IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 23629 of 2009

Employees Provident Fund Organization & Anr.
Vs
Employees Provident Fund Appellate Tribunal & Anr.

For the Petitioners	:	Ms. Aparna Banerjee.
For the Respondent No. 2	:	Mr. Soumya Majumder, Sr. Adv. Mr. Ranajit Talukdar, Ms. Sanjukta Dutta.
Hearing concluded on	:	07.08.2025
Judgment on	:	02.09.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging the order dated 25.08.2007 passed by the respondent no.1, Employees Provident Fund Appellate Tribunal, New Delhi.

2. The petitioner/EPFO's case in short is that the respondent no.2 is a company incorporated under the Companies Act, 1956 and its office is at 30, B.T. Road, Khardah, P.O. Sukchar, District-North 24-Parganas, West Bengal, Pin Code-743179.

3. The establishment was covered under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 and two provident fund **Code Numbers being WB/15443 and WB/3405 were issued to two units namely M/s. Electro Steel Castings Limited (Steel Foundry Works) and M/s. Electrosteel Castings Limited (Spun pipe works) respectively on administrative grounds.**

4. It is the further case of the petitioner/EPFO that the respondent no. 2 failed to extend it's membership under the said Act to their job trainees/junior trainees/canteen staffs/security staffs and other employees of its units, and so a squad of Enforcement Officers of the petitioners were deputed to detect evasion of membership.

5. The squad of Enforcement Officers of the petitioner no. 1 inspected the office of the respondent no. 2 on 17.06.1999. The respondent no. 2 failed to produce any document/papers before the squad of enforcement officers of the petitioner no. 1 for the purpose of inspection.

6. The squad of Enforcement Officer of the petitioner no. 1 submitted a Part-II inspection report on 17.06.1999 to the Managing Director of the respondent no. 2 directing them to regularize the anomalies by allowing membership to all the employees irrespective of the nature of employment i.e. contract labour, temporary or casual labour and daily rated employees from the date of joining the respondent no. 2 with effect from 01.11.1990.

7. The squad of Enforcement Officers of the petitioner no. 1 again visited the respondent no. 2 on 22.09.2000 and 16.10.2000 with prior intimation to the respondent no. 2 for the purpose of verifying the relevant records/documents in connection with the evasion of Provident Fund Membership. The inspection report dated 16.10.2000 stated that the employees employed in the respondent no. 2, establishment have not been allowed provident fund benefits.

8. On disposal of the proceedings under Section 7A of the Act, the respondent no. 2/company filed a writ petition being W.P. No. 17155(W) of 2002 challenging the order dated 22.11.2002, wherein the Court directed the Appellate Tribunal to proceed in accordance with law, on an appeal being preferred by the company. The company accordingly filed an appeal before the EPF Appellate Tribunal, New Delhi. The appeal was allowed in part by the Tribunal vide the order under challenge dated 25th August, 2007. Hence, the writ application by the EPFA.

9. The tribunal vide the order under challenge on considering the materials on record allowed the appeal in part and the order of the Assistant Provident Fund Commissioner, Barrackpore under Section 7A of the Act was set aside except to the extent that the benefits were confirmed in respect of the canteen workers.

10. The Provident Fund Organization being aggrieved with the said order has preferred the writ application on the ground that the company is liable to pay the dues in respect of the casual and contractual workers also and it is submitted that the order of the authority under Section 7A of the Act being in accordance with law is to be restored.

11. Both parties have filed their written notes of argument along with the judgments relied upon.

12. The affidavits are on record.

13. The petitioner has relied upon the following judgments:-

(i) *Shri Vishal Printers Ltd. vs. Regional Provident Fund Commissioner, 2019 SCC OnLine SC 1179, Para 20, 26 and 27;*

(ii) *M/s. L.N. Gadodia vs. RPFC, 2011 (13) SCC 517, Para 16 and 23;*

(iii) *Jayakar Rao N. Shetty vs. RPFC & Ors., 1993 (II) LLJ 78 Bom, Para 10;*

(iv) *RPFC vs. Shibu Metal Works, AIR 1965 SC 1076;*

These judgments are not applicable to the facts and circumstances in the present case.

14. On the other hand, the respondent no. 2 company has relied upon the following judgments:-

(i) *Gurbir Kaur vs. RPFC, EPFO & Ors., (2006) 1 CHN 547, Para 26 to 28;*

(ii) *Satnam Singh Ahluwalia vs. The RPFC EPFO & Ors., 2007 SCC OnLine Cal 816, (Para 9,10);*

(iii) *Mohan Lal vs. Anandibai & Ors., AIR 1971 SC 2177;*

(iv) *Syed Yakoob vs. K.S. Radhakrishnan & Ors., AIR 1964 SC 477;*

(v) *B. Venkatamuni vs. C.J. Ayodhya Ram Singh & Ors., (2006) 13 SCC 449;*

(vi) *Lanco Anpara Power Limited vs. State of Uttar Pradesh & Ors., (2016) 10 SCC 329; the following Paras being relevant are reproduced here:-*

> ***"37.*** *We now advert to the core issue touching upon the construction of Section 2(1)(d) of the BOCW Act. The argument of the appellants is that language thereof is unambiguous and literal construction is to be accorded to find the legislative intent. To our mind, this submission is of no avail. Section 2(1)(d) of the BOCW Act dealing with the building or construction work is in*

three parts. In the first part, different activities are mentioned which are to be covered by the said expression, namely, construction, alterations, repairs, maintenance or demolition. Second part of the definition is aimed at those buildings or works in relation to which the aforesaid activities are carried out. The third part of the definition contains exclusion clause by stipulating that it does not include "any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), applies". Thus, first part of the definition contains the nature of activity; second part contains the subject-matter in relation to which the activity is carried out and ***the third part excludes those building or other construction work to which the provisions of the Factories Act or the Mines Act apply.***

38. *It is not in dispute that construction of the projects of the appellants is covered by the definition of "building or other construction work" as it satisfies first two elements of the definition pointed out above. In order to see whether exclusion clause applies, we need to interpret the words "but does not include any building or other construction work to which the provisions of the Factories Act … apply" (emphasis supplied). The question is as to whether the provisions of the Factories Act apply to the construction of building/project of the appellants. We are of the firm opinion that they do not apply.* ***The provisions of the Factories Act would "apply" only when the manufacturing process starts for which the building/project is being constructed and not to the activity of construction of the project.*** *That is how the exclusion clause is to be interpreted and that would be the plain meaning of the said clause……………."*

46. *We are left to deal with the argument of the appellants that while granting permission under the Factories Act, various conditions are imposed which the appellants are required to fulfil and these conditions are almost the same which are contained in the BOCW Act. We are not convinced with this submission either.* ***It is already held that provisions of the Factories Act are not applicable to these construction workers.*** *Registration under the Factories Act becomes necessary in view of the provisions contained in Section 6 of the said Act as this section requires taking of approval and registration of factories even at preparatory stage i.e. at the stage when the premises where factory is to operate has to ensure that construction will be done in such a manner that it takes care of safety measures, etc. which*

> *are provided in the Factories Act. This means to ensure that construction is carried out in such a manner that provisions in the Factories Act to ensure health, safety and provisions relating to hazardous process as well as welfare measures are taken care of.* ***It is for this reason that even after the building is completed before it is occupied, notice under Section 7 is to be given by the occupier to the Chief Inspector of Factories so that a necessary inspection is carried out to verify that all such measures are in place. Therefore, when the permissions for construction of factories is given, the purpose is altogether different.”***

15. It is the contention of the respondent company that the order passed in the proceeding under Section 7A of the Act is wholly unreasoned and the case of the company was not considered by the officer. The total order is based on the calculation of the Enforcement Officer which, it is submitted is without any basis.

16. It is further stated that the petitioner has relied upon the ESI documents of employees who were engaged in the regular work of the company while claiming that the **casual and workers under contractors who were engaged for putting up of the factory were also entitled to such benefits and dues.**

17. It is further submitted by the respondent company that the order passed by the EPFAT considers each of the three separate categories of persons referred to in the 7A order. It gives reason as to why the canteen employees should be considered as coverable employees; and why the other two classes should not be deemed to be ‘employees’ within the meaning of the EPF and MP Act, 1952. The order of the EPFAT holds the canteen employees to be the employees of the Company for the purpose of coverage under the Act, but the other two classes have been justifiably held outside the scope of the Act. It is further argued that the order under Section 7A cannot be sustained for the following reasons:-

(a) Non furnishing of copies of reports of the Enforcement Officers; although relied upon in the order.

(b) Unreasoned and being violative of the principles of natural justice.

18. On hearing the learned counsels of the parties and on perusal of the materials on record, it appears that the APFC, Barrackpore in its order under Section 7A of the EPF Act, held as follows:-

> ***"………….the management failed to produce salary/wages Register in respect of employees employed directly or through contractor before the squad of Enforcement Officers at the time of inspection.*** *As no alternative the dues were calculated on the basis of available records i.e. Form 7, half yearly returns, Challans of the ESIC Act, 1948.*
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> *The management has paid to their contractors* ***as Labour charge to meet the labour charges for their Job/Works.*** *Moreover, the management has paid the E.S.I. contribution in respect of the contractors employees and also submitted the respective returns in their under the ESCI code no. of M/s. Electro Steel Castings Ltd.*
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> *The squad of Enforcement Officers visited the establishment several times and reported non-cooperation of the establishment. At the time of their first inspection collected information regarding payment of wages and contribution in respect of the employees employed in M/s Electro Steel Castings Ltd. for the period 10/1992 to 08/2000.*
>
> *On careful consideration of the contention, I reject the contention of the establishment and accept the report of the*

Enforcement Officers on the ground that the establishment failed to discharge its responsibility cast upon them u/p 36 of the E.P.F. Scheme and also on the ground that they did not rebut any time when the dues statement was supplied to the establishment.

As per the submissions of the squad of Enforcement Officer, the dues were calculated on the basis of available records, of ESIC (i.e. Form No.-7 and Form No.-6 and paid up Challans) *and EPF records i.e. F/12A (R) and Form No. 6A (R), Challans* ***which was produced by the establishment at the time of inspection……"***

19. The authority while deciding the proceedings under Section 7A of the Act in favour of the petitioner herein also held that the respondent no. 2/company is liable to pay interest under Section 7A of the Act for belated payment of dues.

20. The learned counsel for the petitioner/EPFO was asked to place the relevant report of the Enforcement Officer which was considered by the Assistant Provident Fund Commissioner while considering the 7A proceedings. The petitioner/EPFO did not file any such copies before the Court, but has brought the notice of this Court to the annexures which are part of the affidavit-in-opposition filed by the respondent no. 2/ company.

21. It appears that the inspection of the respondent no. 2 establishment was conducted in the year 1999 and continued till the year 2000.

22. Learned counsel for the petitioner has relied upon the inspection reports which are annexed to the affidavit-in-opposition. **The final report being at page 57 of the affidavit-in-opposition.**

23. It appears that there is **no complete report** which was submitted on inspection by the Enforcement Squad. The inspection reports placed before this Court shows that the Enforcement Squad had visited the establishment and requested for the said documents. **As to which report the authorized officer has referred to, in the order passed under Section 7A of the EPF Act is not clear. There does not appear to be any proper inspection report on record.**

24. It was further held by the authorized officer that **as per the statement of the Squad of the Enforcement Officer,** the dues were calculated on the basis of the ESIC/EPF records and also other documents which were produced by the establishment at the time of inspection. **As such, the contention in the inspection report-II and other reports that the establishment did not provide any document is not substantiated.**

25. **The learned Tribunal in its well reasoned order held,** that the dues in the present case was assessed for the period from October 1992 to August 2000 in respect of casual employees, job trainees, contractor workers and canteen employees.

26. The learned Tribunal considering the definition of the word **'employee'** as defined under Section 2(f) of the Act and relying upon several judgments of the Supreme Court, held as follows:-

> *"7. It seen that the principal employer or the employer, as the case may be, is liable for PF dues on the ground that the labour is employed for or on behalf of the principal employer or the employer. In relation to contract labour the principal employer is the person for whom or on whose behalf any contract labour is engaged in any establishment. The Act does not define an independent contractor and also does not prevent an independent contractor from being the*

principal employer in relation to contract labour. Therefore, it will be a question of fact in each case as who is the person for whom or on whose behalf contract labour is engaged. ***If such a contractor who is referred to as an independent contractor employs labour for himself the liability will attach to him as principal employer and not to the manufacturer.*** *There is no restriction on the right of the manufacturer to carry on business.* ***They are liable under the Act for contract labour employed for or on behalf of them.***

8. In the last type of cases, as categorized by the Hon'ble Supreme Court of India in the case of PM Patel (supra) the contractor is a separate and independent entity. ***The workers engaged by such independent contractor are not discharging any work in connection with the affairs of the principal employer.*** *Although the principal employer is having a little bit control over the manner of discharging such duties by the workers, but such control can not be construed to establish the relationship of master and servant between the principal employer and the workers of the contractor. The Hon'ble Supreme Court of India in the case of Silver Jubilee Tailoring House Vs Chief Inspector of Shops and Establishments, Hyderabad (1973-II-LLJ-495) had also pointed out that the test of "control" was no longer an exclusive test. There could be no magic formula for all cases and in fact the court must perform a balancing operation weighing up the factors which observe in one direction and balancing them against those pointed in the opposite direction. The control test is, therefore, not always decisive*. ***In the instant matter, there is neither any enquiry by the Learned APFC, Barrackpore nor any finding of fact that the appellant any control or authority in selection or appointment of these workers and that such workers were engaged in connection with the affairs of the appellant establishment or that the appellant was having any control on the work discharged by those workers. Therefore, the appellant is not answerable for the workers engaged by the contractors and therefore such workers engaged by the contractors are falling within the third category of***

the workers as observed by the Hon'ble Supreme Court of India in the case of P.M. Patel & Sons (supra).

10. ....It is not disputed by the appellant that the canteen is established in the appellant establishment for the workers engaged by it. Outsiders are not permitted to avail the canteen facilities. This issues have to be seen in the light of the definition of the word 'employee' as defined under Section 2 (f) of the Act. As discussed in the preceding paragraphs, ***to bring an employee within the definition of the word 'employee' under the Act, it is necessary that such employees must discharge the functions in connection with the affairs of the employer.*** *Reliance in this regard may be placed on the Hon'ble Supreme Court of India decision in the case of M/s. Royal Talkies, Hyderabad Vs. ESIC (AIR 1978 SC 1478). In this case, the owner of a cinema theater allotted a site under a contract to a contractor to run a cycle stand. The contractor in turn employed certain number of employee for the said cycle stand. On a dispute raised relating to conferment of PF benefits to such employees, Hon'ble Supreme Court of India has observed that the employees engaged by the contractor for the purpose of cycle stand are eligible for the PF benefits since such employees are discharging their duties in connection with the affairs of the cinema.* ***Accordingly, in this case the employees working for the canteen are, of course engaged by the contractor, yet such employees are discharging their duties in connection with the affairs of the appellant establishment. Therefore, the canteen employees are eligible for the PF benefits and the appellant is answerable to the canteen employees for PF benefits.............***

Sd/-

Presiding Officer, EPFAT"

27. Section 1(3) of the EPF Act lays down:-

"Section 1(3) *Subject to the provisions contained in section 16, it applies—*

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which [twenty] or more persons are employed, and

(b) to any other establishment employing [twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than [twenty] as may be specified in the notification.]"

28. Schedule 1 of the Act relates to such industries which are engaged in the **manufacture** of the goods as mentioned therein and applies only to such industries which is involved in manufacturing.

29. Section 2(f) of the EPF Act lays down:-

"Section 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, or under the standing orders of the establishment;]"

30. Section 2(l) of the Factories Act lays down:-

"Section 2(l) *"worker" means a person employed, directly or by or through any agency (including a contractor) with or* *without the knowledge of the principal employer, whether for remuneration or not,* ***in any manufacturing process,*** *or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union;"*

31. Section 2(1)(d) of the Building and Other Construction Works (Regulation of Employment and Condition of Service) Act, 1996 lays down:-

> ***"Section 2(1)(d)*** *"building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aquaducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification* ***but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), apply;"***

32. In the present case:-

(i) The establishments are manufacturing units registered under the Factories Act.

(ii) As such Section 2(1)(d) of the BOCW Act will only apply to the establishments in this case and construction workers are not covered by the Factories Act. Welfare measures are specifically provided for such workers under the BOCW Act, which the petitioners have to agitate before the appropriate authorities ***(Lanco Anpara Power Ltd vs State of Uttar Pradesh & Ors. (Supra)).***

33. Thus, the tribunal findings in the award under challenge, being in accordance with law, requires no interference.

34. WPA 23629 of 2009 is thus dismissed.

35. There will be no order as to costs.

36. All connected applications, if any, stand disposed of.

37. Interim order, if any, stands vacated.

38. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)