Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7497 OF 2025

Abbot Healthcare Pvt. Ltd. .. Petitioner
Versus
The Regional Provident Fund Commissioner (I) .. Respondent

....

- Mr. Manoj Gujar a/w Mr. Pradeep Kumar i/b C.R. Naidu & Co., Advocate for Petitioner.
- Ms. Payoja Gandhi a/w Ms. Devangi Manjrekar, Advocate for Respondent.

....

CORAM : MILIND N. JADHAV, J.
DATE : NOVEMBER 10, 2025.

P.C.:

1. Heard Mr. Gujar, learned Advocate for Petitioner and Ms. Gandhi, learned Advocate for Respondent.

2. Present Petition is filed challenging impugned Orders dated 07.05.2025, 20.05.2025 and 05.06.2025 passed by Regional Provident Fund Commissioner – I, Thane in Diary No. 35 Of 2021. Impugned Orders are appended at Exhibit 'A' page 26, Exhibit 'A-1' page 45 and Exhibit 'V' page 170 respectively in Petition.

3. Briefly stated, Petitioner is Private Limited Company incorporated under Company Act, 1956 and registered with Registrar of Companies. Respondent is Regional Provident Fund Commissioner - I, Thane administering provisions of Employees Provident Fund and

Miscellaneous Provisions Act, 1952 (for short "**EPF Act,1952**"). In 2010, four employees of Petitioner - Company filed complaint with Enforcement Officer (for short "**EO**") attached to Respondent's Office and on 17.12.2020, EO visited Petitioner's offices and met two of Petitioner's officers who gave him inspection of various documents as per request. On 14.01.2021, Petitioner dispatched Form 3A in respect of aggrieved employees for the periods of March 2016 - April 2019.

3.1. On 08.02.2021, EO once again visited Petitioner's offices and requested for salary / wage register for all employees for period of April 2016 to March 2019 as well as Ledgers pertaining to salary, wages, bonus, staff welfare expenses, advertising, publicity and sales promotion, freight and forwarding charges and Miscellaneous expenses for the period April 2016 to January 2021 which was dispatched by Petitioner on 05.03.2021. On 11.03.2021, Respondent forwarded report of EO and requested for explanation with supporting documents.

3.2. On 01.04.2021, Respondent initiated proceedings under Section 7A of EPF Act, 1952 bearing Diary No. 35 of 2021 and issued summons to Petitioner. On 08.04.2021, Petitioner submitted aforementioned explanation with relevant documents. During pendency of proceedings, Petitioner filed Miscellaneous Applications being (i) Misc. Application No. 1 of 2022 praying for speaking order to be passed, (ii) Misc. Application No. 2 of 2022 praying for finding that Petitioner produced all relevant records and documents, (iii) Misc. Application No.3 of 2022 seeking order stating that no contributions are due and payable with respect to workmen and office staff. On 28.12.2022, EO filed Deposition Statement however since the matter did not proceed further, on 20.02.2023, Petitioner filed Misc. Application No.6 of 2023 seeking permission to cross examine EO which was followed by another Miscellaneous Application filed on 25.04.2023 being Misc. Application No. 7 of 2023 seeking same relief.

3.3. On 02.05.2024, Respondent heard aforesaid Miscellaneous Applications and passed Order dated 04.10.2024 allowing Miscellaneous Application Nos. 1 to 5. On 16.05.2025, Petitioner received email from Respondent stating that hearing was fixed later in the afternoon on same date hence Respondent requested for an adjournment which was granted and hearing was fixed on 20.05.2025. On 20.05.2025, during hearing, Petitioner informed Respondent that order on Miscellaneous Application Nos.6 and 7 was pending when Respondent stated that Order was passed on 07.05.2025 dismissing both Miscellaneous Applications. Petitioner requested for a copy of Order dated 07.05.2025 as they were unaware of the same and Respondent directed his Office to provide the same to Petitioner on 20.05.2025 however when Petitioner sought adjournment to peruse and challenge the same, his request was denied and Respondent disposed of the proceedings on that day itself. On 05.06.2025, Respondent passed final Order and held that Petitioner was to pay Rs.6,04,67,266/- is Provident Fund dues. Being aggrieved by twin Orders dated 07.05.2025 and 05.06.2025, Petitioner filed present Petition.

4. Mr. Gujar, learned Advocate for Petitioner would submit Respondent has not only abused the due process of law but also shown blatant disregard for the principles of natural justice by not affording Petitioner a chance to cross examine EO. He would submit that impugned Orders are bad in law, passed without application of mind, non est and deserve to be set aside. He would submit that, Petitioner is entitled to cross examine EO basis his report, Deposition Statement and other documents that he relied upon in order to bring about a fair and just determination of the matter. He would submit that Respondent acted with undue haste and in violation of settled principles of law by passing final Order dated 05.06.2025 which manifested injustice and procedural irregularities.

4.1. He would submit that Respondent solely relied upon EO's Deposition Statement and Inspection Report to determine amount of Rs.6,04,67,266/-. He would submit that when dues are determined basis report or deposition of any Officer then, Petitioner can test veracity and methodology of such report in cross examination. He would submit that denial of right to cross examine any witness or person would lead to serious defects in determination of present case. He would submit that depriving of any party their right of cross examination is an absolute violation of the principles of natural justice and denial of substantive right to to cross examine witness in quasi judicial enquiries.

4.2. He would submit that, EO wrongly quantified Provident Fund dues by using arbitrary and illegal quantification metric which led to his calculation running contrary to definition of "Basic Wages" under EPF Act, 1952. He would submit that EO derived wages of employees by adding various allowances including Special Allowance, Other allowances, Medical Allowances and Education allowances to basic wages and dearness allowances hence such computation is wrong and deserves to be reversed. He would submit that Petitioner paid Special Allowances to certain employees to defray expenses which arise due to nature of their duties. He would submit that Medical and Education expenses were mere reimbursement of expenses and allowances that are contingent, variable or linked to reimbursement do not fall under the definition of "Basic Wages" as enumerated under EPF Act, 1952. He would submit that findings in EO's reports were contrary to Employees Provident Fund Organization Circular dated 16.05.1964 which clearly states that "Special Allowances" do not fall into the definition of "Basic Wages" to determine.

4.3. He would submit that during hearing on 20.05.2025, Petitioner sought adjournment to merely peruse Order dated 07.05.2025 and appeal the same however Respondent did not consider this submission and disposed of the matter without even affording opportunity to Petitioner to prepare final arguments or orally argue their case hence final Order dated 05.06.2025 was passed with necessary haste in violation to established procedure of law. He would submit that Respondent did not consider prejudice caused to Petitioner by denying right of cross examination, presentation of final arguments and appeal of Order dated 07.05.2025 and blindly passed final Order dated 07.05.2025 without proper hearing to adjudicate the case. He would submit that even quasi – judicial officers are bound by principles of natural justice and by Civil Procedure Code, 1908 hence reasonable opportunity ought to have been given to Petitioner to examine witness produced by Respondent and failure to allow cross examination of Respondent's witness would vitiate entire proceedings. He would urge me to allow present Petition, quash Orders dated 07.05.2025, 20.05.2025 and 05.06.2025, direct Respondent to allow Petitioner to cross examine EO and pass appropriate order after hearing Petitioner.

4.4. In support of his above submissions he has referred to and relied upon the following decisions of the Supreme Court and this Court to contend that the impugned jdugement decserved to be upheld in view of the ratio in the following cases:-

(i) ***Food Corporation of India V/s. Provident Fund Commission of India[1] and***

(ii) ***Sarah Exim Private Limited V/s. The Assistant Provident Fund Commissioner[2]***

5. Ms. Payoja Gandhi, learned Advocate appearing for Respondent would submit that impugned Orders are correct, in accordance with principles of natural justice, tenable in law and deserve to be upheld. She would submit that Respondent duly followed principles of natural justice while adjudicating impugned proceeding and impugned orders were passed after duly considering all documents submitted by Petitioner as well as oral evidence given by both parties. She would submit that Respondent afforded numerous opportunities to Petitioner to file documents and present oral arguments and that proceedings have extended over four years hence Respondent disposed of proceedings expeditiously by delivering well reasoned speaking orders after due consideration of all material on record. She would submit that impugned proceeding was pending for over a period of 4 years due to repeated and numerous adjournments sought by Petitioner and hence Respondent passed the impugned Orders dated 07.05.2025 and 05.06.205 expeditiously and the same cannot be equated with haste as claimed by Petitioner.

1 (1990) 1 SCC 68
2 Writ Petition (St.)No. 97150 of 2020 decided on 13.01.2021

5.1. She would submit that Respondent exercised due precaution and concluded the proceedings only after all documents, submissions and applications were filed by Petitioner and the same were duly considered while passing the impugned orders. Hence proceedings in Diary No. 35/2021 was disposed of only after careful consideration of all material on record and expeditiously with regard to interest of workmen and employees so that they do no suffer for a prolonged period of time. She would submit that during hearing on 20.05.2025, Respondent did not grant adjournment to Petitioner on the ground that no new or substantive evidence was to be introduced to decide the matter, hence to prevent further delay in determination of dues and since impugned proceedings were pending for last four years, it would the defeat purpose of the EPF Act, Respondent disposed of the proceedings and passed final order dated 05.06.2025.

5.2. She would submit that Petitioner cannot seek cross examination of the EO as he was not examined as witness in the proceedings by the department and that prior to passing Order dated 07.05.2025, EO had already left his position and hence he is exempted from cross examination. She would submit that Deposition Statement submitted by EO is a matter of legal right and procedure in proceedings under Section 7A of EPF Act, 1952. She would submit that EO only filed his Deposition Statement and was not examined by Respondent, hence he cannot be cross-examined by Petitioner and his

Deposition Statement cannot be equated to an Affidavit-in-lieu of Examination-in-chief. She would submit that EO's duties were merely to peruse the documents submitted to him by the establishment and submit report computing total amount payable by the establishment, hence his role is limited to a functionary to analyse record and thus EO cannot be subjected to cross examination under Section 142 and 143 of the Bharatiya Sakshya Adhiniyam, 2023. She would submit that when EO is neither a jurisdictional inspector nor authorized representative of the department after his transfer, he cannot be called for cross examination even if he / she was a witness in the proceedings. She would submit that EO cannot represent the department in a case post his transfer or superannuation.

5.3. She would submit that Petitioner illegally bifurcated employees' salaries into various allowances such as Special Allowance, Medical Allowances, Education allowances and other allowances in order to reduce liability towards Employees' Provident Fund. She would submit Petitioner only made contribution towards Employees' Provident Fund from basic wages and for some employees deductions were on amount less than statutory wage limit of Rs.15,000/- despite their gross wages being more than the statutory limit. She would submit that Respondent assessed outstanding provident fund payable to Petitioner by restricting salaries up to statutory limit of Rs.15,000/- per month by taking basic wages, dearness allowances, special allowance, other allowance, medical allowance and education allowances into consideration for calculation as components of basic salary, hence Respondent issued Show Cause Notice and summons to Petitioner in order to determine contribution payable on total salary including allowances. She would submit that salary and allowances paid to unionized employees are fixed on the principle of "industry – cum region" however such principle is irrelevant to determine Provident Fund dues.

5.4. She would submit that Petitioner ought to have deducted Provident Fund on the basis all allowances paid to employees and not only on the basis of basic wages. She would submit that, basis Petitioner's reply, Respondent directed fresh calculation of Provident Fund dues payable where certain allowances such as field allowance, travel allowance, conveyance and sales incentive and miscellaneous allowances which were not paid to all employees and hence fresh calculation of dues payable amounted to Rs.6,04,67,266/- for the period March 2017 to February 2019.

5.5. She would submit that despite Respondent's requests, Petitioner failed to provide copies of salary and wage sheets to Respondent which hampered exact quantification of dues, hence Show Cause Notice dated 11.03.2021 was issued to Petitioner. She would submit that Petitioner failed to substantially explain why contribution was paid only on the basis of basic salary excluding the various allowances and since Petitioner did not provide any satisfactory response thereto, Respondent was constrained to issue Show Cause Notice dated 01.04.2021 to Petitioner and initiate proceedings under Section 7A EPF Act, 1952.

5.6. She would submit that circulars dated 15.05.1964, 28.08.2019 and 14.02.2020 circulars are mere administrative guidelines to facilitate working of Employees Provident Fund Corporation and cannot dilute provisions of EPF Act 1952 and established principles of law. She would submit that it is trite law that any and all allowances which are paid to employees form a part of basic wages to determine provident fund contribution. She would urge me to dismiss present Petition and uphold impugned Orders dated 07.05.2025, 20.05.2025 and 06.06.2025.

5.7. In support of her above submissions she has referred to and relied upon the following decisions of the Supreme Court and this Court to contend that the impugned Orders deserved to be dismissed in view of the ratio in the following cases:-

(i) ***Associated Cement Co. Ltd. V/s. Keshavanand*** [3]

(ii) ***Management of Reynolds Pens India Private Limited V/s The Regional Provident Fund Commissioner – II and Ors.***[4]

3 AIR 1998 SC 596

4 Writ Petition No. 15823 of 2010 decided on 06.06.2011

(iii) ***West Bengal V/s. Vivekananda Vidya Mandir and Others.***[5]

6. I have heard Mr. Gujar learned Advocate for Petitioner and Ms. Gandhi, learned Advocate for Respondent and with their able assistance perused the record of the case. Submissions made by learned Advocates at the bar have received due consideration of the Court.

7. At the outset, controversy raised in present Petition is whether cross examination of EO of Employees Provident Fund Organization ought to be conducted in quasi - judicial proceedings under EPF Act,1952? Admittedly, Petitioner registered itself with Employees Provident Fund Organization and regularly contributes portion of employees salary towards Provident Fund. It is seen that on the basis of complaints filed by four employees of Petitioner, Employees Provident Fund Organization, Thane South (for short "**Department**") deputed EO to investigate complaints, collect documentary evidence, prepare report and submit the same to Department in order to determine if Petitioner failed in its statutory duty to contribute appropriate amount of Provident Fund.

8. It is seen that EO collected relevant documentary evidence from Petitioner with Petitioner's co-operation and submitted his report

5 Civil Appeal Nos. 6221 of 2011, 3954-34966 of 2013 decided on 28.02.2019

concluding that Petitioner was in default of Provident Fund dues amounting to Rs.6,064,67,266/- and Petitioner was asked to explain the same. It is seen that Petitioner forwarded its explanation to Respondent after one month however in the interregnum, Respondent issued summons to Petitioner and initiated proceedings under Section 7A of EPF Act, 1952 against Petitioner bearing Diary Number 35 of 2021. It is seen that during course of proceedings Petitioner filed various Miscellaneous Applications seeking direction to Respondent to decided the matter expeditiously and pending those Applications, EO filed his Deposition Statement in support of his report. It is seen that Petitioner filed reply to Deposition Statement reiterating its position that it has not bifurcated basic wages into allowances with a view to reduce contributions to Provident Fund and Petitioner filed another Miscellaneous Application seeking cross examination of EO on the basis of his Deposition Statement. It is seen that the same was dismissed on 07.05.2025, however copy of aforementioned order was not served upon Petitioner therefore leaving them in the dark and had EO served copy of aforementioned order upon Petitioner they may have taken appropriate steps in law to challenge the same.

9. It is seen that, during hearing on 20.05.2025, Respondent forthwith provided Petitioner a copy of Order dated 07.05.2025 to which Petitioner sought adjournment to peruse and challenge the same. However in complete disregard of principles of natural justice

Respondent denied Petitioner's request and disposed of proceedings in Diary No.35 of 2021 without affording opportunity to Petitioner to present final arguments in support of its case hence Respondent's actions are, *prima facie* in the above admitted facts, arbitrary in nature and violative of principles of natural justice by not affording Petitioner opportunity to cross examine EO and neither affording them an opportunity to present final arguments. While it is true that material and documents filed by Petitioner and EO were available on record to decide proceedings, Respondent ought to have given one final opportunity to Petitioner to cross examine EO basis report and Deposition Statement and in that regard, there is nothing in the EPF Act, 1952 which exempts EO from cross examination on the ground that he is merely a department functionary.

10. It is seen that duties of EO are to investigate possible defaults of employers, request and examine documents and submit report as to whether employer was in default along with amount and that there is no provision in EPF Act, 1952 that exempts EO from cross examination in respect of his report as well as Deposition Statement. If Respondent wished to dispose of impugned proceedings expeditiously then he ought to have afforded one opportunity to Petitioner to advance final arguments which would undoubtedly assist Respondent in adjudicating the proceedings. It is seen that during hearing on 20.05.2025, Respondent absolutely denied Petitioner opportunity to peruse and consider Order dated 07.05.2025 despite receipt of the same on that day itself, advance final arguments and also passed final Order dated 05.06.2025 despite Petitioner expressing intention to challenge the Order dated 07.05.2025. Hence actions of Respondent are highly arbitrary, illegal and not in line with established practice and deserve to be nipped in the bud.

11. In this regard, I would like to quote paragraph no.9 of a decision of the Supreme Court in the case of ***Food Corporation of India V/s Provident Fund Commissioner and Others (Supra)*** decided on 26.10.1989 and relied upon by Mr. Gujar wherein it was held that Commissioner ought to oblige the party who summons evidence from other party. The paragraph reads as under:-

> *9. It will be seen from the above provisions 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. This 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."*

12. The words of the Supreme Court need reiteration in the present matter and in the facts of the present case viz; that Commissioner i.e. Respondent in the present case possesses power to receive and examine witnesses and issue commissions to record examination of witnesses. It is seen that as per Section 7A of EPF Act, 1952 Respondent is bestowed with powers of Court under Civil Procedure Code, 1908 and as per aforementioned judgment, non exercise of such powers would lead to failure to exercise jurisdiction and therefore it would be a failure to perform his legal duty under EPF Act, 1952. Hence in the present case, Respondent ought to have allowed Miscellaneous Application No. 6 and directed EO to file his Affidavit of Chief Examination or treat his Deposition Statement as Affidavit of Chief Examination and allow Petitioner to cross examine him on the same. It is seen that Respondent passed final Order dated 05.06.2025 without directing either party to file their evidence hence he ignored the vital stage of trial despite being possessed of powers to receive evidence and appointing commissioner to record examination of witnesses. It is seen that in Order dated 07.05.2025, Respondent recorded a finding that EO left his role and hence cannot be examined however it is seen that Respondent is also possessed with power to enforce attendance of any person on oath hence although EO in present matter has left his position, Respondent has power to enforce his attendance and examine him on oath. Therefore I cannot accept the submission of Ms. Gandhi with regards to EO being exempt from cross examination as he has left his position and even if that is the case then Employees Provident Fund Organization ought to have appointed another suitable officer in his place to prepare a fresh report and then depose in proceedings in Diary No.35 of 2021. Hence Respondent failed to exercise jurisdiction and failed to perform his legal duty.

13. Next, it is seen that, as per findings in Order dated 07.05.2025, EO left his role before he was examined as witness nor did he admit to any facts to his personal knowledge and in this regard he cannot be examined as witness as it would be practically difficult to ensure his attendance. I cannot accept this finding nor submission of Ms. Gandhi to this effect as if EO who investigated Petitioner's alleged default left his role before filing his Affidavit of Chief Examination or before being examined as a witness, then it is the Employee Provident Fund Organization's duty to appoint another suitable officer to espouse its case before Respondent against Petitioner and authorize such officer to depose to facts and evidence in impugned proceedings in Diary No.35 of 2021 before Respondent after preparing a fresh report.

14. It is seen from findings in Order dated 20.05.2025, Respondent has stated that 63 hearings took place in impugned proceedings in Diary No.35 of 2021 spanning over 4 years hence in the interest of workers, he decided to conclude impugned proceedings and pass final Order dated 05.06.2025. In this regard I would like to quote paragraph No.4 from an Order passed by this Court (Coram: M.S. Karnik, J.) in the case of ***Sarah Exim Private Limited V/s. The Assistant***

Provident Fund Commissioner (supra) wherein even if proceedings were unduly delayed, Petitioner must be given opportunity to cross examine the EO. The paragraph is reproduced as under:-

> *"4. In my opinion, it cannot be said that the proceedings are so unduly delayed that even an opportunity of cross-examination cannot be given to the Petitioner. The report dated 17.03.2020 was served on the Petitioner only on 28.10.2020. In these circumstances, in the interest of justice with a view to give one opportunity to the Respondent to cross-examine the Enforcement Officers/Department Representative, the Petition deserves to be allowed. The impugned order is set aside"*

15. Hence it is seen that notwithstanding delay or extension proceedings, right of cross examination is of absolute importance and Respondent cannot turn a blind eye to it. In the present case, although proceedings may have extended over a period of 4 years, that cannot defeat a party's right to cross examine witnesses, advance final arguments and prevent proper perusal of Orders passed. It is seen that Respondent in present case rushed through impugned proceedings with undue haste and passed final Order dated 05.06.2025 which is arbitrary, perverse and cannot be sustained.

16. In the aforementioned circumstances, nothing can be held against Petitioner in present case on the basis of the above facts. Thus impugned Orders dated 07.05.2025, 20.05.2025 and 05.06.2025 suffer from serious infirmity, bordering on complete arbitrariness, illegality, and are therefore not sustainable in law and are therefore quashed and deserve to be set aside.

17. If the EO who has filed the Deposition Statement is not available, the EPFO, Thane (South) shall be at liberty to file fresh EO Report by appointing a new EO and following all principles of natural justice and only after hearing the Petitioner shall pass appropriate order assigning liability, if any, upon the Petitioner. If the new EO files any Deposition Statement, Petitioner shall be allowed to cross-examine him. All material relied upon by the EO in his Deposition Statement / Report to determine liability of Petitioner shall be given to Petitioner before giving hearing to Petitioner. Respondent shall decide Diary No.35 of 2021 in accordance with law with due regard to principles of natural justice. Let the aforesaid exercise be completed within a period of six months from today.

18. In view of my above observations and findings, impugned orders dated 07.05.2025, 20.05.2025 and 05.06.2025 are quashed and set aside. Resultantly, present Petition succeeds.

19. Writ Petition stands allowed in terms of prayer clauses (a) and (b).

20. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2025.11.10 18:16:54 +0530