

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

NO. CGIT/LC/EPFA-191-2017

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

M/S J.K.Laxmi Cement Ltd.

APPELLANT

Versus

The Assistant Provident Fund Commissioner
Bhopal(M.P.)

RESPONDENT

Shri Satyam Aggarwal : **Learned Counsel for Appellant.**

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

(J U D G M E N T)

(Passed on 28-9-22)

1. This appeal is directed against two separate orders dated 18-1-2016 passed by the Respondent Authority under Section 14B and 7Q



of the Employees Provident Fund And Misc. Provisions Act, 1952, herein after referred to by the word "Act", whereby the Respondent Authority has held the Appellant Establishment to have committed default in payment of employees provident fund dues of its employees from May-2002 to November-2013 and has assessed Rs.11,31,023/- as damages under Section 14B of the Act and R.5,42,938/- as interest under Section 7Q of the Act.

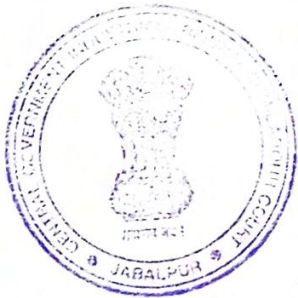
2. Facts connected in brief are that the present Appellant has stated in the memo of appeal that the Respondent Authority initiated an inquiry against the Appellant Establishment and issued a notice dated 1-1-2015 asking the Appellant Establishment to pay interest and damages for the alleged belated payment of employees provident fund dues of its employees within the period May-2002 to November-2013. According to the Appellant Establishment, there was a change in its registered address which was duly intimated to the office of Respondent and was within the knowledge of Respondent Authority. The Respondent Authority had earlier issued communications on the changed address as well as issued corrigendum dated 16-1-2006 which was sent by the Respondent Authority at the new address of the Appellant Establishment which is M/s J.K.Laxmi Cement Ltd., Chola road, Opposite bus stop, Bhopal(M.P.) . As stated by Appellant Establishment, no notice was issued on this address of Appellant Establishment, rather it was issued on the old address of the Appellant Establishment which was never served on them, hence they could not participate in the inquiry



P.S.

before the Respondent Authority which is in violation of Section 7A(1) of the Act. Secondly according to the Appellant Establishment, it was granted relaxation under Para 79 of the Provident Fund Rules vide Order No.PFC/3154/EXEM/MP/W1/2321 dated 30-8-1980. This relaxation was withdrawn vide letter dated 31-10-2013. The Appellant Establishment was under no obligation to deposit the employees provident fund dues of its employees with the Respondent Authority for the period it was exempted in the notification aforesaid. The Respondent Authority committed error in law in recording the finding regarding default for the period of exemption by ignoring the notification, hence according to the Appellant Establishment the impugned order is bad in law and requires to be set aside.

3. In its counter the Respondent Authority has defended the impugned order and has submitted that firstly the appeal is not maintainable against the order Under Section 7Q of the Act because it is a separate order. Secondly the Respondent Authority has acted as a Quasi Judicial Authority, it may need not be made a party and thirdly notice of Inquiry dated 1-1-2015 was sent on the registered address of the establishment i.e. A-4, Industrial Area, Govindpura Bhopal. None appeared from the side of the Appellant Establishment during the inquiry though it continued for nine dates, hence the assessment was done ex-parte. It is further the case of the Respondent Authority that change of address of Appellant



Pr

Establishment was not informed to the Respondent Authority at any point of time. The Appellant Establishment informed only the change of its name to the Respondent Authority. It is further the case of the Respondent Authority that after withdrawing all exemption, the Appellant Establishment is under obligation to remit the employees provident fund dues in which it failed.

4. No counter has been filed by Appellant Establishment .
5. I have heard arguments of Shri Satyam Agarwal for Appellant Establishment and Shri J.K.Pillai for Respondent Authority and have gone through the record. The following points arise for determination, in the case in hand:-

(1)Whether this appeal is maintainable against order under Section 7Q of the Act?

(2)Whether the Appellant Establishment was denied proper opportunity of hearing in the case in hand?

(3)Whether the finding of Respondent Authority regarding default in payment of employees provident fund dues for the period May-2002 to November-2013 by the Appellant Establishment is justified in law and fact or not?

6. **POINT FOR DETERMIANTION NO.1:-**



P
ms

Apparently order under Section 7Q and 14B have been passed separately. The Act does not provide appeal against order under Section 7Q of the Act, hence the appeal against order under Section 7Q of the Act is held not maintainable before this Tribunal, and however, the Appellant Establishment is at liberty to pursue remedy before proper forum in this respect. **Point No.1 is answered accordingly.**

7. **POINT FOR DETERMINATION NO.2:-**

In its written arguments, the learned counsel for the Appellant Establishment has referred to Section 7A of the Act. Section 7A(3) and 7A (3a) are being reproduced as follows:-

7A. Determination of moneys due from employers. -

- (1) The Central Provident Fund commissioner, any Additional Central Provident Fund Commissioner, any deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,-
 - (a) In a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and
 - (b) Determine the amount due from any employer under any provision of this Act, the Scheme or the 1[Pension] Scheme 2[or the Insurance Scheme], as the case may be, And for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]



Pnc

7A(3A) Where the employer, employee or any other person required to attend the inquiry under sub- section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employers, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

Section 14-B of the Act is being reproduced as follows:-

Section 14(B)-

Power to recover damages. -
.....
.....

[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.]
.....

8. Perusal of these provisions established that it is mandatory on the part of the Respondent Authority to give a reasonable opportunity of hearing to the Appellant Establishment against whom Order under Section 7A or 14-B of the Act is passed. The case of the Appellant Establishment is that it had changed its registered address which was under the knowledge of the Respondent Authority. The Appellant Establishment has mentioned the communication of Respondent Authority dated 16-2-2006 whereby it issued a corrigendum to the Appellant Establishment and sent it to the changed address of the Appellant Establishment. This communication is Annexure A-3. This Annexure is of three papers (Annexure A-3), (Annexure A-3a) and (Annexure A-3b). In

Pae



Annexure A-3 which is a corrigendum issued by the Respondent Office to the Appellant Establishment about the changed address of the Appellant Establishment as mentioned. It shows that in the year 2006 itself the changed address of the Appellant Establishment was within the knowledge of Respondent Authority. This fact falsifies the case of the Respondent Authority that the changed address of Appellant Establishment was never informed by the Appellant Establishment, had it been so, the communication Annexure A-3 would not have been issued by the Office of the Respondent on the changed address.

9. From the above facts it is established that since the notice of inquiry was not sent by the Respondent Authority at the changed address of the Appellant Establishment, the Appellant Establishment was denied reasonable opportunity of being heard in the inquiry. **Point for determination No.2 is answered accordingly.**

10. **POINT FOR DETERMINATION NO.3:-**

According to the learned counsel for the Appellant, the establishment was granted exemption under para-79 of Provident Fund Scheme, 1952 which was revoked vide letter dated 31-10-2013. According to the Appellant Establishment, it was under no obligation to deposit employees provident fund dues of its employees with the Respondent Authority. The Revocation letter



Prs

dated 20-11-2013 is Annexure A-5 to the appeal in which the Appellant was directed to comply with the provisions of the Act as an exempted establishment from 1-11-2013 meaning thereby the Appellant Establishment was under no obligation under law to comply with the provisions of the Act within the period of exemption i.e. the period from May-2002 to 31-10-2013. In other words the employees provident fund dues of employees for this period were not to be deposited by the Appellant Establishment with the Respondent Authority. Hence, the finding of the Respondent Authority in the impugned order that the Appellant Establishment had defaulted deposits of employees provident fund dues for the period in question is not justified in law and fact and requires to be set aside. **Point for determination No.3 is answered accordingly.**

11. No other ground has been pressed.

12. Accordingly, the order under Section 14B of the Act is liable to be set aside. The matter deserves to be remanded back to the respondent Authority to decide it afresh in the light of the findings recorded and observations made in the present appeal.

ORDER

A. Appeal is allowed partially. The order of Respondent Authority under Section 14-B of the Act is set aside. The matter is remanded back to the



respondent Authority with a direction to decide it afresh In the light of findings recorded and observations made above, after giving reasonable opportunity of hearing to the appellant establishment within three months from the receipt of order by the Respondent.

B. Since the Order Under Section 7Q of the Act is not appealable before this Tribunal, the Appellant Establishment may pursue remedy in this respect before appropriate forum.

C. Parties to bear their own costs.


(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.


(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:28/9/2022

