

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 2709 of 2016
Durga Engineering Works
Vs.
Regional PF Commissioner, WB & Ors.

For the Petitioner : Mr. Victor Chatterjee.

For the P.F. Authority : Mr. Mihir Kundu.

Hearing concluded on : 21.08.2025

Judgment on : 11.09.2025

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred challenging an order dated 30th September, 2014 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi in A.T.A. No. 497(15)2004.
2. The petitioner's case is that on and from September, 1998, the petitioner had started depositing the Provident Fund contributions in the sub code number and had also deposited the arrear contributions from 1st April, 1997 in September, 1998 in one go, although the purported sub code number was allotted to the petitioner's establishment only in April, 1998, where it was noted as follows:-

*"2. As prayed for a Sub Code No.WB/CA/417A
is allotted to your establishment for your*

*administrative convenience and to facilitate as arate compliance in respect of your unit at 32, Ram Krishna Samadhi Rd-Cal-54 without prejudice to the average of your establishment under Code No. WB/ 417 and **as such for the purpose of employees provident fund & Miscellaneous provisions Act 1952 and the scheme framed thereunder, the unit noted above shall be treated as a part of paracel of the main establishment.***”

3. The petitioner vide their letter dated 04.05.98 filed their objection to the said letter dated 07.04.1998, stating as follows:-

“.....The said partnership firm, as will appear from the registered deed, started operating w.e.f. 01-04-94.

The partnership firm is engaged in manufacturing of cold drawn bright steel bars in the shape of squares, flats, rounds, hexagons etc. The workmen of the partners are totally new recruits, engaged in the above process. A list of the workmen recruited on and from 1st April, 1994 is annexure 'P' hereto.

Being a newly set up w.e.f. 1st April, 1994 the partnership firm was eligible for exemption for a period of three years from the date as per Section 16(1)(d) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (as it was in 1994) till 31st March, 1997.

It is surprising that your memo, as referred to hereinabove, has clubbed our partnership firm with another establishment and a sub code NO. has been given to us being WB/CA/417A. As per your memo referred to above, our establishment has been shown as a part and parcel of the establishment having Code NO. WB/417, which is M/S. Punjab Engineering Works.

Punjab Engineering Works is totally separate establishment engaged in the manufacturing of oil mill machinery and its spares, which has no relationship with M/S. Durga Engineering Works. Initially M/S. Punjab Engineering Works was a partnership firm with Mr. Satish Kumar Gupta and Mr. Bimal Kumar Gupta as partners. The latter is one of the Partners of M/S. Durga Engineering Works. Mr. Bimal Kumar Gupta disassociated himself from M/S. Punjab Engineering Works and surrendered as a partner and relinquished all his rights in M/S. Punjab Engineering Works and there was a deed of settlement entered by and between Sri Bimal Kumar Gupta and Sri Satish Kumar Gupta by which Sri Bimal kumar Gupta was a retiring partner of Punjab Engineering Works. Presently, Punjab Engineering Works has its factory and workshop at Vill: Nandankanan, Post: Ganganagar, Dist.: 24 Pg.(N). The factory licenses, excise registrations, ESI registration Nos. West Bengal Sales Tax and Central Sales

Tax Nos. of the two firms, namely M/S. Durga Engineering Works and M/S. Punjab Engineering Works are totally different and the partners are also totally different. As such M/S. Durga Engineering Works under no stretch or imagination can be clubbed with M/S. Punjab Engineering Works. The ownership of the two firms are totally different and distinct. The Profit & Loss Accounts are totally different, which we crave leave to refer, if necessary. The Works Manager and Production Supervisor are totally different and there is no supervisory control of either of M/S. Durga Engineering Works and M/S. Punjab Engineering Works on the other.....”

4. In February, 1999, the respondent authorities initiated a proceeding under Section 7A of the said Act for the purpose of determining contributions payable **for the period from 04/1994 to 03/1997** on the ground that the petitioner's establishment is a branch of Punjab Engineering Works.
5. By an order dated 20th September, 2002, the establishment of the petitioner was held to be a partition unit of the already covered establishment, namely, M/s. Punjab Engineering Works. The establishment was directed to comply with the statutory provisions with effect from 1st April, 1994. **No amount was, however, determined by the said order.**

6. Against the aforesaid order dated 20th September, 2002 passed under Section 7A of the said Act, the petitioner had preferred an appeal under Section 71 of the said Act on 11th November, 2002. The said appeal was registered as ATA No.537 (15) 2002.
7. The petitioner states that during the pendency of the aforesaid appeal, a notice dated 5th September, 2003 was issued to the petitioner for the purpose of levying damages under Section 14B of the said Act for the period from 04/1997 to 05/1999.
8. The respondents, however, by an order dated 17th March, 2004 passed order under Section 14B of the said Act; thereby levying damages of Rs. 42,324/ upon the petitioner along with interest under Section 7Q thereof. The said order was received on 20th March, 2004.
9. **It is the case of the petitioner that since February 2003, manufacturing activities of the establishment had stopped and all the erstwhile employees had approached the partners of the petitioner firm to take necessary steps including filling up the statutory forms towards withdrawal of the Provident Fund accumulation standing to the credit of the respective members in the Fund.**
10. Two statutory appeals were filed before the Employees' Provident Fund Appellate Tribunal (i) from an order under Section 7A of the said Act passed in 2002 A.T.A No. 537(15)2002 and (ii) from

an order of damages under Section 14B of the said Act passed in 2004-A.T.A No. 497(15)2004.

- 11.** Both the appeals were listed for hearing on 13th September, 2014, but adjourned to 14th September, 2014 for further hearing. However, the appeals were not heard and got adjourned for 30th September, 2014.
- 12.** On 30th September, 2014, both the appeals were not listed for hearing, as will appear from the cause list of the Employees' Provident Fund Appellate Tribunal.
- 13.** Notwithstanding such non-appearance of the appeals, by an order dated 30th September, 2014, the appeal being A.T.A No. 497(15)2004 was dismissed.
- 14.** The order was received by the petitioner only in December, 2015. Hence, the present writ application challenging the said order dated 30th September, 2014 passed in appeal from an order levying damages under Section 14B of the EPF Act.
- 15.** It is submitted that the said order has been passed without hearing the parties and on a date on which the matter was neither listed and nor heard. As such the petitioner has been severely prejudiced and there has been an abuse of process of law and violation of the principles of natural justice, as the petitioner was not given an opportunity of hearing.

- 16.** Considering the nature of relief prayed for, the records of the Tribunal was called for by this Court. By an affidavit-in-opposition the respondents have denied the case of the petitioner and prayed for dismissal of the writ application.
- 17.** It appears from the records received from the tribunal in respect of the proceedings which has been challenged before this Court and more specifically the order sheets that the tribunal vide an order dated 5th December, 2013 posted the case for disposal of the miscellaneous application on 14.05.2014.
- 18.** It appears from the unsigned order sheet of the tribunal that it is noted in the order dated 14.07.2014 that both the parties were heard and the case was reserved for orders.
- 19.** The order under challenge has been passed on 30.09.2014 wherein the tribunal has noted that both the parties were heard and the appeal was dismissed vide the order dated 30th September, 2014.
- 20.** It further appears from the order dated 2nd July, 2014 that the matter was posted for final hearing on 13.07.2014. There is no order dated 13.07.2014, and as stated by the petitioner, the order dated 14th July, 2014 has been recorded but does not bear the signature of the Presiding Officer.

21. Vide the final order dated 30th September, 2014, the Tribunal rejected the contention of the petitioner herein that the delay had occurred due to heavy financial crisis and non-receipt of fund.

22. The relevant extract of the order under Section 14B of the EPF Act is as follows:-

“.....Whereas the employer in relation to the establishment failed to pay, in time.

(1) P.F. Contribution

(2) Pension Fund Contribution

(3) Insurance Fund Contribution and

(4) Administrative charges as required by law for the period from 04/97 to 05/99.

Summon was issued vide letter No. WB/CAL/Circle:21/WB/417A/CA/Dam/878 dated 05-09-2003 dated 17-10-2003 to the establishment to appear before the Regional Provident Fund Commissioner (Damage) either in person or through an authorized representative on 01.10.2003.

None appeared from the establishment on the date fixed and the case was adjourned to 09-12-2003 On 09-12-2003 Shri Vikas Gupta, Partner of the establishment appeared on behalf of the establishment and his contention is that the establishment could not get the Code number in time which resulted in delayed payments. Even the registration No. given is a sub Code number for which the case has been filed in the EPF Tribunal, New Delhi and filed the copy of the establishment's appeal at the Tribunal, New Delhi letter dated 19-12-2002 stating the file No., letter dated 14-

10-97 regarding request for registration under Provident Fund Act and letter dated 07-04-98 in respect of allotment of Sub-Code number.

In the instant case non allotment of a specific Code number is not a valid excuse for default in payment of contribution and I am supported by Ujwal Transport agency V Union of India 1998 II LLJ 833: 1999 (82) FLR 163:1998 IV LLN 865 (Mad. HC). Non-payment of contribution due to non-allotment of specific Code number is default within meaning of Section 14B and attracts damages. The Act and the Scheme framed under the Act imposed obligation in the employer to make the stipulated payments within the stipulated time.

I have applied my mind and gone through the reasons and submission made before me at the time of hearing. **I find no valid reasons for the belated payment and I consider that the establishment had defaulted in payment for the above period of enquiry.** Failure to make payment within a stipulated time results default in payment as enjoined by the Act. Not only loss caused to the administration is to be made good **also increase in cost of administration** and loss cause to the beneficiaries is to be seen. As such exemplary action should be inflicted upon the establishment so that statutory dues will be remitted in time in future.

Therefore, I, Smt. S.K. Sangma, Regional Provident Fund Commissioner, West Bengal, Sikkim & The Andaman & Nicobar Islands on application of mind to the facts and circumstances of the case and on

perusal of the relevant records consider it to be a fit case to levy damages for the above enquiry period. The amount levied for the belated payment U/S 14B for the inquiry period as given below along with interest u/s 7Q.....”

- 23. It appears from the said order** that the reasons given by the authority passing the order under Section 14B of the EPF Act and the reasons given by the tribunal, in its order under challenge dated 30th September, 2014 **are entirely different.**
- 24. The tribunal rejected** the contention of the petitioner on the ground that the grounds like financial constraints and shortage of raw materials are not considered as grounds of financial constraints and shortage of raw material etc. are not considered mitigating factor in determination of damages under Section 14B of the Act. ***(M/s. Arvind Mills Ltd. v. R.M. Gandhi, 1982 LIC 344 (Guj.DB))***
- 25. On the other hand,** before the authority concerned the petitioner had placed his case that as he could not get the code number in time it resulted in delayed payments. The authority concerned notice/order under Section 14B of the EPF Act held that non-allotment of a specific code number is not a valid reason for delayed payment of contribution.
- 26.** The finding of the authority in this case, (APFC (Circle II) West Bengal), regarding the petitioner being a part of Punjab

Engineering Works (for the benefit under Section 16(1)(d) of the Act) is as follows:-

*“.....And whereas on final of submissions made by the establishment and the department and after going through the relevant records, it is observed that M/S Punjab Engg. Works was functioning as a partnership firm and covered under the Act under Code No. WB/417. It was located at 32. Ramkrishna Samadi Road, Kolkata - 54. By a deed of settlement between the partners, namely: Shri Bimal Kr. Gupta, and Shri Satish Kr. Gupta, both son of Late Lachmandas Gupta, **the firm was dissolved w.e.f***

1.4.94. Partition of the properties of the said firm and division of other assets, properties, liabilities etc. was made between the parties.

After the dissolution of the partnership firm, one of the partner of the dissolved firm, namely Shri Bimal Kr. Gupta with Shri Vikash Gupta Son of Shri Bimal Kr. Gupta and Shri Nikita Gupta Wife of Shri Binay Gupta formed a new partnership firm in the name and style "M/S Durga Engg. Works" and carried on the manufacturing activities in a portion of the premises where M/S Punjab Engg. Works was functioning before, dissolution of partnership.

Before taking any decision in the matter I rely upon some decision of the Hon'ble Court's as narrated below:-

(1) Chandra Bus Service, Thanjarun Vs R.P.F.C. Madras (1986 LLJ 535)

In disposing of the Writ Appeal, the Division Bench held that if partition and allotment of shares of any business is to be taken as amounting to closure of the old business and the sharers are deemed to have started new business with their shares, then the provisions of the Act can be easily defeated by partition of business once in every three (3) years. So long as the business continues as usual, without any change either in the assets or the business, of the establishment under different shareholders should be taken as one continuing establishment.

(2) J.C Vakhasia Vs R.P.F.C. Bombay (1957/LLJ 448 Bom).

The silk mill owned by father and two major sons as partners was closed. Subsequently, the machineries were shown to have been leased to members of the family including even minor Sons and a number of factories were created which were to work in priority for the parent lessor Company. The arrangement was done so that the units could escape the liability to pay contribution under the E.P.F Act. The Bombay High Court held that it was just a paper arrangement to avoid payment of contributions under the Act.

(3) Lakshmi Rattan Engg. Works Vs R.P.F.C Punjab (1966, ILLJ (SC) 741).

Hon'ble Supreme Court observed that A mere change or ownership, change of location and even line of business does not affect the continuity of the establishment. The mere fact that instead of manufacturing diesel engines, the new employer

manufactured textile Machinery parts also does not make any difference.

(4) Sayaji Mills Ltd. Vs R.P.F.C (1985 ILLJ 240, 241 (SC))

*Hon'ble Supreme Court observed that mere investment of additional Capital or effecting repairs to the existing machineries before factory has been restarted, the diversification of lines of production or **change of ownership** would not amount to the establishment of a new factory, attracting exemption U/s 16(1)(d) of the Act for a fresh period of three years.*

*Now, I, N. O. Chatterjee, A.P.F.C, in exercise to the power conferred upon me U/S 7 A of the Act, and having gone through the records, submissions made and relying upon the above judgments of Hon'ble Court, finds that the establishment is a partitioned unit of the covered establishment namely M/S Punjab Engg. Works and **is not entitled to any infancy protection U/S 16(1)(d) of the Act.....**"*

27. Section 16(1)(d) of the EPF Act (now omitted) is as follows:-

"Section 16(1)(d) Omitted by Act 10 of 1998, S. 5 **(w.e.f. 22-9-1997)**. Prior to omission cl. (d) read:
"(d) to any other establishment newly set up, until the expiry of a period of three years from the date on which such establishment is, or has been, set up."

28. From the said findings, it appears that the authority did not consider the **case of the petitioner that:-**

- a) The M/s. Durga Engineering Works, the petitioner herein is engaged in manufacturing of cold drawn

bright steel bars in the shape of squares, flats, rounds, hexagons etc. The workmen of the partners are totally new recruits, engaged in the above process.

Being a newly set up w.e.f. 1st April, 1994 the partnership firm was eligible for exemption for a period of three years from the date as per Section 16(1)(d) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (as it was in 1994) till 31st March, 1997.

b) Punjab Engineering Works is totally separate establishment engaged in the manufacturing of oil mill machinery and its spares, which has no relationship with M/S. Durga Engineering Works.

29. It appears that "**M/s Durga Engineering Works**" located in Kolkata, West Bengal, engages in manufacturing and supplying various engineering goods and services, including manufacturing of industrial machinery like colloid mills, fluid bed dryers, and dies punches for industries like pharmaceuticals and food processing, as well as supply and trade of steel products such as bright bars and flats.

30. Whereas M/s. Punjab Engineering Works is an engineering firm that designs, manufactures, and supplies specialized machinery and equipment for the oil mill and chemical industries, focusing

on oil extraction, grinding, and processing equipment like oil expellers, screw conveyors, and grinding machines. The nature of work involves manufacturing, sales, and providing services, with a strong emphasis on quality, innovation, and customer satisfaction.

- 31. Both M/s. Durga Engineering Works and M/s. Punjab Engineering Works are fully functional** and the products manufactured by them are different in nature and not a single unit nor part of it.
- 32.** As such, it appears that the judgments relied upon by the authority concerned in it's order are not applicable to the present case, **as the two units are totally independent of each other and both are functional.**
- 33.** Only one of the partners has surrendered his partnership in M/s. Punjab Engineering Works on 16.04.94 and joined M/s. Durga Engineering Works on 3.5.94, but both the firms are separate establishments and both functional.
- 34.** M/s. Durga Engineering Works is a new separate entity, since 3.5.94. The two units have their own machineries, manufacture different products and are still functioning independently.

- 35. As such the petitioner is entitled to the benefit of the provision of Section 16(1)(d) of the Act on and from 3.5.94 till March 1997 (the total period of alleged default). The provision under Section 16(1)(d) of the Act being in force till 22.09.1997.**
- 36.** The order of the APFC (Circle II) West Bengal dated 19/20.09.2002 (under Section 7A of the EPF Act) being not in accordance with law, is liable to be set aside being consequently the orders under Section 14B and 7Q of the Act passed in 2004-ATA No. 497(15) 2004 are also liable to be set aside.
- 37.** The order dated 30.09.2014 of the EPF, Appellate Tribunal, New Delhi in ATA No. 497(15)2004 is without any independent findings and has been passed on general observations.
- 38. Accordingly, as this Court holds that the petitioner is entitled to the benefit under Section 16(1)(d) of the Act (then in force), the orders under Sections 7A, 14B and 7Q of the Act, being not in accordance with law are set aside.**
- 39. And finally the order dated 30th September, 2014 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi in ATA NO. 497(15)2004, also being not in accordance with law is also set aside.**

40. The writ petition is allowed.

41. The petitioner is granted leave to withdraw the amount deposited, in compliance of this Court's order dated 16.03.16 along with accrued interest, from the office of the learned Registrar General, on compliance of all formalities.

42. All connected application, if any, stands disposed of.

43. Interim order, if any, stands vacated.

44. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]