BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE AVENUE, DISTRICT COURT COMPLEX, DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

M/s. Army Environmental Park and Training Area — Appellant

Vs.

RPFC, Delhi — Respondent

ATA No. 526(4)2012

ORDER DATED:- 14.07.2021

Present:- Ms. Tarni Rawat, Ld. Counsel for the Appellant.
Shri Satpal Singh, Ld. Counsel for the Respondent.

This appeal challenges the order dated 29.05.2012 passed by the APFC Delhi in a proceeding u/s 7A of the EPF and MP Act (in short The Act) against the appellant/establishment assessing Rs. 50,55,697/- towards outstanding EPF dues of it's Employees for the period 2002-2003 to 2006-2007.

Being noticed the respondent No.1 entered appearance through its counsel and file the written reply to the grounds taken in the appeal.

The appellant is the Army Environmental Park and Training Area (in short AEPTA) an establishment engaged in providing training facilities and Golf facilities as Sport for the serving and ex-service Army Officer. The organized game activity is undertaken with the ultimate purpose of physical training and fitness. This organization is managed by an Apex Body and its executive committee for it's normal day to day functioning. The AEPTA is governed and run by it's own set of Rule without any control direct or indirect by the Union Government. It also doesn't receive any government grant or financial aid. The persons engaged for running the organization are not the government civilian employees. To run the organization the AEPTA has a separate civilian work force comprising of regular employees numbering approximately 70 who are employed to work in the AEPTA only. Besides these persons the AEPTA engages casual, seasonal and daily wage worker intermittently to attain the work as and when required. Though the establishment AEPTA is not a factory nor engaged in any industrial

activity specified under the EPF and MP Act nor an establishment notified by the Central Government u/s 1(3)(b) of the EPF and MP Act. With the idea of taking care of its employees and as a welfare measure it had made a voluntary application for coverage under the provisions of section 1(4) of the EPF and MP Act. Though the EPFO did not issue any notification u/s 1(4) the appellant went on making deposit of EPF subscription of its regular and permanent civilian employees.

The grievance of the appellant as stated in the memo of appeal is that on 04.08.2004 a notice vide annexure A-2 was served on the appellant alleging violation of the provision of the EPF and MP Act by not making PF contributions etc. The appellant/establishment replied to the notice indicating that it has 83 employees and necessary Provident Fund contributions was being made to cover all the employees and returns to that effect where being filed from time to time. It was also explained that no contribution were being made in respect of seasonal workers employed for specific temporary work. The establishment also submitted all details relating to the Provident Fund deposit under different accounts of its regular employees from July 2004 to September 2005. The inquiry u/s 7A continued from 2004 to 2012 i.e. for about 8 years unilaterally and 3 enforcement officers after verification of records of the appellant/ establishment submitted their report in 2007, 2010 and 2012 respectively. The Enforcement officer in the year 2007 calculated the outstanding dues to be 55,67,874/- till the end of 2006. The EO who submitted his report on 29.03.2010 considering the objection of the establishment revised the Provident Fund Contribution due to be paid by the establishment to 32,89,087/-. But the respondent department instead of accepting the report deputed another EO who submitted his report on 28.05.2012 observing the Provident Fund outstanding dues of the establishment to be 50,55,697/-. The commissioner without application of mind accepted the 3rd report of the EO and passed an arbitrary order holding that the establishment has to pay 50,55, 697/-. Describing the same as an unreasoned order the appellant has prayed for setting a side of the impugned order. Alongwith the appeal the appellant has filed certain documents which include the letters written by the appellant/establishment in response to the 7A inquiry, the letter complying the queries made by the respondent during the inquiry alongwith an affidavit submitted by the appellant on 10.09.2010 before the respondent. It is also the stand of the appellant that the seasonal and daily wage workers were being engaged through different contractors and their remuneration was being paid to the said contractors. The contractors were separately provided code No. by the EPFO and as such they were the Principal Employer. As required by the respondent the name, address and EPF code No. of those contractors were provided to the respondent during the inquiry. But

the respondent instead of taking action against the contractor illegally fastened the liability on the appellant/establishment which is illegal and not sustainable in the eye of law.

In reply the Ld. Counsel for the respondent submitted that the EOs attempted to quantify the outstanding EPF dues during their inspection but the establishment did not cooperate and failed to-produce the documents demanded. Thus the inquiry was made time and again and the last inquiry report of the EO was accepted. However, the commissioner while passing the impugned order took into consideration all the 3 reports and on the basis of the available documents passed the impugned order. While elaborately submitting about the benevolent provision of the EPF and MP Act he has pleaded in his reply that the action of the appellant for the non compliance has caused hardship to the poor workers. Citing the provision of Para 30 of the EPF scheme it has also been pleaded that the appellant being the Principal Employer should have deducted the EPF contribution from the payment made to the contractors and should have deposited the same with the EPFO. Otherwise the establishment should have insisted for filling or production of the returns showing deposit of the EPF contribution. These inactions by the appellant/establishment make it liable for the amount assessed.

During course of argument the Ld. Counsel for the appellant took this tribunal through the impugned order and submitted that the APFC without application of mind simply accepted the report of the EO Shri S.P Arora. He only added the proposed amount as suggested by the EO in his report dated 28.05.2012. No opportunity was given to the establishment for cross examination nor the documents filed were examined. The commissioner not even felt proper to summon the contractors through whom the seasonal worker were engaged though the details of the contractors and their EPF Code No. were provided to the commissioner during inquiry. While strongly objecting to the observation of the commissioner in the order that the establishment accepted the EO report, the Ld. Counsel for the appellant submitted that the said observation is ethically wrong as the establishment had never given any such statement before the commissioner accepting the EO report. She also argued that the entire assessment by all the Eos were based upon the balance sheet of the establishment filed at the beginning of the 7A inquiry. But the APFC with utmost enthusiasms discarded the submissions of the establishment and accepted the report of the EO. To counter this argument the Ld. Counsel for the respondent submitted that the commissioner while discharging the quasi judicial function has truthfully reflected the happenings during the inquiry and unless the until the contrary is proved, the action and observation of the said quasi judicial authority are to be accepted as correct. While supporting the impugned order he argued that the

commissioner had given ample opportunity to the establishment to setup its defence. Considering the stand taken by the establishment and all the document available on record a reasoned order was passed and the same needs no interference.

The Ld. Counsel for the appellant strenuously argued that the respondent has not produced the proceeding of the 7A inquiry which could have thrown some light on the opportunity allegedly offered to the establishment to setup its defence. Moreover, the respondent has not produced any documents to prove that the last EO report was admitted by the establishment during the inquiry. In absence of any documentary proof to that effect the solitary observation of the APFC with regard to the acceptance of the EO report by the appellant is far from belief.

Perusal of the impugned order clearly shows that the commissioner while discharging a quasi judicial function has not given any reasoning as to why the stand of the establishment was rejected and the report of the last EO was accepted. His cryptic order only shows that the submissions of the establishment as well as the department were considered and EO's report was accepted. In the impugned order the commissioner has observed about the stand taken by the establishment that the seasonal workers were engaged through the contractor. Though the details of the contractor were made available by the establishment during inquiry the commissioner failed to summon the contractors or to ascertain the identity of the seasonal workers in respect of whom the establishment had defaulted deposit of EPF dues.

In this case the clear stand taken by the appellant/establishment is that in order to make the activities of AEPTA functional it has a civilian workforce who are its regular employees. The appellant/establishment had made an application u/s 1(4) of the Act for voluntary coverage of these regular employees under the provision of the act and they are regularly making EPF contribution for them. The only dispute is with regard to the seasonal workers/ daily wage workers engaged through the contractor. Whereas the appellant/establishment took the stand that the contractors providing the manpower having been covered separately under the Act with separate code No. are the Principal Employer and no obligation can be created on the appellant for EPF contribution of those seasonal workers working through the contractor. In reply the Ld. Counsel for the respondent forcefully argued citing the provisions of Para 30 of the EPF scheme and submitted that the payment made to the contractor since included the wage of the workers employed by the contractor, the establishment in view of the provisions of Para 30 of the EPF scheme is liable for deposit of the Employees share as principal employer in respect of the said contractors employee. But

this argument of the Ld. Counsel for the respondent doesn't sound convincing. On hearing the argument advanced by the counsel for both the parties and on perusal of the relevant provisions of the EPF Act and scheme it appears that under the definition of section 2(e) of the Act, the person having control over the employee is the employer. The employer as per the mandate of Para 36 of the scheme shall submit the return regarding the EPF deposits to the commissioner within 15 days of the close of each month.

The employer in compliance of Para 30 of the scheme shall at the first instance pay both contribution payable by himself as the employer and also on behalf of the employee. If the employee is employed through the contractor, such contractor shall recover the contribution from the employee and reimburse to the principal employer which have been provided under clause 2 of Para 30 of the scheme.

Perhaps by looking into the provisions of Para 30(3) of the scheme the APFC came to a finding that a defaulted EPF contribution is payable by the appellant. In this case the undisputed fact is that the workers for whom there was default in EPF contribution were engaged through the contractor and the said contractors are independent establishments having been allotted separate EPF Code No. Hence, the contactors were the employer of the seasonal workers employed in the Appellant/establishment during the relevant time.

Now it is to be determined, if the appellant as the Principal employer and under any kind of obligation under the EPF and MP Act.

No doubt, Provisions of Para 30 of the scheme shaddles the principal employer with the responsibility of depositing the EPF dues at the first instance and recover the same later. But a plain reading of the provision leads to a conclusion that the establishment would be construed as the principal employer when the workers are employed through the contractor which is intended as a safe guard of the interests of the employees. But under a situation, where the contractor is an independent entity having a separate code no. the establishment with which the contractor is under a contract for supply of manpower, the former can't be said to be the principal employer, to be fastened with the liability as provided under Para 30(1) of the scheme.

In the case of **Brakes India Limited vs. EPFO represented by its RPFC reported in 2015LLR635 decided by the Hon'ble High Court of Madras and in the case of M/s. Calcutta Construction Company vs. RPFC and others decided by the** Hon'ble **High Court of Punjab and Haryana reported in 2015 LLR1023**, it has been clearly held that the beneficiaries when employed by the

contractor, who has been allotted a separate EPF code No., the said contractor is liable to pay the contribution and the Principal Employer is not liable to make deposit. Not only that in the case of **Madhurai District Central Cooperative Bank vs. EPFO reported in 2012 LLR 702** the Hon'ble High Court of Madras have also held that when the matter is with respect to the contractor who is registered with the provident fund department having independent code no., he is to be treated as the independent employer.

On a careful reading of the above mentioned judgment with reference to the provisions of Para 30 and 36 of the scheme, lead to a conclusion that the EPF and MP Act being a beneficial legislation having the object of safeguarding the interest of the employees, has taken care of the situation when the contractor is not allotted with a code No. If a separate code no. has been allotted, the contractor is the employer in terms of the definition of section 2(e) of the Act and the establishment having a contract with the contractor cannot be held as the Principal employer so as to make itself liable for compliance of Para 36 or 30 of the EPF scheme. The responsibility of the principal employer comes to the forefront with the object of safeguarding the interest of the employees when the contractor has not been allotted with the code No.

In this case it is thus, held that the contractor having been allotted with the code no. is responsible for making the contribution and the direction of the APFC for recovery of the assessed amount from the appellant is illegal. The other limb of the argument advanced by the Ld. Counsel for the appellant is that the assessment has been made on the basis of guess work only and the beneficiaries were never identified. The calculation and assessment arrived by the commissioner is on the basis of the balance sheet only which is not sustainable in the eye of law.

It is seen from the impugned order that the commissioner had made least effort for identifying the workers employed by the contractor nor took any steps for summoning the contractor when the appellants reply has clearly given the details of the contractors allegedly engaged by the establishment. In the case of **Food Corporation of India vs. the Provident fund and others reported in (1990)1 SCC Page 68** the Hon'ble Apex Court have clearly held that the authority under the PF Act having been vested with the power under the C.P.C for summoning and production of witnesses, should exercise all their powers to collect all the materials before coming to a proper conclusion. Not only that in the case of **Assistant Provident Fund Commissioner vs. M/s Kanya Kubj Lime Works and**

another reported in 2012 LLR 1096 the Hon'ble High Court of Madhya Pradesh have held:

> "It was for authority concerned to discharge his obligatory duty of establishing facts rather than taking recourse to guess work, which had no place in a case where liability was to be ascertained for payment of contribution. The finding recorded by the commissioner in a proceeding under section 7A of the Act which was based on inferences and guess work is not sustainable.

A similar view was also taken by Hon'ble High Court of Bombay in the case of **Sandeep Dwellers Pvt. Ltd. vs. Union of India reported in 2007(3) Bombay C.R 898**. The Hon'ble High Court of Guwahati way back in the year 1978 in the case of **Minerva Stores vs. RPFC reported in 1978 Lab I.C Page 1160** have held that when the commissioner under 7A proceeding made the assessment on the basis of the provident fund inspectors report the same is not acceptable. The commissioner in the order of assessment should clearly state on what basis the calculation is made so that the authority concerned may understand the basis on which the dues have been determined.

In this appeal as seen from the impugned order the report of the E.O S.P Arora was accepted by the commissioner to form basis of his assessment and the commissioner while discharging the quasi judicial function had failed to discharge his duty in summoning and examining the witnesses, particularly the contractors named by the appellant in order to identify the beneficiaries in respect of whom the establishment was found to be a defaulter. In view of the circumstances this tribunal is of the opinion that the order passed by the commissioner is nothing but a guess work and no clear finding has been given with regard to the beneficiaries to whom the amount of the contribution if recovered from the appellant/establishment would go. Hence, for the discussion made in the preceding paragraphs the impugned cryptic order is found to be illegal and cannot sustained in the eye of law and liable to be set aside. Hence, ordered.

ORDER

The appeal be and the same is allowed. The impugned order dated 29.05.2012 passed by the APFC is held to be illegal and thus, setaside. Consign the record as per law and Rule.

Presiding Officer