974220	

Details of Salary disbursed(2006-2007 to 2014-2015)

YEAR	NO. OF EMPLOYEES	SALARY DISBURSED
2006-2007	15	811120
2007-2008	15	770000
2008-2009	13	623667
2009-2010	12	846300
2010-2011	12	812867
2011-2012	11	790267
2012-2013	10	793700
2013-2014	7	780000

2014-2015	8	792000
Grand Total		7019921

8. The salary statement for the period in question filed by the Appellant as Annexure -7 for the period 2006-2007 to 2014-2015 shows that the amount spent in salary, as shown in the balance sheet matches with the salary amount but the amount shown to be paid in wages during this period remains unexplained. There is nothing on record to show as to who were the persons to whom these wages were paid in different years. Reference of Section 2(b) and 2(f) of the 'Act' requires to be made here, which are being reproduced as follows:-

2 (b) "Basic wages" means all emoluments which are earned by an employee while on duty or 3[on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-

(i) The cash value of any food concession;

(ii) Any dearness allowance (that is to say, all cash payments by whatever name called paid to an employees on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

2 (f) "employer" 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];

9. The perusal of these provisions shows that, any person who is working in any type of work for wages is an employee, hence the persons to whom the wages were paid are also employees of the appellant establishment according to these provisions. In the light of

these discussions, the finding of the Respondent Authority that on the basis of the wages paid to appellant establishment is covered under the provisions of the Act, cannot be faulted in law and fact and is liable to be confirmed . It is confirmed accordingly.

10.As regards the calculation of amount, the Respondent has stated in its counter that the calculation of amount was done in the presence of representative of appellant Mr. Yadu and has filed Annexure R-4, the order sheets of the relevant date in this respect, which shows that the assessment/calculation was done in the presence of the appellant representative and also shows that report of Enforcement officer was given to the appellant establishment as well the Enforcement Officer relied only on the documents produced by the appellant establishment itself in preparing his report. Otherwise also the calculation appears to be correct, hence the calculation done regarding the amount is also not faulted in law and fact.

11.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.

No order as to costs.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:9/3/2021