

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: OWP No. 784/2015

M/s Sonam Enterprises

..... Petitioner(s)

Through :- Mr. C. S. Azad, Adv.

Vs

State of J&K and others

.....Respondent(s)

Through :- Mr. Vivek Mattoo, Adv. vice
Mr. Vishal Bharti, Dy.AG

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

19.09.2025

1. Through the medium of instant petition, the petitioner has sought the following reliefs:

“(a) Directions in the nature of writ of certiorari quashing the impugned demand/recovery Letter No. Addl.PCF/J/359-41, Dated 09.02.2025 addressed by respondent No. 1 to respondent No. 2

and/or

Any other writ, order or direction which Your Lordship may deem just and proper in the facts and circumstances of the case may also be issued in favour of the petitioner and against the respondents.”

2. The petitioner's firm intended to set up a MICRO Manufacturing Enterprise at Village Bariyan, Vijaypur, Samba for manufacturing Chequered Tiles, Interlocking Paver Blocks and Cement Blocks. It is specific case of the petitioner that with the said intent, the petitioner approached in the office of respondent No. 2 with the requisite documents as also the project report and filed its memorandum form expressing its intent to set up the said unit. Further case of the petitioner is that on receipt of the said memorandum and intent of

the petitioner to set up a MICRO Manufacturing Enterprise, the case of the petitioner was processed for the issuance of the said unit and the respondent No. 2 issued the Acknowledgment Form No. 00467, thereby acknowledging the intent of the petitioner to set up the aforesaid unit. It is the specific case of the petitioner which is evident from a bare perusal of the acknowledgement, it was emphatically clear that the same was provisional in nature in the light of the fact that the unit holder on the basis of said acknowledgement can obtain a requisite NOC/consent from Pollution Control Board as well as from the Power Development Department. The formal registration of the unit with the District Industries Center, Samba was also required to be issued only after fulfilling the conditions laid down in the said acknowledgement. It is the specific case of the petitioner that his unit has not been formally registered and has also not been entered into the stage of manufacturing.

3. Thus, according to Mr. C. S. Azad, learned counsel for the petitioner, a unit which is not formally registered and has not gone into production/manufacturing, cannot be said to be an establishment/factory/industry so as to attract the provisions of Jammu and Kashmir Employees Provident Fund Act, 1961. Mr. Azad has further submitted that it is very strange case that the respondents have without recording the satisfaction that whether the unit is duly covered for application of provisions of Jammu and Kashmir Employees Provident Funds Act, 1961 has proceeded against the petitioner for its breach and as a consequence of which, a recovery notice has been issued on 17.12.2013 which is impugned in the present writ petition.

Since the aforesaid recovery notice was issued without application of mind, the petitioner immediately replied the same in the following manner:

“Secondly we have not yet started any commercial production but in the process of installing machinery and trial on some occasions are made for testing machines and raw material. It is evident clear from the provisional registration certificate issued by GM, District Industries Center (J&K) Government Samba vide No. DISC/706/Prov/4425 dated 21.02.2012, copy of the same is enclosed herewith for your information.”

4. In the reply to the recovery notice filed by the petitioner, it is abundantly clear that since the Jammu and Kashmir Employees Provident Funds Act, 1961 and the Scheme was not applicable to the petitioner establishment as the unit has not come into force from the date of commencement of actual commercial production, the recovery notice could not have been issued. In the said reply, it was also stated that the certificate of final/formal registration shall be issued to the petitioner by the respondent No. 2 under rules. In the aforesaid backdrop, a request through the medium of reply submitted to the recovery notice for dropping the said recovery proceedings was made, but the same was not considered and feeling aggrieved of the same, the instant petition was preferred.

5. The aforesaid notice was not implemented for more than one year and after a period of one year, the petitioner received communication dated 09.02.2025 by virtue of which, the Collector has been requested to exercise the powers conferred under sub sections (4) & (5) of Section 6 of the Jammu and Kashmir Land Revenue Act, 1996 to recover an amount of Rs. 2,91,207/- from the petitioner. It is specific case of the petitioner that the said amount was not at all liable to be paid by the petitioner under any provision of law and thus,

the impugned recovery notice and the off shot of the same was without any jurisdiction and on this ground alone, the order of recovery notice as per learned counsel for the petitioner, was liable to be quashed.

6. All along it was the specific case of the petitioner that the unit of the petitioner has not gone into process of manufacturing and the process of establishment has yet to take place which is evident from the bare perusal of the communication dated 20.04.2012 issued by the Regional Director, State Pollution Control Board, Jammu addressed to the petitioner, which vindicates the stand of the petitioner that the petitioner who is going to install two units has submitted the site plan and revenue papers for both the units for its establishment. Thus, the aforesaid communication, according to Mr. Azad, indicates the fact that the unit was not established and instead was in the process of establishment and yet, the liability has been fastened on the petitioner through the medium of aforesaid recovery notice.

7. The fact that the unit has not entered the stage of manufacturing can also be vindicated from the bare perusal of the certificate issued under Central Sales Tax Act, 1956 dated 03.08.2012, a perusal whereof, reveals that the unit is not manufacturing rather the unit is establishing plant and machinery in its premises which may be used for manufacturing the goods. It is not so, even the returns which have been filed by the petitioner under VAT Act also vindicate the said stand.

8. In the aforesaid backdrop, the learned counsel for the petitioner submits that the impugned demand issued through the medium of the recovery notice is absolutely illegal, unwarranted and arbitrary and is liable to be quashed, as the

same is against the provisions of the J&K Employees Provident Fund Act, 1961 being without jurisdiction. It is not so, even the impugned demand is without application of mind. Lastly, Mr. Azad has impugned the demand recovery letter, which has been issued without recording any subjective satisfaction with regard to the applicability of J&K Employees Provident Fund Act, 1961 to the petitioner and in absence of any subjective satisfaction, the impugned demand/recovery cannot sustain the test of law and it is liable to be quashed.

9. *Per contra*, reply stands filed by the respondents. The stand taken by the respondents in their preliminary objections is that the petitioner has raised disputed questions of fact, which cannot be adjudicated through the medium of this writ petition, as such, the writ petition deserves to be dismissed as the same is grossly misconceived and liable to be dismissed out rightly. Moreso, there is no infringement of any legal fundamental or statutory right of the petitioner. The respondents while filing the reply affidavit, have taken a specific stand that the petitioner has admitted that the said unit was not formerly registered with regard to the production/manufacturing but the concerned Area Inspector has conducted the inspection on 22.08.2013 and submitted its report to the office that eleven employees were found working in the said unit, and in light of provisions of J&K Employees Provident Fund Act, 1961, the said unit was covered and accordingly, the employer was supposed to provide the social security benefits in the shape of EPF and thus, the demand was created.

10. The respondent while filing the reply, have also stated that the process have been initiated against the petitioner with regard to the deposition of Provident Fund Contribution from the due date in favour of the employees those who were working in conformity with the report of the concerned Inspector. The stand of the petitioner that Employees Provident Fund was not applicable is specifically denied by the respondents by filing the reply affidavit. The respondents while filing reply have justified their stand by initiating the recovery proceedings in terms of section 9 read with section 16 for recovery of statutory Provident Fund due in exercise of powers conferred under SRO 323 of 2004 dated 07.10.2004 read with Government Order No. 46-L&E of 2009 dated 16.07.2009, wherein, the Divisional Head (Additional Provident Fund Commissioner) can exercise the powers of recovery of Provident Fund Contribution dues as arrears of Land Revenue. Thus in light of stand taken by the respondents, it has been prayed that the writ petition which is grossly misconceived deserves dismissal.

11. Heard learned counsel for the parties and perused the record and also gone through the reply filed by the respondents.

12. With the consent of learned counsel for the parties, the instant petition is admitted to hearing and taken up for final disposal.

13. From a bare perusal of the writ petition preferred by the petitioner, it is apparently clear that the petitioner has taken a specific stand that the unit of the petitioner has not gone into the process of manufacturing and was still in the process of establishment and the stage for manufacturing has not yet reached and thus, there was no question of imposing the penalty by way of a demand

notice. The petitioner with a view to substantiate his stand has also placed on record requisite documents with regard to certificate of registration of the Central Sales Tax and also the return filed under the VAT Act, which stand has not been denied by the respondents by filing the reply affidavit. It is also the specific stand of the petitioner that since the unit of the petitioner was in the process of establishment and rightly so, the respondents have not assessed the unit of the petitioner under the VAT Act owing to the reason of not manufacturing any saleable goods and the unit being only in the process of establishment and this stand of the petitioner has not been specifically denied by the respondents. However, from a bare perusal of the reply filed by the respondents it is apparent that a casual approach has been taken, wherein, respondents in reply to paras 17 to 18, have submitted that “the contents of these paras are matter of record and need no reply”. Thus, the averments, which have been pleaded by the petitioner in the writ petition have not been denied specifically and in absence of any specific denial by the respondents and by applying the law of pleading, the averments which have not been denied specifically are deemed to have been admitted.

14. It is not so, even when Mr. Azad was confronted with the stand taken by the respondents with regard to the so called inspection report of the concerned Inspector and he submits that no such report was ever supplied to him and he was never associated with the said report which alleged to have been prepared by the concerned Inspector with regard to the eleven employees who were allegedly working in the unit of the petitioner. Once, the specific stand has been taken that the unit has not gone in manufacturing/production phase, then

it is not forthcoming that where those eleven employees were working when the unit has not commenced its manufacturing/working and thus, the stand taken by the petitioner which has not been denied by the respondents, seems to be correct. Then assuming that any such inspection was conducted on 22.08.2013, then the respondents were under an obligation to have notified the same to the petitioner for such inspection by associating the petitioner as well, which has not happened in the instant case. Thus, any inspection conducted at the back of the petitioner and that too without associating the petitioner cannot be relied upon. What to talk of conducting the inspection even the record does not specify whether the said report has been provided to the petitioner which has been made as the basis for imposition of said demand. Any adverse report affecting the rights of the petitioner ought to have been conveyed to the petitioner so that petitioner could have worked out his remedy. I draw support from the law down by the Apex Court in **A. K. Kraipak & Ors. vs. Union of India & Ors. AIR 1970 SC 150**, the Apex Court has held as under :

"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (Nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of

years many more subsidiary rules came to be added to the rules of natural justice".

15. Further in ***Union of India & Ors vs Mohd. Ramzan Khan, AIR 1991 SC 471***, the Hon'ble Apex Court in Para 18 has held as under;

"We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

16. Therefore, any report or action stemming from an inspection that was not communicated to the petitioner would be legally questionable and could be subject to challenge on the grounds of violation of natural justice and any such adverse report, copy of which has not been supplied to the petitioner cannot be relied upon for imposing penalty upon the petitioner and that too on a unit which has not started its commencement and the same stand has not been denied by the respondents while filing reply affidavit. Once, the respondents have not rebutted the specific stand of the petitioner that the unit has not commenced its production, then where those eleven employees were working is not forthcoming from the record and thus the stand taken by the respondents by way of said inspection report is rejected.

17. For the reasons stated hereinabove and in light of the submissions made by the learned counsel for the parties and also in the light of the stand taken by the respondents in the reply affidavit as per record, the instant writ petition preferred by the petitioner is allowed and the impugned recovery notice/letter dated 09.02.2025 addressed by respondent No. 2 to respondent No. 1 stands quashed.

18. *Disposed of* in the manner indicated above.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
19.09.2025
Rakesh

