

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 3867 of 2011**

1. Mohanti Higher Secondary School through its Secretary, Miss Mohanty's Education Society, Bilaspur, (C.G.)

---- Petitioner**Versus**

1. Employees Provident Fund Appellate Tribunal, New Delhi, Ministry of Labour, Government of India, Through Registrar Office Address Core-II, 4th Floor, Scope Minar, New Delhi 110092
2. Recovery Officer & Regional Provident Fund Commissioner, Office of Employees Provident Fund Organization, Regional Office Near LIC Building Pandari, Raipur (C.G.)
3. Assistant Provident Fund Commissioner, Officer of Regional Provident Fund Organization, Regional Office near LIC Building, Pandari, Raipur (C.G.)
4. State of Chhattisgarh through Secretary, School Education Department, D.K.S. Bhawan, Raipur, (C.G.)

... Respondents

For Petitioner	: Mr. N. K. Vyas, Advocate
For Resp. No. 1 & 2	: Mr. Sunil Pillai, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****14.12.2020**

1. The challenge in the present writ petition is to the Annexure P-1 dated 30.03.2011, whereby the respondent no. 1 has rejected the appeal preferred by the petitioner u/s 7 (i) of the E.P.F Act, 1952 (hereinafter in short referred as "the Act") affirming the order dated 12.02.2008 Annexure P-2 passed by the respondent no. 3, the order u/s 7 (A) of the aforesaid Act, 1952.
2. The challenge primarily has been on the ground that though the appellate authority ie., the respondent no. 1 has not disclosed the ground which were raised by the petitioner in his appeal while challenging the order Annexure P-2 dated 12.02.2008 u/s 7 (A) of the E.P.F. Act 1952.

3. The contention of the counsel for the petitioner is that the petitioner is an educational institution having Hindi Medium School operating from Class-6 to Class-12. The disputed period involving in the present case is the period between August, 1982 to September, 2004. It is the contention of the counsel for the petitioner all along that firstly the provisions of the Act itself would not be applicable upon the petitioner for the reason that it does not have the strength of more than 20 which is otherwise required for being covered under the provisions of the Act. Secondly, the respondents have not been able to establish that the petitioner's establishment had more than 20 employees in his school on a given date.
4. The further contention of the counsel for the petitioner that the entire assessment of the assessment year dated 12.02.2008 was based upon Enforcement Officer's report. The copy of which has never been served upon the petitioner nor were provided opportunity of hearing, opposing the same at any point of time. The further contention of the counsel for the petitioner is that before the tribunal it was specifically raised that the assessment order could not have been based upon the Enforcement Officer's alone and secondly, the order of assessment also is bad to the extent that it does not disclose the beneficiaries and in the absence of beneficiaries, the order passed by the assessing authorities therefore would also be not sustainable.
5. It was the further contention of the counsel for the petitioner that before the appellate authority a large number of objections factual as well as legal was raised based upon the judicial pronouncement prevailing. The respondent no. 1 ie., learned Tribunal ignoring all those facts and grounds has passed the impugned order Annexure P-1 in a summary manner without discussing or dealing with the objections that he had raised in the Memo of Appeal. The contention of the counsel for the petitioner is that apart from the fact that the Tribunal has not discussed or dealt-with the objections raised in the Memo of Appeal the Tribunal has given or

discussed certain facts which were otherwise never raised or argued in the Appeal, and which was never the stand of the petitioner and for which again the order of the appellate authority would not be sustainable.

6. Opposing the petition, learned counsel for the respondent-organization submits that a bare perusal of the order annexure P-2. The order in 7 (A) proceedings would clearly reveal that the petitioners have been granted ample opportunity of hearing for defending themselves. It is not a case where they were not aware of the proceedings. They had participated on various occasions and thereafter have voluntarily chosen not to proceed further with the proceedings and, therefore, the assessment officer had no option but to proceed with the report that was submitted by the Enforcement Officer.
7. The counsel for the respondents refers to the amendment that was brought to the Section 7 (A) vide memo of the year 1988 whereby the provisions of the Clause (3A) was incorporated to the Section 7 (A) of the Act, 1952 wherein the assessing officers have been empowered to proceed further based upon the evidences itself during the course of enquiry or the document available on record.
8. Having heard the contentions put-forth on either side and dealing with the first objections raised by the petitioner; so far as the order of respondent no. 01 of non-speaking order concerned, if we look into the assessment order Annexure P-6, it would reveal that from Para 1 to Para,5 the officer has dealt with only the factual aspect and so far as paragraph no. 6 is concerned, this again is based upon the discussions that is reflected in the Enforcement Officer's report. Admittedly in the order Annexure P-1, there is no discussion on the grounds which have been raised by the petitioner in the Memo of Appeal u/s 7 (i) nor is there any discussions made by the respondent no. 1 in-respect-of those objections, particularly the legal objections that the petitioner has raised, like whether the order of the assessment could had been based on the Enforcement Officer's report.

Whether in the absence of identified beneficiaries can the assessment order be enforceable etc.? It was also to be considered by the Tribunal as to whether the petitioner would not have been entitled for the report of the Enforcement Officer which they had submitted before the Assessing Officer so as to defend their case. This aspect has also not been dealt with by the appellate authority while deciding the appeal on its merits. It is settled position of law that when the appeal is preferred, the appellate authority has to apply his own mind considering the objections that the petitioner or the appellant raises in the appeal. In the absence of any discussion in the impugned order on the grounds raised by the appellant in the appeal, by the appellate authority the same cannot be said to be a reasoned order or a speaking order.

9. With the aforesaid reasons, this Court is of the opinion that the impugned order Annexure P-1 dated 30.03.2011 to that extent is not sustainable and the same deserves to be and is accordingly stands set-aside and the matter stands remitted back to the appellate tribunal which now in the light of the amendment would go to the the C.G.I.T-Jabalpur for deciding the appeal afresh on its own merits after affording an opportunity of hearing to either parties.

10. Considering the fact that the matter that the writ petition is of the year 2011, the appellate tribunal upon receiving the case, is expected to decide the case within one year from the date of receipt of records. The writ petition, accordingly, stands allowed and disposed off.

**Sd/-
(P. Sam Koshy)
JUDGE**