

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD
CORAM:**

***HON'BLE SRI JUSTICE K. LAKSHMAN**

+WRIT PETITION No.31702 OF 2022

% Delivered on: 12-09-2022

Between:

The Director, Centre for DNA Fingerprinting
And Diagnostics, Uppal, Hyderabad. .. Petitioner

Vs.

\$ The Asst. Provident Fund Commissioner-II
Compliance, Hyderabad & others. .. Respondents

! For Petitioner : Dr.K.K.H.M. Syam Sundar,

^ For Respondent Nos.1 to 5 : Mr. S. Surender Reddy

For Respondent No.6 : Standing Counsel for Central Govt.

For Respondent Nos.7 to 13 : Mr. Srinivasa Rao Madiraju

< Gist :

> Head Note :

? Cases Referred :

1. 2000 SCC (Cri) 1510
2. AIR 2000 SC 1731
3. W.P.(C) 9530/2020 & CM APPL. 30575-76/2020,decided on 04.12.2020
4. (1990) 1 SCC 68

HON'BLE SRI JUSTICE K. LAKSHMAN**WRIT PETITION No.31702 OF 2022****ORDER:**

Heard Dr. K.K.H.M. Syam Sundar, learned counsel for the petitioner, Mr. S. Surender Reddy, learned counsel for respondent Nos.1 to 5 and learned Central Government Standing Counsel appearing for respondent No.6 and also Mr. Srinivasa Rao Madiraju, learned counsel for respondent Nos.7 to 13.

2. This Writ Petition is filed by the petitioner seeking the following relief:

“.....to quash the Establishment Code Number unilaterally allotted by the Regional PF Commissioner I, Respondent No.2, APHYD2659645 in the website of EPFO showing the date of coverage as 26th March 1996 uploaded on 17-5-2022. It is hereby prayed to direct the Respondent No.2 to delete all the data uploaded about the Petitioner in the EPFO Website till the passing of a final order after the inquiry under Sec. 7A of the EPF & MP Act 1952. In view of the irregularities unfair procedures adopted by the APFC II Hyderabad - Respondent No.1 the impugned summons in file No. vide Letter No.TS/RO-I HYD (BKP)/2659645/C-II/T-2/2022-23/54 dated 23-5-2022 may be quashed and necessary direction may kindly be given to the CPFC New Delhi Respondent No.4 to entrust the matter of enquiry if

any to the Addl. CPFC Hyderabad Respondent No.5 so that the applicability of the Act to the Petitioners Institute and date of applicability of the Act if any etc can be decided in an impartial manner by the Addl. CPFC Hyderabad (Respondent No.5) b) To Quash the Inspection /investigation/ enquiry reports submitted by the Enforcement Officer and Asst. Public Prosecutor - Respondent No.3 dated 31-12-2021 and 4-3-2022 (Ex P23) and to declare them as illegal/unfair since the Asst. Public Prosecutor should not involve himself in the investigation/inquiry process. c) The Circular No.C-I/3(28) 2016/7A & 14B /1161 dated 1-10-2020 of the Respondent No.4 has to be quashed in line with the physical hearings taking place in all Civil Courts/Criminal Courts in the State of Telangana. All the inquiry Authorities under Sec.7A of EPF & MP Act 1952 should be directed to conduct inquiry proceedings by way of physical hearings if requested by the parties and to pass such other or further orders....”

3. **FACTS OF THE CASE:**

i) The petitioner herein is a Society registered under the Andhra Pradesh (Telangana Areas) Public Societies Registration Act 1350 Fasli (Act 1 of 1350F) by the Registrar of Societies, Hyderabad, with registration No.1604 of 1996. Now, it is governed by the Telangana Societies Registration Act, 2001. It is a Research Institute

and an Autonomous Body. According to the petitioner, it is a non-profit motive organization.

ii) A complaint has been received from the employees engaged on contract basis against the petitioner establishment stating that the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act') have not been extended to them and that the petitioner is not extending any social security benefits.

iii) A letter dated 16.12.2021 was received from the Zonal Office regarding Non-enrollment of Contract Employees of the petitioner establishment. Therefore, on 20.12.2021, Enforcement Officer was directed to visit the establishment and to submit a detailed report on Non-enrolment of contract employees. The said fact was intimated to the complainants (employees) vide letter dated 20.12.2021. The Enforcement Officer had submitted his report on 31.12.2021 along with letter dated 29.12.2021 of the petitioner establishment pointing out the following deficiencies on the part of the petitioner establishment:

a) At present about 152 employees have been engaged on outsourcing basis through contract Agencies.

b) About 78 employees are directly engaged by the petitioner on direct contract between 2000 and 2014 for its operational requirements; Contract allotted for six (06) months and there is a break of three (03) days and allotted new contract for those employees.

c) About 16, contractual employees still on petitioner roll on contract, five (05) among them filed writ petition for continuing contract with petitioner rolls.

iv) The list of 16 contractual employees along with date of joining and pay as on date of joining obtained, and as per which, most of the employees are above the wage ceiling at the time of joining. However, respondent Nos.7, 9 and 13 and 2 others are having wages below the wage ceiling at the time of joining in the petitioner establishment.

v) In view of the said report, respondents have advised the petitioner establishment to register under the provisions of the Act and to comply with the provisions with all eligible employees under the Act vide letter dated 06.01.2022 of respondent No.2. The petitioner herein had submitted its response on 28.02.2022 stating that the provisions of the Act does not apply to their establishment by virtue of

Section - 16 (b) of the Act. Therefore, the Enforcement Officer was once again directed on 11.02.2022 and 23.02.2022 to pursue with the Employer to enroll all eligible contract employees of the establishment under the Act and to submit a report.

vi) Accordingly, the Enforcement Officer had submitted an observation report dated 04.03.2022. Therefore, a show-cause notice dated 24.03.2022 was issued to the petitioner by respondent No.2 to register under the Act. The petitioner herein had submitted reply dated 07.04.2022. The Enforcement Officer had also visited the petitioner establishment to advise them for obtaining Code Number. The petitioner had not complied with the provisions of the Act and, therefore, the respondent department had allotted a Code Number on 17.05.2022 for convenience of conducting the quasi-judicial inquiry to settle the dispute and to decide the date of applicability of the Act.

vii) Since the petitioner establishment has disputed the coverability of the Act stating that it is complying under CPF and excluded under Section - 16 of the Act. For initiating further action, the respondents on allotting EPF Code to the petitioner establishment to conduct an inquiry under Section - 7A of the Act, had issued summons dated 23.05.2022 duly fixing hearing date. Thereafter,

respondent No.1 had conducted some hearings, during which the petitioner had attended the said hearings and filed preliminary objections. According to the petitioner, respondent No.1 has been conducting the said inquiry under Section - 7A of the Act in gross violation of principles of natural justice and instructions / guidelines issued for the said purpose. Therefore, the petitioner had filed the present writ petition.

viii) The petitioner herein had raised the following grounds:

- a) Respondent No.3 being the Public Prosecutor cannot act as an Enforcement Officer. Therefore, the reports submitted by him had to be treated as null and void.
- b) Respondent No.1 is not conducting an inquiry under Section - 7A of the Act as per the instructions / guidelines issued by respondent No.6. The Code was allotted on 17.05.2022 itself and, therefore, there is no point in conducting inquiry under Section - 7A of the Act.
- c) Though the petitioner herein has raised fourteen (14) preliminary objections during the inquiry, respondent No.1 had not considered the same.

- d) The petitioner establishment was exempted establishment under Section - 16 of the Act vide Gazette dated 14.05.2010, though the said fact was informed to the respondents, without considering the same, respondent No.1 has been proceeding with conducting inquiry under Section - 7A of the Act.
- e) Respondent No.2 had allotted the Code on 17.05.2022 itself and, therefore, he has come to the conclusion that the petitioner establishment is coverable under the provisions of the Act. Therefore, respondent No.1, who is Inferior Officer to respondent No.2, cannot conduct inquiry under Section - 7A of the Act, and it amounts to violation of principles of natural justice and also in violation of the procedure laid down under the Act and Regulations and also instructions / guidelines issued by respondent No.6 from time to time.

4. **DISCUSSION AND FINDINGS:**

- (a) With regard to the first contention raised by the petitioner that respondent No.3 being the Public Prosecutor appointed under

Section - 13 of the Act cannot act as an Enforcement Officer as per the Provisions of the Act:

i) It is relevant to note that Section - 13 of the Act deals with ‘Inspectors’ and the same is extracted below:

“13. Inspectors.—(1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act 14, the Scheme, the Pension Scheme or the Insurance Scheme, and may define their jurisdiction.

(2) Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with this Act or with any Scheme or the Insurance Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of any Scheme or the Insurance Scheme have been complied with in respect of an establishment to which any Scheme or the Insurance Scheme applies or for the purpose of ascertaining whether the provisions of this Act or any Scheme or the Insurance Scheme are applicable to any establishment to which the Scheme or the Insurance Scheme has not been applied or for the purpose of determining whether the conditions subject to which exemption was granted under section 17 are being complied with by the employer in relation to an exempted establishment—

(a) require an employer or any contractor from whom any amount is recoverable under section 8A to furnish such information as he may consider necessary;

(b) at any reasonable time and with such assistance, if any, as he may think fit, enter and search any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment;

(c) examine, with respect to any matter relevant to any of the purposes aforesaid, the employer or any contractor from whom any amount is recoverable under section 8A, his agent or servant or any other person found in charge of the establishment of any premises connected therewith or whom the Inspector has reasonable cause to believe to be or to have been, an employee in the 4 establishment;

(d) make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence;

(e) exercise such other powers as the Scheme or the Insurance Scheme may provide.

(2A) Any Inspector appointed under sub-section (1) may, for the purpose of inquiring into the correctness of any information furnished in connection with the Pension Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of the Pension Scheme have been complied with in respect of an establishment to which the Pension Scheme applies, exercise all or any of the powers conferred, on him under clause (a), clause (b), clause (c) or clause (d) of sub-section (2).

(2B) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898) shall, so far as may be, apply to any search or seizure under sub-section (2), or under sub-section (2A), as the case may be,] as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code (45 of 1960).]”

ii) Section - 14 of the Act deals with ‘penalties’.

iii) According to the respondents, vide Notification S.O. No.35024/1/88-II, dated 19.01.1989, in exercise of powers conferred by sub-Section 1A of Section - 25 of the Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’), the Central Government appointed all the Inspectors appointed under Section - 13 (1) of the Act as Assistant Public Prosecutors to conduct the cases within their respective jurisdiction, arising out of the Act and the Schemes framed there-

under in Courts of Magistrate. The said notification is specific to handle the cases filed in the Courts under Section - 14 of the Act. Therefore, according to the respondents, there is no error in respondent No.3 conducting inspection of petitioner establishment.

iv) However, learned counsel for the petitioner would submit that respondent No.3 being Assistant Public Prosecutor cannot act as Enforcement Officer and conduct inspection of the petitioner establishment. Thus, the said action of respondent No.3 in conducting the inspection and submitting reports is illegal. He has also placed reliance on the decisions rendered by the Hon'ble Supreme Court in **Navinchandra N. Majithia v. State of Meghalaya**¹ and **R. Sarala v. T.S. Velu**².

v) It is trite to note that a Two-Judge Bench of the Apex Court has decided the matter in **R. Sarala**² on 13.04.2000. Like-wise, a Three-Judge Bench of the Apex Court has decided the matter in **Navinchandra N. Majithia**¹ on 16.10.2000. In both the said judgments, the Apex Court has considered the scope of investigation, prosecution and also the provisions of the Cr.P.C. It also considered

¹. 2000 SCC (Cri) 1510

². AIR 2000 SC 1731

the facts of the said cases and held that the investigation and prosecution are two different facets in the administration of criminal justice. The role of a Public Prosecutor is inside the Court, whereas investigation is outside the Court. Normally the role of a Public Prosecutor commences after the Investigating Agency presents the case in the Court on culmination of investigation. Its exception is that the Public Prosecutor may have to deal with bail applications moved by the parties concerned at any stage. Involving the Public Prosecutor in investigation is un-judicious as well as pernicious in law. At any rate, no Investigating Agency can be compelled to seek the opinion of a Public Prosecutor under the orders of the Court.

vi) In **Navinchandra N. Majithia**¹, the Apex Court also held that the police investigation should necessarily be with the fund supplied by the State. It may be possible for a rich complainant to supply any amount of fund to the police for conducting investigation into his complaint. But a poor man cannot afford to supply any financial assistance to the police. It is an acknowledged reality that he who pays the piper calls the tune. So he would call the shots. Its corollary is that somebody who incurs the cost of anything would normally secure its control also. In our constitutional scheme, the

police and other statutory investigating agency cannot be allowed to be hackneyed by those who can afford it. All complaints shall be investigated with equal alacrity and with equal fairness irrespective of the financial capacity of the person lodging the complaint.

vii) It was further held that financial crunch of any state treasury is no justification for allowing a private party to supply funds to the police for conducting such investigation. Augmentation of the fiscal resources of the State for meeting the expenses needed for such investigations is the lookout of the executive. Failure to do it is no premise for directing a complainant to supply funds to the investigating officer. Such funding by interested private parties would vitiate the investigation contemplated in the Code. A vitiated investigation is the precursor for miscarriage of criminal justice. Hence any attempt, to create a precedent permitting private parties to supply financial assistance to the police for conducting investigation, should be nipped in the bud itself. No such precedent can secure judicial imprimatur. If the impugned judgments are allowed to stand, it would set up an unwholesome precedent.

viii) In the said decision, the Apex Court had examined the facts of the case, more particularly the allegation that the police inaction to carry on with the investigation in a particular criminal case was attributed to financial crunch of the State, and the High Court directed the complainant to supply funds to the police to meet the cost.

ix) In **R. Sarala**², the question that fell for consideration is as follows:

“The question here is not simply whether an investigating officer, on his own volition or on his own initiative, can discuss with the Public Prosecutor or any legal talent, for the purpose of forming his opinion as to the report to be laid in the court. Had that been the question involved in this case it would be unnecessary to vex our mind because it is always open to any officer, including any investigating officer, to get the best legal opinion on any legal aspect concerning the preparation of any report. But the real question is, should the High Court direct the investigating officer to take opinion of the Public Prosecutor for filing the charge sheet.”

x) The Apex Court referring to the investigation as defined under Section - 2 (h) of the Cr.P.C., Chapter XII of the Cr.P.C. and other provisions thereunder and also the Scheme of the Cr.P.C., held that Public Prosecutor is appointed, as indicated in Section - 24 of the

Cr.P.C., for conducting any prosecution, appeal or other proceedings in the Court. He has also the power to withdraw any case from the prosecution with the consent of the Court. He is the Officer of the Court. Thus Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not in the scheme of the Cr.P.C. for supporting or sponsoring any combined operation between the investigating officer and the Public Prosecutor for filing the report in the Court.

xi) The Apex Court has also referred the principle laid down by it in **Abhinanadan Jha v. Dinesh Mishra (AIR 1968 SC 117]**, and the same is as follows:

"We have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge- sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority."

It further held that the Investigating Officer, though is subject to supervision by his superiors in rank is, not to take instructions regarding investigation of any particular case even from the executive government of which he is a subordinate officer.

xii) The Apex Court also relied upon a judgment in **R. v. Metropolitan Police Commissioner [1968 (1) All.E.R. 763]** and referred a paragraph of Lord Denning, which is as follows:

"I have no hesitation, however, in holding that, like every constable in the land, he should, and is, independent of the executive. He is not subject to the orders of the Secretary of State. I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone."

xiii) Referring to the above said paragraph, a Three-Judge Bench of the Apex Court in **Vineet Narain v. Union of India [1998 (1) SCC 226]** stated that "There can hardly be any doubt that obligation of the police in our constitutional scheme is no less."

xiv) Thus, the Apex Court held that the facts of the said case are much lighter and hence the investigating officer cannot be directed to be influenced by the opinion of the Public Prosecutor. Thus, the High Court has committed an illegality in directing the final report to be taken back and to file a fresh report incorporating the opinion of the Public Prosecutor. Such an order cannot stand legal scrutiny.

xv) In view of the above said principle laid down by the Apex Court, it is also relevant to refer to investigation as defined under Section - 2 (h) of the Cr.P.C., which is as under:

"2 (h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."

xvi) In EPF & MP Act, there are no definitions of 'investigation'; 'inspection'; 'enforcement officer'; and 'public prosecutor'. It only defines 'authorized officer' under Section - 2

(aa), which means the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette.

xvii) As discussed above, Section - 13 of the Act deals with 'Inspectors', and the appropriate Government has power to appoint 'Inspectors' for the purpose of the Act and confer the jurisdiction. As per Section - 25 (1A) of the Cr.P.C., the Central Government has power to appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

xviii) In the present case, respondent No.3 is an Inspector and also Assistant Public Prosecutor appointed by the Central Government in terms of Section - 25 (1A) of the Cr.P.C. In the capacity of Inspector under the Act, he had conducted inspection of the petitioner establishment and submitted two (02) reports. It is not an inspection as defined under Section - 2 (h) of the Cr.P.C. As stated above, there is no definition of 'investigation', 'inspection' and 'inquiry' under the

said Act. Therefore, inspection conducted by respondent No.3 with the petitioner establishment cannot be equated with the investigation as defined under Section - 2(h) of the Cr.P.C.

xix) It is the specific contention of the respondents that the Central Government has appointed respondent No.3 as Assistant Public Prosecutor by invoking its power under Section - 25 (1A) of the Cr.P.C., and there is no irregularity.

xx) In view of the aforesaid discussion, the petitioner herein cannot contend that respondent No.3 being the Assistant Public Prosecutor in terms of Section - 25 (1A) of the Cr.P.C. cannot conduct inspection of the petitioner establishment. Thus, the said contention of the petitioner is unsustainable.

xxi) If respondent No.3 acts as Public Prosecutor in a complaint filed against the petitioner in terms of Section - 14 of the Act, the petitioner can raise such contention, and whereas, in the present case, respondent No.3 has only conducted inspection of the petitioner establishment. Basing on the said inspection report and on the complaints lodged by respondent Nos.7 to 13, an inquiry under Section - 7A of the Act was initiated against the petitioner

establishment. Thus, viewed from any angle, the said contention of the petitioner is unsustainable.

b) **With regard to other contention that respondent No.1 is not conducting inquiry under Section - 7A of the Act as per the instructions / guidelines issued by respondent No.6 from time to time:**

i) It is relevant to note that the Additional Central Provident Fund Commissioner (Compliance) had issued guidelines, dated 14.02.2020 for initiation of inquiries under Section - 7A of the Act. The said guidelines are relevant in the present case and the same are extracted hereunder:

“It is noticed that the Assessing Officers follow different yardstick as they deem fit for initiation of inquiries u/s 7A of the Act. In many cases inquiries are initiated for wholly insufficient and untenable reasons and even without ascertainment of sufficient grounds which leads to general resentment among employers on one hand and prolonged pendency of such inquiries on the other.

Section 7A of the Act predicates the statutory mandate of resolution of applicability disputes or determination of amounts due from employers and, for this purpose, also clothes the authorities with the trappings of a Court under the Code of Civil Procedure. The duty to act judicially, fairly and equitably is conspicuously discernable from the statutory mandate.

In order to bring uniformity in the procedure for initiation of inquiries u/s 7A and in supersession of the earlier instructions, the following instructions are issued in reiteration of the laid down law on this issue:-

1. Inquiries u/s 7A shall not be initiated for any purpose

extraneous to the statutory mandate of section 7A i.e dispute of applicability or determination of dues. Therefore grounds such as non-submission of returns, non-production of records, non-cooperation in inspections etc. are not reasons within the sweep of section 7A and do not, therefore, constitute a sufficient basis for initiating proceedings under section 7A.

2. The minimum standard of evidence for commencement of any legal proceedings is “existence of a prima-facie case” and the same applies to proceedings u/s 7A as well. Any inquiry or legal proceeding initiated without a prima-facie case is of the nature of fishing and roving inquiry and the same is impermissible in law. Such inquiries are a nullity in the eyes of law and are non-est *ab-initio*. Therefore the Assessing Officers shall record reasons in file, on the basis of evidence available on record, regarding existence of a prima-facie case of default, or of an applicability dispute, before initiating process u/s 7A.

3. A mere complaint in itself does not constitute prima-facie evidence, sufficient to initiate an inquiry u/s 7A as complaint is only a source of information and not a legal proof of the allegations. Therefore, any complaint is required to be investigated by an Enforcement Officer under section 13 (1) of the Act and substantiated on the basis of admissible evidence gathered during investigation. The tendency to initiate inquiries on the basis of complaints alone is legally untenable and must be avoided as it lead to surpassing the investigations required under law before initiation of any inquiry.

4. Sometimes the inquiries are initiated for prolonged durations such as 5 to 20 years without any evidence of such prolonged default. This practice is legally untenable and must be eschewed. Therefore, before initiating the inquiry, the assessing officer shall record in writing proximate nexus with the evidence of default available on record and the period for which the inquiry is intended to be held.

5. Once an inquiry is initiated for specific reasons and period, the scope thereof cannot be extended beyond the fact-in-issue. The scope of the inquiry need not travel beyond the issues identified at the stage of its initiation. For any new reason or period separate notice must be issued. The records summoned from the employer, therefore, must have reasonable linkage with the subject matter of determination and the period. The practice of summoning unrelated records for prolonged period amounts to conducting a fishing and roving inquiry which is not permissible in law.

6. Wherever the inquiries are intended to be initiated on the basis of credible evidence and meeting the requirements of

principles narrated above, reasons for initiation of inquiry must be recorded in writing and a copy of all documents forming basis for initiation of inquiry must be supplied to the concerned parties along with the notice u/s 7A.

7. The notice initiating inquiry shall be assigned a computer generated diary number from Compliance e-Proceedings portal and any notice issued without case number generated from Compliance e-Proceedings portal shall be treated as non-est.

The above instructions may be scrupulously followed by all officers.”

Therefore, all the Authorities while conducting inquiries under Section - 7A of the Act have to follow the said procedure. Wherever the inquiries are intended to be initiated on the basis of credible evidence and meeting the requirements of principles, reasons for initiation of inquiry must be recorded in writing and a copy of all documents forming basis for initiation of inquiry must be supplied to the concerned parties along with notice under Section - 7A of the Act. The Authorities have to follow the said instructions scrupulously.

ii) It is the specific contention of the petitioner that respondent No.1 has not furnished the inspection reports, dated 31.12.2021 and 04.03.2022 of respondent No.3 despite specific request and complaint lodged with respondent No.6. Respondent No.1 has not enclosed the information and copies of all the documents forming basis for initiation of inquiry to the petitioner establishment along with

summons issued under Section - 7A of the Act dated 23.05.2022. Therefore, the very initiation of inquiry and conducting the same under Section - 7A of the Act by respondent No.1 is in violation of the guidelines dated 14.02.2020 issued by the Additional Central P.F. Commissioner (Compliance).

iii) It is relevant to note that the petitioner herein had submitted fifteen (15) preliminary objections with respondent No.1 during inquiry under Section - 7A of the Act including non-furnishing of information, copies of documents and reasons for initiation of inquiry under Section - 7A of the Act along with summons, dated 23.05.2022 issued by respondent No.1 under Section - 7A of the Act. Despite the same, respondent No.1 has not furnished the copies of the said documents and there are no reasons mentioned by respondent No.1 in the summons, dated 23.05.2022 issued under Section - 7A of the Act.

iv) As discussed above, it is the obligation on the part of respondent No.1 to form an opinion basing on the information and documents available with him to initiate inquiry under Section - 7A of the Act against the petitioner herein. It is also the obligation on the part of respondent No.1 to specify the reasons for initiation of 7A

inquiry and to furnish the copies of the documents and information available with him along with summons issued under Section - 7A. In the present case, respondent No.1 has not mentioned the basis on which he has initiated inquiry under Section - 7A of the Act and he has not mentioned the reasons thereto. He has also not furnished information and copies of documents to the petitioner herein along with summons under Section - 7A of the Act, dated 23.05.2022. There is specific request from the petitioner to furnish the same. The petitioner herein had also lodged a complaint with respondent No.6 against respondent No.1 for conducting inquiry in gross violation of the said guidelines / instructions. Even then, respondent No.1 has not furnished the same and has not assigned any reasons. Therefore, the inquiry initiated under Section - 7A of the Act is in violation of the aforesaid guidelines dated 14.02.2020.

v) It is also relevant to note that vide Circular dated 01.10.2020, the very same Additional Central P.F. Commissioner (Compliance), had issued certain guidelines for conduct of virtual hearing in quasi-judicial cases by Assessing Officers through Video conferencing by use of secure IT applications. Clause - IV of the said

Circular dated 01.10.2020 deals with 'conduct of hearings'. The same is relevant herein and the same is extracted as under:

IV. Conduct of Hearings

1. On the date of the hearing, the hyperlink of Video Conferencing provided in e-Notice would enable the parties to participate in the proceedings remotely. Office of the AO to verify whether authorization letter is received from employer's registered email id /other parties in favour of the persons appearing in the virtual hearing.
2. AO to satisfy himself/herself that all the parties participating from remote points can be seen and heard clearly and that each of the parties at their point can clearly see and hear the AO and other parties. AO should have a clear image of each party.
3. Proceedings to be drawn on the spot in presence of the participating parties in the Portal directly using the screen share mode of the VC utilities.
4. Oral submissions made, including admission of liability by employer or consent of complainant to the assessment of dues & arguments put forth by parties during video conferencing should be recorded by AO in daily order sheet.
5. The daily order sheet with signature of the Assessing Officer is to be sent by email to the parties for resubmission by each party through e-mail in PDF format bearing signature or digital signature or e-sign of the employer/complainant or their authorized representatives who appeared in the hearing.

As per the said circular, respondent No.1 is obligated to furnish daily order sheet in the manner stated above. In the present case, respondent No.1 has not complied with the said guidelines while conducting hearings.

vi) The said Circular, dated 01.10.2020 was issued considering the situation due to COVID-19, a pandemic and also the concept of paperless Quasi Judicial Proceedings. If the establishment requests the Inquiry Authority under Section - 7A of the Act to conduct physical hearing, he has to consider the same. Even High Courts and Supreme Court are conducting the proceedings in hybrid-mode, both physical and virtual as per the request of parties / counsel. In the present case, there is specific request by the petitioner to conduct physical hearing, the same was denied. Physical hearing was conducted twice. The petitioner requested for physical hearing on the ground that it has to cross-examine the Enforcement Officer and other witnesses to elicit certain procedure. Therefore, physical hearing would be convenient. Thus, the entire proceedings conducted by respondent No.1 under Section - 7A of the Act are in violation of the said Circular, dated 01.10.2020.

vii) Considering the observations and findings in **M/s. Civicon Engineering v. The Central Board Of Trustees**³ of the Delhi High Court, the Additional Central P.F. Commissioner (Headquarters)

³. W.P.(C) 9530/2020 & CM APPL. 30575-76/2020, decided on 04.12.2020

(Compliance & Legal), had issued certain directions/instructions vide Circular dated 19.01.2021 for conduct of quasi judicial proceedings under the Act. Some of the directions are extracted as under:

“i) All quasi judicial proceedings under the EPF & MP Act, 1952 for which functionality has been created in the ‘e proceedings portal’ must be conducted through the portal. If conduct of proceedings is not possible in any case through the portal for functional or technical reasons must be brought to the notice of the concerned Zonal Offices. In this context, instructions issued by EPFO, Head Office vide Circular No. C-1/63)2017/e-court/7647 dated 24.07.2017 and No.C-I/1(63)2017/e-Proceedings Management (Pt file)/1028 dated 17.02.2020 may be adhered to strictly.

ii). Instructions have already been issued vide EPFO, HO Circular No. C-11/20/76/Misc./2020/CBE/TN/1027 dated 14.02.2020 against initiation of fishing and roving inquiries. It is reiterated that such proceedings are impermissible in law. Adjudicating officers must record reasons qua existence of a prima facie case before commencing any inquiry/ proceedings under the Act.

iii) Wherever inquiries/proceedings are initiated, the notice thereof should be accompanied with documents that have constituted the basis for initiation of such inquiries.

iv) All notices must be issued through speed post with proof of delivery. Additionally, a copy thereof should be sent at the email address submitted in official returns. In

case any party intends to receive inquiry related communications at a particular email id, the notices may be sent at such id as well.

v) Whenever the proceedings are adjourned, the next date of listing must be informed to the parties present at that stage itself and the case status i.e. upload of daily order sheet and next date should be updated on the Compliance e-proceeding portal so that all parties can access the same on the link <https://eproceedings.epfindia.gov.in/epfo/public/caseenowisearch.php>.

vi) It is the duty of every Adjudicating Officer to ensure that parties to the proceedings are afforded sufficient opportunity to represent their cases.

vii) Wherever any case is reserved for orders, the Adjudicating Officer must fix a date of pronouncement, preferably within the next fifteen days, and inform the same to the parties by methods specified at iv) & v) above.

viii). In cases where it is proposed to proceed ex-parte in any proceedings, the adjudicating officer must examine the aspect of service of notice minutely and record his satisfaction thereto before proceeding as such.

ix) All final orders must be properly authenticated with dated signatures of the adjudicating officer and the official stamp. The provisions of The State Emblem of India (Regulation of Use) Rules, 2007 must be complied with in use of official seals.

x) Final orders must be dispatched through modes specified at iv). above. A copy thereof must also be uploaded in the Compliance e-proceedings portal within the next three days of pronouncement to make it available to all parties on the link <https://eproceedings.epfindia.gov.in/epfo/public/caseenowisearch.php>.

xi) Detailed instructions and guidance for conducting the virtual hearing in quasi-judicial cases using IT Applications issued vide Circular No. C-1/3(28)2016rIA & 146/1164 dated 01.10.2020 should be scrupulously followed to enable parties to join the hearings from remote location of their choice and convenience.

3. The directions to the above effect are issued for scrupulous compliance by the concerned officers. Any lapse will attract appropriate proceedings.”

The said instructions were not followed by respondent No.1 while conducting inquiry in the present case under Section - 7A of the Act.

c) **With regard to allotment of Code and contention of the petitioner that respondent No.1 is conducting inquiry under Section - 7A of the Act with pre-determined mind is concerned,**

i) It is relevant to note that it is not in dispute that respondent No.2 had allotted Code to the petitioner establishment on 17.05.2022. According to the respondents, on receipt of the reports from the

Enforcement Officer and also on consideration of the reply dated 07.04.2022 submitted by the petitioner to the show-cause notice dated 24.03.2022, the Enforcement Officer has visited the petitioner establishment to advise it for obtaining Code. It has not obtained the same. Therefore, respondent No.2 had allotted the Code number to the petitioner establishment for convenience in conducting quasi-judicial inquiry to settle the dispute and to decide the date of applicability of the Act. Whereas, according to the petitioner, the Code was allotted by respondent No.2 and, therefore, respondent No.2 has come to the conclusion that the provisions of the Act are applicable to the petitioner establishment. Respondent No.1 is conducting inquiry under Section - 7A of the Act only as a mere formality and no useful purpose would be served in conducting 7A inquiry. According to the respondents, the petitioner herein is under obligation to cover its contractual employees under the provisions of the Act. They have received a specific complaint from the contract employees. As per the Registration Certificate, the petitioner was registered on 26.03.1996 and, hence, registration date is considered for coverage date. They have allotted Code on 17.05.2022.

ii) In this regard, it is relevant to note that in the Circular No.Conf.54(1)2013-14/CPFC/Tour Reports, dated 16.07.2014 issued by respondent No.4 i.e., Additional Central P.F. Commissioner (Compliance) at paragraph No.3 it says;

“....There being no provisions in the Act and/or Scheme for allotment of code numbers to establishments, it has emerged that de-registration and decoding of establishments should be done through administrative order only.”

iii) In paragraph No.12 of the aforesaid Circular, it is also mentioned that

“....it shall be subjected to assessment enquiry under Section 7A of the Act and if required issued a new EPF code number after such enquiry from the date the Act is found applicable after the enquiry under Section 7A of the Act.”

iv) In the summons, dated 23.05.2022 issued by respondent No.1 under Section - 7A of the Act, it is also specifically mentioned that he has initiated the said inquiry under Section - 7A of the Act to decide the date of applicability of the Act and assessment of dues, whereas, the respondents have allotted the EPF Code to the petitioner establishment on 17.05.2022 itself. Therefore, as rightly contended by

the learned counsel for the petitioner, the respondents should have allotted the EPF Code number after concluding inquiry under Section - 7A of the Act and after coming to a conclusion with regard to the date of applicability. Instead, the respondents have allotted the Code to the petitioner establishment on 17.05.2022 on the ground that despite the advice, the petitioner establishment has not applied for Code Number and, therefore, for the purpose of convenience to conduct inquiry under Section - 7A of the Act, they have allotted the EPF Code Number to the petitioner. Allotment of Code Number is administrative task and cannot decide the applicability of the Act. It is also relevant to extract Section - 7A of the Act, which deals with determination of moneys due from employers and the same is as under:

“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 Pension Scheme 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.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order shall be made under sub-section (1), unless the employer concerned is given a reasonable opportunity of representing his case.

(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 employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry: Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.—Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.”

v) Thus, as per sub-Section (1) (a) of Section - 7A of the Act, in a case where a dispute arises regarding the applicability of the Act to an establishment, decide such dispute and, therefore, respondent No.1 being the Authority under Section - 7A of the Act, has to decide the very applicability itself. However, during the course of hearing, it is brought to the notice of this Court that respondent No.1 has not completed the inquiry and it is still pending. After allotment of the Code, the respondent authorities have not initiated any further steps except initiating inquiry under Section - 7A of the Act. In view of the same, allotment of the aforesaid EPF Code is subject to the result of the inquiry under Section - 7A of the Act. If Authority under Section - 7A comes to a conclusion that the petitioner establishment has to covers its employees including contractual employees under the provisions of the Act, it has to allot a new Code Number to the petitioner establishment, otherwise, it has to delete the information

including the allotment of Code number from its website in respect of the petitioner establishment.

vi) The petitioner herein is contending that it is a Society registered under the Societies Act, Research Institute, an Autonomous Body, non-profit motive organization and, therefore, it is exempted from the provisions of the Act in terms of Section - 17 and also as per the Notification S.O. No.35024/1/88-II, dated 19.01.1989. Though the said fact was specifically mentioned in the reply submitted by the petitioner to the show-cause notice, the respondents have not considered the same. Without considering the same, respondent No.1 has initiated inquiry under Section - 7A of the Act erroneously. In view of the same, it is relevant to note that in exercise of powers conferred under Section - 16 (2) of the Act, the Central Government had issued Gazette Notification SO No.1431, dated 14.05.2010 exempting certain classes of establishments from the operation of the provisions of the Act from 01.04.2010 to 31.03.2015. The same is extracted below:

- (a) those being wholly financed by the grants-in-aid received from the Central Government, or any State Government or State Governments, or partly by the Central Government and partly by one or more State

Governments subject to the condition that grants-in-aid does not include any amount for the purpose of meeting the liability of the employer towards the employers' contribution to the provident fund: or

(b) those being run by public, religious or charitable trusts or endowments (including maths, temples, gurudwaras, wakfs, churches, synagogues, agiaries or other places of public religious workshop) or societies and Trusts for religious or charitable or other public purposes and notified as such by the Central Government under the Income Tax Act, 1961 (43 of 1961).

2. Provided that if such class of establishments run any university, any college, any school, any scientific institution, any institution in which research education, imparting knowledge or training is carried on against charges or fees from the students, or run any hospital, nursing home or clinic in which any medical treatment or procedure is carried on against charges or fees from the patients, such activity shall not be exempted from the operation of the first mentioned Act.

3. Provided that the Government reserves the right to revoke and/or modify the exemption as and when it is deemed fit."

vii) According to the petitioner, respondent No.6 had issued Gazette Notification vide S.O. No.3536, dated 05.04.2000 under Section - 16 of the

Act exempting the petitioner society from the provisions of the Act for a period of one year from 22.09.1994. Vide Gazette No.2121 (E), dated 04.07.2003, respondent N.6 had exempted the petitioner for a period of 01.04.1994 to 31.03.2005. Like-wise, respondent No.6 vide Gazette Notification S.O. No.2368, dated 07.06.2005, had exempted the petitioner society from 01.04.2005 to 31.03.2010. Similar Gazette Notification No.1431, dated 14.05.2010 was issued by respondent No.6 exempting the petitioner from the provisions of the Act from 01.04.2010 to 31.03.2015.

viii) According to the learned counsel for the petitioner, the Enforcement Officer has not mentioned the said facts in the inspection reports, dated 31.12.2021 and 04.03.2022. The petitioner herein has specifically stated the said facts in the reply dated 07.04.2022 to the show-cause notice dated 24.03.2022. Even then, without considering the same, respondent No.1 has initiated inquiry under Section -7A of the Act.

ix) Learned counsel for the petitioner would also submit that the Gazette Notification No.35025/15/88-SS-II, dated 08.01.1989 was superseded by the subsequent Gazette issued by respondent No.6

granting exemptions to the Societies registered under the Societies Act which are getting government funds. The petitioner society has not received any grants. The said aspect was not considered by respondent No.1 while conducting the inquiry under Section - 7A of the Act. Without considering the same, the EPF Code was allotted.

x) Whereas, in the counter filed by the respondents, it is contended that in the show-cause notice dated 24.03.2022 itself, respondent No.2 has specifically mentioned that the petitioner is not eligible for exclusion under Section - 16 (1) (b) of the Act, as the contract employees who are/were engaged by the establishment directly are not in receipt of the CPF/NPS or any other Social Security Benefits. As per the instructions of Head Office Circular No.CAIU/011(33)15/HQ.VOL-II/11834, dated 06.09.2017, it is requested to implement the instructions issued by the Cabinet Secretary to ensure that Principal Employer, the Ministries / Departments extend the legally entitled social security benefit to the outsourced staff working in the Ministry / Department, PSUs and other bodies. As per the clarifications issued vide letter dated 08.01.1989, the Ministry of Labour, Government of India, has clarified that grant of exemption to departmental undertakings under

the control of Central / State Government and Statutory bodies “which satisfy the requirement of section but have reported partial compliance or have been disputed the coverage under the Act may also be removed from the list of exempted establishment w.e.f. 01.08.1988”. Therefore, the petitioner establishment is rightly coverable and the action initiated by the respondents is legally valid.

xi) In view of the aforesaid rival submissions, it is relevant to extract certain provisions of the Act, which are as under:

“2 (e) **“employer”** means— (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;”

“2 (f) **“employee”** means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, 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 Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;”

“2 (ff) “*exempted employee*” means an employee to whom a Scheme or the Insurance Scheme, as the case may be, would, but for the exemption granted under section 17, have applied;”

“2 (fff) “*exempted establishment*” means an establishment in respect of which an exemption has been granted under section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme, as the case may be, whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein;”

“16. Act not to apply to certain establishments.—(1) This Act shall not apply—

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the

benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;

(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.”

“16A. Authorising certain employers to maintain provident fund accounts.—(1) The Central Government may, on an application made to it in this behalf by the employer and the majority of employees in relation to an establishment employing one hundred or more persons, authorise the employer, by an order in writing, to maintain a provident fund account in relation to the establishment, subject to such terms and conditions as may be specified in the Scheme:

Provided that no authorisation shall be made under this sub-section if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under this Act during the three years immediately preceding the date of such authorisation.

(2) Where an establishment is authorised to maintain a provident fund account under sub-section (1), the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such

administrative charges, and abide by such other terms and conditions, as may be specified in the Scheme.

(3) Any authorisation made under this section may be cancelled by the Central Government by order in writing if the employer fails to comply with any of the terms and conditions of the authorisation or where he commits any offence under any provision of this Act: Provided that before cancelling the authorisation, the Central Government shall give the employer a reasonable opportunity of being heard.”

xii) It is also relevant to note that the Act is a beneficial Legislation for providing social security to the employees working in any establishment in which 20 or more persons on any day and casts an obligation upon the Employer to make compulsory deduction for Provident Fund and to deposit in the workers account in EPF Office. Thus, it is a social piece of Legislation.

xiii) According to the petitioner, it is a Society registered under the Societies Registrations Act, an Autonomous Body, Research Centre. It is a non-profit motive organization. It is not receiving any grants from the Central Government. Therefore, it is exempted from the provisions of the Act in terms of Section - 16.

xiv) Whereas, according to the respondents, in view of the aforesaid clarifications and also the decision taken by the Cabinet, the

petitioner which engages its employees and also contract employees has to cover their employees under the provisions of the Act. According to the respondents, as per the reports of the Enforcement Officer, 152 employees have been engaged on outsourcing basis through contract Agencies; about 78 employees are directly engaged by the petitioner and about 16, contractual employees still on petitioner roll on contract. The contract employees who are / were engaged by the petitioner establishment directly are not in receipt of the CPF / NPS or any other social security benefits and, therefore, the petitioner cannot claim exemption under Section - 16 (1) (b) of the Act. They are also relying on the Instructions, dated 06.09.2017.

xv) Learned counsel for the petitioner has also relied upon the recommendation of Law Commission. The same are in respect of the Code of Criminal Procedure and the scope and ambit of the same under Cr.P.C. is different and the scope and ambit of the Act and, therefore, they are not relevant for the purpose of the present case.

xvi) It is relevant to note that respondent Nos.7 to 13 are claiming that they are the contract employees of the petitioner, they are not getting any benefits and, therefore, the petitioner has to cover them under the provisions of the Act. They have also lodged

complaints to the respondent authorities. In view of the aforesaid facts and also as per Section - 7A (1) (a) (b) of the Act, there is a dispute with regard to the applicability of the Act to the petitioner establishment and, therefore, the Authority under Section - 7A of the Act has to decide the said aspect first, and thereafter it has to determine the amount. Thus, the Authority under Section - 7A of the Act shall decide the said aspect of applicability of the Act to the petitioner establishment on considering the aforesaid Notifications, relied on by the petitioner. The Authority shall give an opportunity to the petitioner, respondent Nos.7 to 13 and the Enforcement Officer to adduce evidence and to file documents in support of their contentions while deciding the said aspect. On affording the said opportunity only, respondent No.1, Authority under Section - 7A of the Act shall decide the said aspect.

d). **With Regard to the Preliminary Objections:**

i) According to the petitioner, it had submitted about fifteen (15) preliminary issues on 08.06.2022 with respondent No.1 authority with a request to decide the same as preliminary issues.

ii) It is needless to submit that the proceedings under Section - 7A of the Act are quasi-judicial in nature. Therefore, the aforesaid

issues cannot be decided as preliminary issues. They will be decided along with the main issue. Perusal of the aforesaid fifteen (15) preliminary issues raised by the petitioner would reveal that if respondent No.1, the Authority under Section - 7A of the Act decides the said issues as preliminary issues, nothing remains in 7A inquiry. Most of the said preliminary issues are touching main issue itself. Therefore, the petitioner cannot expect from respondent No.1, a Quasi-judicial Authority, to decide the aforesaid issues as preliminary issues.

iii) To decide the aforesaid issues, respondent No.1 has to afford an opportunity to the parties including the petitioner and the official respondents and unofficial respondents. Therefore, the said contention of the petitioner that respondent No.1 has not decided the aforesaid preliminary issues is unsustainable. Liberty is granted to the petitioner, official respondents and respondent No.3, Enforcement Officer to raise the said contentions before respondent No.1, who in turn will decide the same along with main issue.

iv) With regard to the contention of the petitioner as to conducting of 7-A inquiry under Section - 7A of the Act by respondent No.1, who is inferior to respondent No.2, who has issued

show-cause notice dated 24.03.2022, it is relevant to note that respondent No.2 had issued the aforesaid show-cause notice dated 24.03.2022. The petitioner herein had submitted explanation on 07.04.2022, specifically contending that it is exempted from the provisions of the Act. Respondent No.1 had issued summons under Section - 7A of the Act dated 23.05.2022. The petitioner herein had appeared before respondent No.1 in 7A inquiry on several dates including 08.06.2022. According to the petitioner, respondent No.1 has not considered the said preliminary issues in the inquiry and conducting inquiry under Section - 7A with pre-determined mind in gross violation of principles of natural justice and also instructions issued by respondent No.6 from time to time.

v) The petitioner herein had lodged a complaint against respondent No.1 on 04.07.2022 with respondent No.6 making several allegations against him, requested to initiate disciplinary action against him. The allegations levelled against respondent No.1 are serious in nature. Even in the complaint dated 04.07.2022, there is serious allegation against respondent No.1 that he has threatened the petitioner to cover its employees under the provisions of the Act. According to the petitioner, respondent No.1 bore grudge against it.

Respondent No.1 is conducting hearings by giving short dates, in gross violation of principles of natural justice and also in violation of the aforesaid instructions. According to them, respondent No.1 is inferior to respondent No.2, who had issued show-cause notice dated 24.03.2022 on coming to a conclusion that the petitioner establishment is covered under the provisions of the Act, and EPF Code was also allotted on 17.05.2022. Therefore, respondent No.1, an Inferior Officer to respondent No.2, cannot conduct an inquiry under Section - 7A. With the aforesaid serious allegations, the petitioner had requested respondent No.6 to initiate disciplinary action against respondent No.1. Thus, there are strained relations between the petitioner and respondent No.1.

vi) In Circular dated 17.10.2007 issued by Head Office of the Provident Fund Department, it is specifically mentioned with regard to number of employees and authority to conduct inquiry under Section - 7A of the Act.

- | | |
|-------------------|-----------------------------------|
| a) Up to 250 | -- Assistant P.F. Commissioner |
| b) 251 - 1000 | -- Regional P.F. Commissioner |
| c) 1501 and above | -- Regional P.F. Commissioner - I |

vii) In supersession of the said Circular, the Head Office of the P.F. Department had issued a Circular vide No. Compliance/

Guidelines on 7-A Inquiry/2021-22/9882 dated 16.08.2022 as per which, the Assistant Provident Fund Commissioner (Compliance) is the authority to conduct inquiry. Therefore, respondent No.1 being the Assistant Provident Fund Commissioner - II Compliance has been conducting 7A inquiry, and there is no error in it.

viii) As stated above, the petitioner herein had made serious allegations against respondent No.1, and it has also lodged complaint with respondent No.6 against respondent No.1. Thus, there are strained-relations between the petitioner herein and respondent No.1.

ix) It is also relevant to note that the petitioner herein is also Central Government Undertaking. It is an Autonomous Body under the control of the Central Government. It is a Research Institute. Even respondent No.1, Assistant Provident Fund Commissioner - II Compliance is also an Officer of P.F. Department, a Central Government Organization. Thus, there are strained-relations between two organizations of the Central Government. In view of the same, there is every possibility of respondent No.1 conducting inquiry under Section -7A of the Act in a prejudicial manner. There may not be fair and transparent inquiry under Section - 7A of the Act by respondent No.1. Thus, this Court is of the considered opinion that conducting of

inquiry by respondent No.1 in the given circumstances will not serve any purpose.

x) In view of the aforesaid discussion and in view the special facts and circumstances of the present case, this Court is of the considered view that respondent No.5 i.e., Additional Central Provident Fund Commissioner shall conduct inquiry under Section - 7A of the Act by following the instructions issued dated 14.02.2020, 01.10.2020 and 19.01.2021. Therefore, respondent No.1 shall entrust the subject file to respondent No.5, who shall conduct inquiry under Section - 7A of the Act irrespective of the aforesaid Circulars dated 17.10.2007 and 16.08.2022. Respondent No.5 shall issue fresh summons under Section - 7A of the Act by giving reasons and by furnishing copies of information and documents basing on which he has initiated inquiry under Section - 7A of the Act. Respondent No.5 shall furnish copies of inspection reports, dated 31.12.2021 and 04.03.2022 of Enforcement Officer to the petitioner. He shall conduct inquiry in physical mode by affording opportunity to the petitioner, Enforcement Officer and respondent Nos.7 to 13 in compliance of principles of natural justice.

xi) As stated above, the Authority under Section - 7A of the Act, shall for the purposes of such inquiry has the same powers vested in Court under the Code of Civil Procedure, 1908 in trying a suit in respect of certain issues which are specifically mentioned.

xii) Referring to the said provisions and also powers of the Authority under Section - 7A of the Act, the Apex Court in **Food Corporation of India v. Provident Fund Commissioner**⁴ held that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. The said power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person. Thus, respondent No.5 shall conduct proceedings strictly in accordance with the aforesaid

⁴. (1990) 1 SCC 68

instructions and as per procedure laid down under Section - 7A (2) of the Act and also the principle laid down by the Apex Court in **Food Corporation of India**⁴.

xiii) As stated supra, the petitioner herein has made a serious allegation against respondent authorities that they have fabricated / corrected form 5A said to have issued by the petitioner and allotted Code. In view of the said allegation, respondent No.5 shall decide the said issue during the course of hearing under Section - 7A of the Act. In the reply affidavit filed by the petitioner to the counter affidavit filed by respondent Nos.1 to 3 and 5 in paragraph No.9, it is specifically contended that the petitioner has not challenged the merits of the matter relating to the coverage of its establishment in the present writ petition. The respondents have given their counter wrongly on merits of the matter. The petitioner has only challenged the procedural lapses in conducting the proceedings under Section - 7A of the Act, and asking for *de novo* inquiry by respondent No.5. In view of the same, respondent No.5 shall conduct inquiry in the manner stated above. In view of the aforesaid facts and circumstances, the relief sought by the petitioner to direct respondent No.6 to initiate disciplinary action against respondent No.1 cannot be considered.

xiv) Referring to the information furnished by the respondents under Right to Information Act, 2005, learned counsel for the petitioner would submit that respondent No.1 has not followed the Circular Instructions, dated 14.02.2020, 01.10.2020 and 19.01.2021 by furnishing daily docket orders etc. Even the said information would reveal that respondent No.1 has not conducted inquiry under Section - 7A of the Act in terms of the aforesaid guidelines/ instructions. The petitioner herein had requested the Authority under Section - 7A of the Act to follow the procedure while conducting 7A inquiry. Burden lies on the EPF Department to prove that the petitioner herein is not exempted establishment and it has to cover its employees under the Act, opportunity has to be given to the EPF Department first and thereafter to respondent Nos.7 to 13 and to the petitioner herein. Therefore, respondent No.5 being the Quasi Judicial Inquiry shall consider the said aspects and follow the said procedure. He shall give opportunity of examination of all the witnesses produced by the respective parties. In the complaint, writ affidavit, reply affidavit, the petitioner herein has specifically alleged that though there is authorization submitted by the petitioner advocate, Dr. K.K.H.M. Syam Sundar, respondent No.1 without considering the

same, in the docket sheets stated that the petitioner herein has not submitted any authorization. But, the petitioner has given authorization to the aforesaid counsel which has filed the same before respondent. Therefore, respondent No.5 shall consider the said authorization and permit the aforesaid counsel of the petitioner to participate in the inquiry under Section - 7A inquiry on behalf of the petitioner.

xv) In the guidelines dated 14.02.2020 in paragraph No.4, it is specifically mentioned that sometimes the inquiries are initiated for prolonged durations such as 5 to 20 years without any evidence of such prolonged default. The said practice is legally untenable and must be eschewed. Therefore, before initiating the inquiry, the assessing officer shall record in writing proximate nexus with the evidence of default available on record and the period for which the inquiry is intended to be held. Therefore, according to the petitioner, respondent No.1 has not considered the same and initiated inquiry by taking the date of registration of the petitioner into account i.e., 26.03.1996. In view of the said allegations, respondent No.5 shall consider the said aspect and also paragraph No.4 of the aforesaid

instructions, dated 14.02.2020 while conducting inquiry under Section - 7A of the Act and give a finding on the said aspect.

5. **CONCLUSION:**

i) In view of the aforesaid discussion, the present this Writ Petition is disposed of with the following directives:

- a) The inquiry proceedings conducted by respondent No.1 so far under Section - 7A of the Act pursuant to the summons dated 23.05.2022 are set aside;
- b) Inquiry is entrusted to respondent No.5. Respondent No.5 shall conduct inquiry under Section - 7A of the Act. He shall issue fresh summons under Section - 7A of the Act by mentioning the reasons for initiating inquiry and also by serving copies of documents relied upon by him and the information to the petitioner herein along with fresh notices / summons under Section - 7A of the Act;
- c) Respondent No.5 shall conduct inquiry physically;
- d) He shall strictly follow the guidelines / instructions issued by respondent No.6 vide proceedings, dated 14.02.2020; 1.10.2020 and 19.01.2021;

- e) He shall conduct inquiry strictly in compliance of the principles of natural justice;
- f) He shall consider and decide the following aspects while conducting inquiry viz.,
 - i. Applicability of the provisions of the Act to the petitioner and exemption as contended by it under the provisions of the Act;
 - ii. Notification, dated 14.05.2010;
 - iii. Circular, dated 01.08.1989;
 - iv. Instructions/Circular dated 06.09.2017 issued by the Head Office of PF Department;
 - v. Clarifications, dated 08.01.1989 of respondent No.6.
- g) Respondent No.5 shall complete the inquiry under Section - 7A of the Act as expeditiously as possible, and the petitioner and its counsel shall co-operate with respondent No.5 in all respects so as to conclude the inquiry under Section - 7A of the Act by respondent No.5.

ii) However, in the circumstances of the case, there shall be no order as to costs.

iii) As discussed above, Dr. K.K.H.M. Syam Sundar, learned counsel having raised several important aspects with regard to the procedural aspects to be followed under Section - 7A of the Act, filed relevant instructions/guidelines/judgments and made his submissions extensively on all the said aspects. Therefore, this Court is placed its appreciation on record for the assistance rendered by him.

As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.

12th September, 2022

K. LAKSHMAN, J

Note: L.R. Copy to be marked.
(B/O.) Mgr