OD-1

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/4/2025

REGIONAL PROVIDENT FUND COMMISSIONER

-VERSUS-

M/s. CRICKXON TRADE AND EXPORTS PVT. LTD. AND ANR.

Present :
The Hon'ble Justice Shampa Dutt (Paul)

For the Petitioner	**:**	*Mr. Rajib Ray, Adv.* *Ms. Suparna Deb, Adv.*
For the Respondent No.1	**:**	*Mr. Soumya Majumdar, Sr. Adv.* *Ms. Sanjukta Dutta, Adv.* *Mr. Sayak Majumder, Adv.*
Judgment reserved on	**:**	03.09.2026
Judgment delivered on	**:**	01.10.2026

SHAMPA DUTT (PAUL), J. :-

1. The writ application has been preferred being aggrieved by an order dated 09.05.2024 passed by the Presiding Officer, of the Central Government Industrial Tribunal, Kolkata in Appeal No.EPF-12 of 2022.

2. Vide the impugned order, the learned Tribunal held as follows :

> *"This Tribunal is of view the proceedings for imposition of penalty u/s 14-B can be initiated only if there are arrears and then, maximum damages of equal to arrears can be recovered. But challans filed by the appellant show due deposit of statutory*

contribution under the Act and Scheme by the Appellant in time and that too from the date of its coverage.

*In view of the above discussion the impugned order appears to have been passed without any basis and prima facie it appears the concerned EPFO Authorities perhaps to achieve some kind of target has initiated frivolous case against the Appellant by issuing summons for alleged belated remittance from 01-04-1996 to 08-03-2021 and which it * has failed to substantiate by producing documents. On the contrary the Appellant, from the documents issued by the EPFO authority has been able to show its establishment having less than 20 employees from the date of its incorporation till date is not mandatorily subjected to the Act of 1952, but it has voluntarily mandated itself to the Act of 1952 w.e.f 12/2016 for the benefit of its employees. That it has duly complied and discharged its statutory liabilities and responsibility from the date of coverage 12/20016 till the date of alleged belated remittance as shown INDUS the Annexure attached with the summon i.e., till 03/2020*

Therefore, it is hereby held the registration of the establishment of the Appellant u/s1(3)(b) instead u/s 1(4) of the Act of 1952 not proper. The impugned summon dated 08.03.2021 issued u/s 14B and 7Q and on the basis of when the impugned/disputed order dt 15.06.2022 was passed u/s 14-B of the Act, to be illegal. Accordingly, the impugned/disputed order u/s 14-B of the Act, dt. 15-06-2022 is hereby set aside and EPF Appeal 12 of 2022 is hereby allowed. Interim order, if any, stands vacated."

3. Being aggrieved by the impugned order, the petitioner herein being the Regional Provident Fund Commissioner, EPF Organization, has preferred the writ application stating that the fact of the case, giving rise to this writ petition is that the respondent's no. 1 is a company duly incorporated under

the Companies Act, 1956 and **had applied on its own for coverage under the Provident Fund Scheme** for its employees and number of employees working in the establishment were more than nineteen and accordingly the respondent no. I was covered under the Employees Provident Fund & Miscellaneous Provisions Act. 1952 with effect from 01.12.2016 and has been allotted a Provident Fund Code No. WB/PRB/1633032 under section 1(3)(b) Employees Provident Fund and Miscellaneous Provisions Act, 1952.

4. It is stated that the respondent no. 1 has remitted it's P.F dues belatedly for the period 12/2016 to 03/2020 and accordingly the petitioner issued Summons to the respondent no. 1 initiating proceeding under Section 14B and 7Q of the EPF Act, bearing no. WB/PRB/1633032/000/Enf/501/Damage dated 08.03.2021 notifying that on scrutiny of records it was found that the establishment made delayed remittance during the period from 12/2016 to 03/2020 and the establishment was liable to pay penalty and interest due to such belated payments. The petitioner has passed the final order dated 15th June, 2022 and the damages was assessed as Rs. 8.36,519/- (Rupees Eight Lakh Thirty Six Thousand Five hundred and Nineteen) only under Section 14B of the EPF Act as per rates recommended in paragraph 32A of the Employees' Provident Funds Scheme. 1952 (hereinafter referred to as the EPF Scheme, 1952).

5. It is further stated that the respondent no. 1 was employing more than nineteen employees and was covered under the EPF & MP Act 1952 with effect from 01 12.2016 on the basis of the establishment's own application

as well as supporting copy of attendance sheet of such employees bears attestation of Mr. Girdhari Lal Seksaria, Director of the establishment and therefore the petitioner establishment was directed to comply with provisions of the EPF & MP Act 1952 and scheme framed there under vide letter dated 11.08.2017. **The establishment disputed the applicability of the Act on the ground that they were never employing 19 or more persons**. However, it is clearly stated in Paragraph 6(xii) of the Grounds of Appeal that the employer has already deposited entire due contribution of its covered employees and there is no dues on account of monthly contribution towards provident fund and submitted photocopies of the challans/return in support of the demand of the dues deposited for the period 12/2016 to 03/2020 i.e., since coverage.

6. The respondent no. 1 had been covered under the EPF & MP Act 1952 with effect from 01.12.2016 by coverage letter dated 11.08.2017and later has accepted the liability and started the compliance of the provisions of the Act and in such circumstances the employer establishment had defaulted for the payment of Provident Fund dues for a long time and for the said reason the establishment is liable to pay the damages levied on the belated payment under the provisions of Section 14B of the EPF & MP Act 1952 because the delay was on the part of the respondent no. 1 in depositing the PF contribution.

7. The petitioner relies upon the following judgments:

i) Hindustan Times Limited vs. Union of India & Ors. [AIR 1998 SC 688];

ii) ***Organo Chemical Industries & Anr. vs. Union of India & Ors. [(1979) 4 SCC 573];***

iii) ***Hindustan Times Ltd. vs. Union of India & Ors. [(1998) 2 SCC 242];***

iv) ***Horticulture Experiment Station Gonikoppal Coorg vs. Regional Provident Fund Organization [(2002) 4 SCC 516];***

v) ***Regional Director, E.S.I. Corporation vs. Kerala State Drugs and Pharmaceuticals Ltd. [(1995) Supp. 3 SCC 148];***

8. Mr. Ray, learned counsel for the petitioner, has prayed for setting aside of the impugned order passed by the learned Industrial Tribunal.

9. **The respondents** herein have filed their affidavit-in-opposition and their case as made out in their affidavit-in-opposition is that the respondent company, at the material point of time was not eligible for coverage under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. It applied for voluntary coverage with only 7 enrolled employees under section 1(4) of the said Act, of which one was otherwise to be reckoned as "excluded employee" within the meaning of the EPF Scheme, 1952 to provide benefit for its employees, at the behest of the petitioner. The establishment and the employees therefore did not owe any statutory liability to pay contributions under the said Act.

10. Mr. Majumder, learned senior counsel submits that the clear language of section 1(4) of the Act honors the agreement between the employer and employees for the purpose of applicability of the provisions of the Act to the establishment. Once an establishment is allowed to be covered under

section 1(4) of the said Act, there is no scope of any retrospectivity to be adhered for the purpose of purported default in compliance.

11. In the instant case, proceeding on the application for voluntary coverage under section 1(4) of the Act, the Provident Fund Authorities had covered the establishment under section 1(3) of the Act with effect from 1.12.2016, and a code number was allotted to the establishment.

12. The notice of coverage dated 11.8.2017 would thus at the most relate back to 1.12.2016. The impugned order under Sections 7Q and 14B of the Act are wholly unreasoned and cannot be sustained.

13. Mr. Majumdar further argues that, on 09.01.2017 Enforcement Officer of the petitioner organization visited the premises of the respondent company herein and after verification of documents he advised the management to make the employees members of provident fund, though the Act was not applicable. Being misguided by the advice of the inspector of petitioner organization and for betterment of the employees of the company the respondent herein made an application online for voluntary coverage of the establishment, wherein for eligibility the number 20 was entered, though the number of employees were much less than that.

14. It is submitted by the respondent that considering the application made by the respondent/establishment, a notice of coverage dated 11.08.2017 was issued covering the establishment with effect from 01.12,2016 and allotted a code number to the establishment but it was very unfortunate

that without proper verification of the documents placed before the petitioner organization, they have covered the establishment under Section 1(3b) of the Act of 1952 wrongly instead of Section 1(4) of the said Act of 1952.

15. Vide the impugned award the learned Tribunal has carefully considered the case of the respondent/establishment and made the following observations :

> *"On perusal of Annexure-A/3 filed by the Appellant, it appears that EPFO Authority had intimated the Appellant on 11-08-2017, about allotment of Code No. WBPRB1633032000 on the basis of declaration submitted by the Appellant. It also shows Appellant, a Private Limited Company and a financing establishment was brought under the coverage w.e.f. 01-12-2016 for having crossed 19 number of employees and covered the establishment of Appellant u/s 1(3) (b) of the Act.*
>
> ***Further, Annexure-A/3 proves that Appellant had voluntarily brought its establishment under the purview of the Act of 1952 as it reads "based on the information submitted online by you, your establishment is registered with Employment Provident Funds with following Code No……"***
>
> *Thus, this Tribunal finds substance in the submission made by Ld. Counsel for the Appellant,* ***that establishment of Appellant is subject to the provision of section 1 (4) of the Act and not u/s 1(3)(b) of the Act or that EPFO authorities ought to have registered the establishment of Appellant u/s 1(4) of the Act of 1952 instead u/s1(3)(b) of the Act.***
>
> *Now, a question may arise, whether an establishment having less than 20 employees and which has voluntarily brought itself under the purview of the Act of 1952 by filing online application in the*

year 2017, but which has been registered on 11-08-2017 with retrospective coverage from 01-12-2016 can be said to be a defaulter u/s 14-B of the Act and that too for a post coverage period?

The answer is "No" as the law is that employer should deduct statutory EPF contribution from all eligible employees from their salary/wages and deposit the same with EPFO authority along with its proportionate share of contribution within the time prescribed in the statute. In the present case it is seen the employer had already paid wages/salary to it's the then eligible employees for the period before the establishment is/was brought under the coverage. Therefore, by retrospectively applying the Act of 1952, the employer cannot be asked to pay the employees' contribution for the period antecedent to the coverage. The Act and Scheme neither permit such payment nor deduction Further, identification of beneficiaries is essential before the employer is saddled with the statutory liabilities for pre-coverage period. The copy of challans filed by the Appellant shows due payment of statutory contribution under the Act and scheme from December, 2016 to March, 2020 i.e. from the date of its coverage from 12/2016 to 03/2020.

The impugned summon dated 08-03-2021 issued u/s 14-B and 7-Q and on the basis of which the impugned/disputed order dt 15-06-2022 was passed u/s 14 B of the Act prima facie shows that summon were issued for hearing on belated remittance under the Act made by the Appellant ***during the period from 01-04-1996 to 08-03-2021*** *The statement of damage calculation annexed with summon dt. 08-03-2021, prima facie shows calculation was made for delay in deposit of the contribution from the wage month of* ***12/2016 till 03/2020 and not for the period of belated remittance from 01-04-1996 to 08-03-2021 as mentioned/shown on disputed summon and in the***

impugned order u/s 14-B dt. 15-06-2022. *Such very facts itself prove* ***non application of mind*** *by the respondent a quasi-judicial body while passing the order impugned and the order being passed mechanically. Thus it appears there is* ***no default or arrear in payment of statutory contribution*** *by the Appellant as alleged by the EPFO Authority in the disputed summon and in the impugned order."*

16. In course of hearing, learned counsel for the petitioner has placed a report before this Court wherein the said authority has reiterated its case as made out before the Tribunal.

17. This Court, considering the submissions made by the parties herein, directed the petitioner to file documents showing the number of employees in respect of whom contribution was being made by the respondent herein since the time of being covered under the said provisions.

18. Mr. Ray, learned Advocate appearing for the Provident Fund authorities has placed documents which show that the number of employees at all relevant time did not exceed 15 and if that is the position, the stand of the respondent is, prima facie, believed in view of the contention that they were mislead to get themselves covered voluntarily in spite of not being required to do so. It also may be the case that 15 of the employees were eligible and if there were more than 20 employees the said finding should have been based on a prima facie enquiry by the authorities.

19. Annexure A/3, before the tribunal proves the coverage was ***"based on the information submitted by you.*** Your establishment is registered with Employees Provident Fund."

20. This proves that no enquiry was conducted by the authorities to verify the applications.

21. Thus, the Tribunal's finding on all issues being in respect of

(a) timely deposit,

(b) coverage period,

(c) about non-application of mind,

(d) the provision of the Act applicable to the respondent/establishment

being in accordance with law, calls for no interference.

22. WPO/4/2025 is dismissed without any order as to costs.

23. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(SHAMPA DUTT (PAUL), J.)

A.Sadhukhan