IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14368 of 2013

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Gatrumal Kanodia Son Of Late Madan Lal Kanodia Proprietor Of M/S India Pharmaceutical, Having Its Office At Chouk Shikarpur, Patna City, P.S.- Chouk, District- Patna

... ... Petitioner/s

Versus

1. The Regional Provident Fund Commissioner 'R' Block, Road No. 6, Patna 800001, Bihar
2. The Regional Provident Fund Commissioner C and R, Regional Office, Employees Provident Fund Organiz 'R' Block, Road No. 6, Patna 800001
3. The Assistant Regional Provident Fund Commissioner, Regional Office, Employees Provident Fund Organ R-Block, Road No. 6, Patna 800001
4. The Enforcement Officer, Regional Office, Employees Provident Fund Organization, R-Block, Road No. 6, Patna 800001
5. The Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
		Mr. Mukund Kumar, Advocate
		Mr. Aditya Raman, Advocate
		Mr. Akash Kumar, Advocate
For the Respondent/s	:	Mr. Amrendra Narayan Rai, Advocate
For the EPFO	:	Mr. Prashant Sinham, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 20-04-2024

This writ petition is filed for setting aside the order dated 06.10.1998 passed by the Regional Provident Fund Commissioner by which it was held that the petitioner Farm is covered under "Employees Provident Fund Act" and accordingly they have been allotted with code no. BR/PT/7621. Further to set aside the order dated 18.10.2004 passed by the Assistant Provident Fund Commissioner, Bihar, Patna by which the establishment is liable to pay Rs. 5,97,197/- as outstanding dues for the notice period i.e., January, 1998 to April 2001.

2. Further to quash the order dated 23.02.2010 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, in ATA no. 1021(3) of 2001 which was dismissed (against the order dated 24.09.2004 passed by the Assistant Provident Fund Commissioner, Bihar, Patna).

3. Further to set aside the order dated 28.01.2013 passed by the Regional Provident Fund Commissioner, (C & R) Regional Office, Patna by which he has also directed the establishment to remit the dues assessed vide order dated 24.09.2008 to 30.08.2011.

4. The petitioner has established his business under small scale industry vide registration no. 03/10/04463/PMT/SST dated 14.03.1975. He also got registered his Small Scale Industry under ESI Act vide code no. 42-11349-34, with effect from 01.04.1996 vide letter dated 23.09.1996, when the number of worker increased to 9 in the said factory.

5. On 09.01.1998, Shri B.K.Sinha, the Area

Enforcement Officer visited the factory of the petitioner and checked all the relevant documents like Attendance Register, Salary Register, Wages Payment Register, Cash Book, Ledger etc. and on that day out of 8 employee only 7 employees were working in the said factory. Shri B.K. Sinha has submitted a report on 24.02.1998 which was dated 19.01.1998, reporting that there are 42 workers in the factory of the petitioner and therefore it comes under the Employees Provident Fund Act.

6. On the basis of the report of Shri. B.K. Sinha, proceedings were initiated against the petitioner, vide order dated 26.02.1998.

7. It is specific plea of the petitioner that the inquiry report was not served on him. The half yearly return filed by the petitioner dated 15.05.1998 disclose that there are only 11 employees in the factory in which the names of the employees and their insurance number are also mentioned.

8. On 20.05.1998, a show cause notice was issued to the petitioner, which was signed on 24.04.1998 fixing the date for production of relevant documents. But the specific contention of the petitioner is that the same was not served upon him on 17.07.1998 and the Authority concerned has made an order to depute a squad for inspecting the factory of the

petitioner and the said order was also not served upon the petitioner.

9. On 12.08.1998, the factory of the petitioner was audited by the competent authority and found that there are no irregularities.

10. It is specific contention of the petitioner that on 24.08.1998, the squad visited the factory and verified that there are only 8 employees working in the said factory but the said fact was suppressed by the authorities and the report of the squad has not seen the light of the day. The said Establishment was covered under EPF Act, by allotting Code No. BR/BT/7621 vide Letter no. 1796 dated 06.10.1998 effective from 09.10.1998 and coverage letter so issued was not served upon the petitioner.

11. It is pertinent to mention that it is the second round of litigation. Initially the petitioner had approached this Court by filing the Writ Petition i.e., CWJC No. 20888 of 2010 which was disposed of by this Court vide order dated 28.03.2012. In the said petition, the petitioner challenged the order dated 23.02.2010, passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi passed in A.T.A. No. 1021(3) of 2001, wherein the appeal of the petitioner was dismissed affirming the order of Assistant

Provident Fund Commissioner, Bihar, Patna dated 24.09.2004.

12. The Assistant Provident Fund Commissioner vide its impugned order dated 24.09.2004 held that the establishment has not made any contribution under Section 7-A of the Employees Provident Funds & Miscellaneous Provision Act, 1952 and the scheme made therein and as such directed the petitioner to pay a sum of Rs. 5,97,197/-. It has been further observed by the Assistant Provident Fund Commissioner, Bihar, Patna, in his order that a detailed inquiry was made by Shri. B.K. Sinha, Enforcement Officer, Employees Provident Fund which shows that the establishment has engaged 42 workers including 28 laborers on casual wages. In the said writ petition the plea of the petitioner is that he was not served with the inquiry report and further the establishment was not permitted to cross examine Shri B.K. Sinha, Enforcement Officer and that the notices under Section 7A the date was mentioned as '16.07.2001' but the same was issued to the petitioner on 13.08.2001 fixing the date of hearing on 08.08.2001 which is ridiculous.

13. This court has found discrepancies in the notice issued under Section 7A and therefore, impugned order dated 23.02.2010 passed by the Presiding Officer, Employees

Provident Fund Appellate Tribunal, New Delhi affirming the order dated 24.09.2004 passed by the Assistant Regional Provident Fund Commissioner was kept in abeyance.

14. Further this Court has directed the Assistant Provident Fund Commissioner to pass fresh orders under Section 7A of the Act and no coercive steps should be taken against the petitioner, subject to deposit of a further sum of Rs. 20,000/- with the respondents.

15. This Court also directed that inquiry should be concluded within six months, from the date of receipt of order of this Court.

16. Subsequent to the order passed by this Court in CWJC No. 20888 of 2010, dated 28.03.2012, the Regional Provident Fund Commissioner, Patna has passed order dated 28.01.2013, which is under challenge in this case.

17. Heard learned counsel for the petitioner as well as learned counsel for the respondents. Perused the records.

18. It is the specific contention of the learned counsel for the petitioner that Shri B.K. Sinha, Enforcement Officer has visited the factory of the petitioner on 09.01.1998 but the inspection report was signed on 19.01.1998 wherein names of 24 employees were incorporated, without the name of

their father, gender, and the addresses and further the inspection report disclose that 18 casual workers were also working including names of 24 others. It is also the contention of the Learned counsel for the petitioner that the first line of the inspection report clearly discloses that the report has to be submitted within 7 days and in no case later than 10 days. It is also contended that the inspection was made on 09.01.1998, but at the place of signature of the Shri B.K. Sinha it was mentioned 19.01.1998 and it was submitted to the authority on 24.02.1998 which clearly indicates that it was not submitted within 10 days, as specified in the Inspection Report. It is also contended that in spite of the Inspection Report on hand, the authorities have made an office note to depute squad for coverage vide order dated 15.07.1998 i.e., the office running notes of the department. It is also contended by the Learned counsel for the petitioner that though deputing of the squad, again the authority have taken a U-turn, the report of the squad was suppressed and the proceedings were initiated against the petitioner, basing on the Inspection Report of Mr. B.K. Sinha. It is also the contention of the Learned counsel for the petitioner that in spite of this Court order in CWJC No. 20888 of 2010 dated 28.03.2012 remanding the matter for fresh adjudication under Section 7A of the Act, the Regional Provident Fund Commissioner have not adjudicated the matter afresh and the documents submitted by the petitioner were not taken into consideration and further an adverse remark was made, as to why the documents could not be produced before the Assistant Commissioner Provident Fund, if at all the documents are there earlier, with the petitioner.

19. It is also contended that such adverse remark by the Provident Fund Officer is unwarranted and it has no basis to form such adverse entries.

20. It is also contended by the Learned counsel for the petitioner that the petitioners is entitled to Principles of Natural Justice and the burden is on the Provident Fund department, to prove that petitioner has employed more than 19 members in his factory. If at all the Provident Fund authorities contends that 42 members were engaged in the factory, then burden is on the authorities to prove that those persons are engaged in the factory and the petitioner cannot be called to give negative evidence on his behalf.

21. On the other hand, Learned counsel for the respondent contended that there is no irregularity in the order passed by the Regional Provident Fund Commissioner (C &R), Regional office Patna and after verifying the entire material on

record it was found that there are 42 persons engaged in the factory of the petitioner and, therefore, allotment code has been made to the petitioner for which the petitioner is entitled to pay the dues for the assessing period, as the establishment has been found *prima-facie* coverable under the act. It is further contended that if records are available with the petitioner to produce before the Regional Provident Fund Authority, what made the petitioner not to produce before the Assistant Provident Fund Commissioner at the first instance is not answered by the petitioner and therefore, the documents are discarded by the Regional Provident Fund Commissioner. It is further contended that the present registers are tampered, so the Regional Provident Fund Commissioner, rejected the documents.

22. In order to support their contention the learned counsel for the petitioner relied on the citation of the Apex Court reported in **(1977(2) SCC 777)** in **State of Kerala vs K.T. Shaduli Yusuff Etc**, wherein the Hon'ble Apex Court has held:

> ***3.*** *One of the rules which constitutes a part of the principles of natural justice is the rule of audi alteram partem which requires that no man should be condemned unheard. It "is indeed a requirement of the duty to act fairly which lies on all*

quasi-judicial authorities and this duty has been extended also to the authorities holding administrative enquiries involving civil consequences or affecting rights of parties because as pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : (1970) 1 SCR 457] "the aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice" and justice, in a society which has accepted socialism as its article of faith in the Constitution is dispensed not only by judicial or quasi-judicial authorities but also by authorities discharging administrative functions. This rule which requires an opportunity to be heard to be given to a person likely to be affected by a decision is also, like the genus of which it is a species, not an inflexible rule having a fixed connotation. It has a variable content depending on the nature of the inquiry, the framework of the law under which it is held, the constitution of the authority holding the inquiry, the nature and character of the rights affected and the consequences flowing from the decision. It is, therefore, not possible to say that in every case the rule of audi alteram partem requires that a particular specified procedure is to be followed. It may be that in a given case the rule of audi alteram partem may import a requirement that witnesses whose statements are sought to be relied upon by the authority holding the inquiry should be permitted to be cross-examined by the party affected while in some other case it may not. The procedure required to be adopted for giving an opportunity to *a person to be heard must necessarily depend on facts and circumstances of each case.*

4. *Now, in the present case, we are not concerned with a situation where the rule of audi alteram partem has to be read into the statutory provision empowering the taxing authorities to assess the tax. Section 17, sub-section (3), under which the assessment to sales tax has been made on the assessee provides as follows:*

"If no return is submitted by the dealer under sub section (1) within the prescribed period, or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such enquiry as it may consider necessary and after taking into account all relevant materials gathered by it, assess the dealer to the best of its judgment:

Provided that before taking action under this sub-section the dealer shall be given a reasonable opportunity of being heard and, where a return has been submitted, to prove the correctness or completeness or such return."

It is clear on a plain natural construction of the language of this provision that it empowers the Sales Tax Officer to make a best judgment assessment only where one of two conditions is satisfied: either no return is submitted by the assessee or the return submitted by him appears to the Sales Tax Officer to be incorrect or incomplete. It is only on the existence of one of these two conditions that the Sales Tax Officer gets the *jurisdiction to make a best judgment assessment. The fulfilment of one of these two pre-requisites is, therefore, a condition precedent to the assumption of jurisdiction by the Sales Tax Officer to make assessment to the best of his judgment. Now, where no return has been submitted by the assessee, one of the two conditions necessary for the applicability of Section 17, sub-section (3) being satisfied, the Sales Tax Officer can, after making such inquiry as he may consider necessary and after taking into account all relevant materials gathered by him, proceed to make the best judgment assessment and in such a case, he would be bound under the proviso to give reasonable opportunity of being heard to the assessee. But in the other case, where a return has been submitted by the assessee, the Sales Tax Officer would first have to satisfy himself that the return is incorrect or incomplete before he can proceed to make the best judgment assessment. The decision making process in such a case would really be in two stages, though the inquiry may be continuous and uninterrupted the first stage would be the reaching of satisfaction by the Sales Tax Officer that the return is incorrect or incomplete and the second stage would be the making of the best judgment assessment. The first part of the proviso which requires that before taking action under sub-section (3) of Section 17, the assessee should be given a reasonable opportunity of being heard would obviously apply not only at the second stage but also at the first stage of the inquiry, because the best judgment assessment, which is the action under*

Section 17, sub-section (3) follows upon the inquiry and the "reasonable opportunity of being heard" must extend to the whole of the inquiry, including both stages. The requirement of the first part of the proviso that the assessee should be given a "reasonable opportunity of being heard" before making best judgment assessment merely embodies the audi alteram partem rule and what is the content of this opportunity would depend, as pointed out above, to a great extent on the facts and circumstances of each case. The question debated before us was whether this opportunity of being heard granted under the first part of the proviso included an opportunity to cross-examine Haji Usmankutty and other wholesale dealers on the basis of whose books of accounts the Sales Tax Officer disbelieved the account of the assessee and came to the finding that the returns submitted by the assessee were incorrect and incomplete. But it is not necessary for the purpose of the present appeals to decide this question since we find that in any event the assessee was entitled to this opportunity under the second part of the proviso.

***5.** The second part of the proviso lays down that where a return has been submitted, the assessee should be given a reasonable opportunity to prove the correctness or completeness of such return. This requirement obviously applies at the first stage of the enquiry before the Sales Tax Officer comes to the conclusion that the return submitted by the assessee is incorrect or incomplete so as to warrant the making of a best* *judgment assessment. The question is what is the content of this provision which imposes an obligation on the Sales Tax Officer to give and confers a corresponding right on the assessee to be afforded, a reasonable opportunity "to prove the correctness or completeness of such return". Now, obviously "to prove" means to establish the correctness or completeness of the return by any mode permissible under law. The usual mode recognised by law for proving a fact is by production of evidence and evidence includes oral evidence of witnesses. The opportunity to prove the correctness or completeness of the return would, therefore, necessarily carry with it the right to examine witnesses and that would include equally the right to cross-examine witnesses examined by the Sales Tax Officer. Here, in the present case, the return filed by the assessee appeared to the Sales Tax Officer to be incorrect or incomplete because certain sales appearing in the books of Haji Usmankutty and other wholesale dealers were not shown in the books of account of the assessee. The Sales Tax Officer relied on the evidence furnished by the entries in the books of account of Haji Usmankutty and other wholesale dealers for the purpose of coming to the conclusion that the return filed by the assessee was incorrect or incomplete. Placed in these circumstances, the assessee could prove the correctness and completeness of his return only by showing that the entries in the books of account of Haji Usmankutty and other wholesale dealers were false, bogus or manipulated and that* *the return submitted by the assessee should not be disbelieved on the basis of such entries, and this obviously the assessee could not do, unless he was given an opportunity of cross-examining Haji Usmankutty and other wholesale dealers with reference to their accounts. Since the evidentiary material procured from or produced by Haji Usmankutty and other wholesale dealers was sought to be relied upon for showing that the return submitted by the assessee was incorrect and incomplete, the assessee was entitled to an opportunity to have Haji Usmankutty and other wholesale dealers summoned as witnesses for cross-examination. It can hardly be disputed that cross-examination is one of the most efficacious methods of establishing truth and exposing falsehood. Here, it was not disputed on behalf of the Revenue that the assessee in both cases applied to the Sales Tax Officer for summoning Haji Usmankutty and other wholesale dealers for cross-examination, but his application was turned down by the Sales Tax Officer. This act of the Sales Tax Officer in refusing to summon Haji Usmankutty and other wholesale dealers for cross-examination by the assessee clearly constituted infraction of the right conferred on the assessee by the second part of the proviso and that vitiated the orders of assessment made against the assessee.*

23. On perusal of the entire records, it is evident that Shri B.K. Sinha had inspected the factory of the petitioner

on 19.01.1998 and submitted a report on 24.02.1998 before the authorities with his signature and date was mentioned on the inspection report as 19.01.1998, wherein names of the 42 names of the employees were mentioned in the said inspection report. It is evident from the report at the names of the 24 employees, neither the addresses nor the genders or name of their father has been mentioned. The date of joining of the employees or the wages paid to the employees were also not mentioned in the Inspection Report. Basing on the Inspection Report the Employees Provident Fund authorities had allotted a code making coverage under the Act against the petitioner's factory. It is necessary to reiterate section 7 of the The Employees' Provident Funds And Miscellaneous Provisions Act, 1952:

> *7. Modification of scheme.—(1) The Central Government may, by notification in the Official Gazette, add to 3[amend or vary, either prospectively or retrospectively, the Scheme, the Family Pension Scheme or the Insurance Scheme, as the case may be].*
>
> *(2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of*

the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.]

[7A. Determination of moneys due from employers.—2[(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 3[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 5[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.]"

24. Section 7A(a) sub-clause 1(a) deals with any dispute regarding the applicability of the Act to an establishment in order to decide such dispute.

25. 7A(b) deals with determining of the amount due by an employer which comes under Employees Provident Fund Act.

26. 7A(2) deals with the procedure of the officer conducting inquiry and 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.

27. Sub section 3A of Section 7A directs the employees to attend the inquiry and for filing the documents relied by him and in case if he fails to produce, the officer is entitled to decide the matter on the basis of evidence available there on.

28. It is specific plea of the petitioner that he has not received any notice from the respondent authorities to appear before the Inquiry which is the subject matter of the first round of litigation i.e. CWJC No. 20888 of 2010. Admittedly, the matter was remitted back for fresh adjudication to the Employees Provident Fund Authorities and orders initially passed by the Assistant Commissioner, Employees Provident Fund as well as the order of Appellate Authority were kept in abeyance as per the observations passed in CWJC No. 20888 of 2010 dated 28.03.2012. But on perusal of the docket ordersheet of the Regional Provident Fund Commissioner, in the proceedings under Section 7A of the Employees' Provident

Funds And Miscellaneous Provisions Act, 1952 against the petitioner's company, it is evident that a specific plea was made by the petitioner before the authority for cross examination of 42 employee's as well as Shri B.K. Sinha, the then Enforcement Officer on the basis of whose report, the establishment was covered under the Employees Provident Fund and also further requesting for the report of the squad comprising Shri A.K Sinha and Shri B.N. Chaudhari. But the said plea was rejected and the order was made as follows :-

> *(I) This is a quashi judicial proceeding and the documents on the basis of which coverage has been made has already been supplied to the establishment. Whatever the content the establishment has to be prefer, it can be done by oral as well as written averments. There is no such requirement of any cross examination. Therefore, I disallow the request of the establishment to cross examine the 42 employees and Shri B.K. Sinha, the then E.O.*
>
> *(II) As the squad did not submit its report at all, no question of supply of report arises. The departmental representative stated he needs to go through the original records to submit his deposition. The establishment is directed to be present with the following records on 31.07.2012 at 4 P.M. before the departmental representatives :-*
>
> *(i) Attendance register and salary register from January,1998 to April 2001.*
>
> *(ii) Balance sheet for the relevant years.*
>
> *(iii) Cash book, ledger and voucher*
>
> *The departmental representative is*

directed to file his deposition by 14.08.2012. Next date of hearing is fixed for 22.08.2012 at 12 pm.

29. It is also the specific contention of the Learned counsel for the petitioner that the allotment of the Employees Provident Fund Code is on the basis of the Inspection Report of Shri. B.K. Sinha who noted that there were 42 employees in the factory of the petitioner on the date of inspection.

30. Furthermore, it is contended that inspite of the fact, that the squad visited the factory of the petitioner and made a note of the factual situation of the factory, the squad report has not seen the light o the day.

31. It is also the contention of the learned counsel for the petitioner that inspite of the production of the records before the Regional Provident Fund Commissioner, those documents were not taken into consideration.

32. On perusal of the Orders of the Commissioner, Regional Provident Fund, it is evident that the said order again reflects the report of the Shri B.K. Sinha as well as the proceedings which have been initiated by the Assistant Enforcement Officer. Further it is the specific plea of the respondents that there is no requirement to cross examine Shri B.K. Sinha as he was already examined before the Assistant

Enforcement Officer under Section 7A proceedings.

33. This Court has kept in abeyance the orders of Assistant Enforcement Officer as well as the orders of Appellate Authority and directed to make fresh adjudication, therefore, the contention that earlier Shri B.K.Sinha was examined is not at all tenable, therefore, this Court is of the consideration that the right of the petitioner to cross examine Shri B.K. Sinha has to be accepted.

34. It is pertinent to mention that Section 101 of Indian Evidence Act which reads as under :-

> *"101. Burden of proof. — Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*

35. It is the contention of the Employees Provident Fund that there are more than 19 persons employed in the factory of the petitioner then the burden of proof is upon the Employees Provident Fund Authorities, to prove that there are 42 employees in the said factory as on the date of inspection i.e, on 09.01.1998.

36. Admittedly, the Inspection Report contains

names of 24 persons and unnamed 18 casual workers, therefore, the petitioner is entitled to cross examining those persons if at all the respondent authorities prove that they are employed in the factory of the petitioner.

37. Further, this Court finds that the Commissioner, Regional Provident Fund ought not have rejected the evidence of the petitioner i.e., the Attendance Register. There is no basis for the finding of the Commissioner, Regional Provident Fund Authority while coming to a conclusion that the Attendance Registers have been prepared after conclusion of the inquiry under Section 7A proceedings. No reasoning has been given, in the orders except stating that the document ought to have been produced by the petitioner in the earlier proceedings. Therefore, the impugned order of the Commissioner, Regional Provided Fund, dated 28.01.2013 is liable to be set aside.

38. The Principle of Natural Justice has to be followed and the burden of proof lies on the person whoever ascertains the particular fact. If at all the authorities of Employees Provident Fund contends that there are 42 employees in the petitioner's factory, thus, it is for them to prove the said fact.

39. Learned counsel for the petitioner has also relied on judgment passed by Division Bench dated 16.04.2024 in CWJC No. 9206 of 2023, wherein this Court has held that the petitioner cannot be asked to lead the negative evidence and burden lies on the department. Learned counsel for the petitioner has also relied on judgment passed by Hon'ble Apex Court reported in (2009) 11 SCC 479 (Premchandra Agarwal and anr Vs. U.P. Financial Corp. & Ors.) wherein the Court has held that it is a well-settled principle that once a final order is passed, all the earlier interim orders merges into the final order, and the interim orders cease to exist. In view of the final order passed by the High Court, the impugned interim order and any direction therein have cease to exist.

40. The entire records disclose that Employees Provided Fund Code was allotted to the petitioner basing on the Inspection Report of Shri. B.K. Sinha dated 09.01.1998 signed on 19.01.1998. Except the said report there is no other material before the respondent authorities to show that the petitioner's establishment has employed 42 persons and they were working as on the date of inspection. If at all there are so many employees engaged in the said factory, what made Shri. B.K. Sinha not to mention their complete details in the Inspection

Report as to their residential address or genders etc and as to why the Inspection Report was signed on 19.01.1998 though the inspection was conducted on 09.01.1998.

41. Moreover, the Attendance Registers placed before the authorities clearly disclose that the establishment has engaged 10-12 employees during the said period. Therefore, the Order dated 06.10.1998 of the Commissioner, Regional Provident Fund (Annexure-14), the Order dated 18.10.2004 passed by the Assistant Provident Fund Commissioner, Bihar (Annexure-15), Order dated 23.2.2010 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal (Annexure-16) and order dated 28.1.2013 passed by the Regional Provident Fund Commissioner (C & R), Regional Office, Patna (Annexure-21) are, hereby, set aside.

42. Accordingly, the writ petition is allowed with the aforesaid observation.

43. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.05.2024
Transmission Date	NA