

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 23925 of 2009

The India Jute & Industries Limited & Anr.

Vs.

The Regional Provident Fund Commissioner & Ors.

For the Petitioners : Mr. Soumya Majumder, Sr. Adv.,
Mr. Sounak Mukhopadhyay,
Ms. Sonia Nandy.

For the P.F. Authority : Mr. Shiv Chandra Prasad.

Hearing concluded on : 27.02.2025

Judgment on : 26.03.2025

Shampa Dutt (Paul), J.:

1. The Petitioners' case in short is that PF authorities have charged interest of Rs. 45,86,306/- for alleged belated remittance of contributions for the period from 05/2000-03/2004.
2. It is stated that the establishment being a sick industrial undertaking which had accumulated losses was required to deposit PF contributions @10% of wages as per the Notification dated 09.04.1997 with effect from 01.05.1997.

3. It is further stated that the establishment fits into the 1997 notification is an undeniable fact. Therefore, it was required to contribute @ 10%, and not @ 12%.
4. However, it had made excess payment of contributions by depositing @ 12% even after 01.05.1997. It is the case of the petition that assuming there was a delay in the deposit of contributions, the said interest under Section 7Q would automatically decrease if the principal amount of contributions were @ 10% instead of 12%.
5. The petitioners further case is that drawing an analogy from the provisions of Para 26(6) of the EPF scheme, 1952, it is submitted that the employer and the employee have to make a joint request and obtain permission from APFC and higher level officer for making a deposit of contributions above Rs. 15,000/- per month, then on the same analogy, for depositing a higher percentage of contributions, the permission of the authority was a pre-condition. In short, on and from 01.05.1997 contribution @ 12% was a higher contribution for the establishment, without the permission of the competent authority of EPFO.
6. By accepting higher contributions, the EPFO has acted against its own laid down guidelines/circular of notification dated 09.04.1997.
7. Relying on the judgment of the Supreme Court in **EPFO vs Sunil Kumar B., reported in (2023) 12 SCC 701**, the petitioners states that *“the pre-condition of obtaining permission from the APFC was required to be followed for depositing higher contributions”*.

8. The petitioners' prayer for 60 installments to liquidate arrear dues was rejected by the respondent no. 2, in spite of a bank guarantee being issued by the petitioners.
9. The petitioners case therefore is that the amount of interest for Rs. 45,86,306/- should be re-calculated by taking the liability to be 10% during the period from 05/2000-03/2004. The same should be adjusted with the excess contributions paid during the same period. That apart the employees, who had already received their full and final settlement dues from the Trust, are to be disregarded for interest liability.
10. The petitioners have thus prayed for direction upon the respondents to set off/adjust the excess payment made by the establishment with the interest claimed by treating liability to be 10% during the period from 05/2000-03/2004.
11. Vide the order dated 13.11.2009/30.11.2009, the Assistant Provident Fund Commissioner, Sub-regional Office, Howrah passed an order as follows:-

"It reveals from the records that the establishment never approached for lesser rate of P.F. contribution since the registration of the establishment as a sick unit. It has further been recorded that the benefits of 12% P.F. contribution along with interest thereon had been paid to the outgoing members of the establishment. The existing employees have also been enjoying the benefits of 12% rate of contribution along with interest thereon and the audit of trust fund has also been completed upto 2007-08 and the accounts slip showing the existing rate of contribution along with interest thereon has been issued to the members.

The undersigned has gone through the records in connection with concerned case for the period under enquiry and submission of the petitioner, and it is opined that if the prayer of the petitioner is granted, two classes of

beneficiaries would be created in the same establishment for the same period **one who have already withdrawn their P.F. contribution in the enhanced rate i.e. 12% along with interest thereon and secondly who are still in the service are to loose their P.F. contribution from 12% to 10 % from the retrospective date, which is not justified in the eye of law.** Moreover it has clearly been mentioned under section 7Q that “The employer shall be liable to pay simple interest at the rate of 12% per annum or at such higher rate as may be specified in the scheme an any amount due from him under this act from the date on which the amount has become so due till the date of actual payment.....”

It is clear from the aforesaid Section that the due amount in the instant case is the deducted amount 12% from the pay of their employees and the equal share of the employer's contribution along with allied dues as per the Act. Moreover the dues for the period under enquiry had already been assessed under section 7A vide order of Assessing Officer dated 02.05.02. The establishment also paid the assessed dues U/S 7A without any objection or litigation. **Hence an assessed amount U/S 7A is considered as dues for the purpose of charging dues U/S 7Q of the Act from the employer for the period under enquiry.** So there is no scope to come out from the quantum of dues and employer is liable to pay interest U/S 7Q on the dues as assessed U/S 7A. **Any reduction of the rate of contribution from the retrospective date would effect the existing beneficiaries also adversely as the existing benefits cannot be reduced in subsequent date.”**

12. Written notes has been filed by the parties herein along with the judgments relied upon.
13. The petitioners have relied upon the judgment of the Supreme Court in **Employees Provident Fund Organization and another-vs- Sunil Kumar B. and others, reported in (2023) 12 SCC 701.**
14. **The provident fund authority** respondent nos. 1, 2 and 3 on filing their written notes have stated that as per the direction of Hon'ble High Court, Calcutta, the establishment was asked to appear before the Competent Authority vide letter No. WB/HWR/CC-II/Ex/9516 &

5135/ZHLY/1100 dated 02.12.2008 for review of the order for determination of interest U/s. 7Q on 16.12.2008. The petitioners establishment admitted that they have been paying P.F. Contribution @12% prior to the notification dated 9.4.97 and continued to pay the same rate even after registration with B.I.F.R.

15. The Respondent PF Authorities state that the High Court, vide order dated 27.11.2007 disposed of the writ petition directing the establishment to submit an application to the P.F. Authority narrating its case regarding excess payment, if any, made by it during the period from May 2000 to June 2002. In terms of High Court, order dated 27.11.2007, the petitioners' establishment filed an application for review and the establishment was asked to appear before the competent authority vide letter no. WB/HWR/CC-II/Ex/9516 & 5135/ZHLY/1100 dated 02.12.2008. The respondent P.F. Authority forwarded the interest computation sheet for the period 05/2000 to 2001-2002 in respect of petitioners' establishment.
16. The competent authority had gone through the submission made by the establishment and the department. The establishment had admitted that they have been paying P.F. contribution @ 12% prior to the notification 9.4.97 and continued to pay the same rate even after registration with B.I.F.R. **There is no denying the fact that the employee who have already left the service have been allowed the P.F. benefits @ 12% and any reduction of the rate from the retrospective date would effect the servicing employee adversely as the benefits once given cannot be reduced in subsequent date.**

The department representative has also rightly pointed out the same in his submission dated 16.12.2008. Sri T. K.Mukherjee, A.A.O. appeared for the department and submitted that the establishment had never approached before the Department for contributing as a lesser rate consequent upon the registration of the establishment as a Sick Unit and also stated that all the benefits to the outgoing employees had been provided on contribution @ 12% which cannot be revised. After consideration the facts and circumstances of the instant matter, the competent authority passed the order U/s. 7B of the Act on 14.7.2009. The Competent Authority upheld the demand raised by the department afresh on 29.12.08 and directed the establishment to liquidate the same. Being aggrieved with such order of the competent authority, the petitioners' establishment filed a writ petition bearing W.P. No. 14333(w) of 2009 and the said petition was disposed on 24.08.2009.

- 17.** It is further stated by the Respondent/P.F. Authorities that there is no denying of the fact that the employee who have already left the service have been allowed the P.F. benefits @ 12% and any reduction of the rate from the retrospective date would affect the servicing employee adversely as the benefits once given cannot be reduced subsequently.
- 18.** The establishment has failed to pay the dues for the period from 02/2002 to 03/2004 in time. As such, the Recovery Officer issued notice vide letter dated 19.08.2009 as per the provisions of Section 8 of the Act which is justified and reasonable.

19. It is further stated that vide the Ministry of Labour Notification

SO No. 367, it has been notified that:-

“in exercise of the powers conferred by the first proviso to Section 6 of the Employees’ Provident Funds and Miscellaneous Provisions Act, (19 of 1952), the Central Government hereby specifies, with effect from the 1st Day of June, 1989, every establishment in the industries specified in the Schedule and in the classes of establishments specified in the said schedule, as the establishments and classes of establishments to which the said proviso shall apply:

The industrial companies which fulfill the above conditions are required to make a reference to the BIFR under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1958, to become eligible for exemption from contributing to the EPF at the rate of 10% of the wages. Such companies shall, however, be free to contribute at the rate of 10% on their own volition.

As per clause 30 of the notification if once an establishment starts paying the contribution at the rate of 10% it will not have the option to revert back to the old rate of contribution even if such company becomes sick at a later stage.”

20. The petitioners have relied upon Para 26(6) of EPF scheme, which

is as follows:-

“26.

(6) Notwithstanding anything contained in this paragraph [an officer not below the rank of an Assistant Provident Fund Commissioner] may, on the joint request in writing of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a Member or allow him to contribute on more than [fifteen thousand rupees] of his pay per month if he is already a member of the fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.”

21. On hearing the parties and considering the materials on record, the following is evident:-

- (i) Sick industrial undertaking which had accumulated losses was required to deposit PF contributions @10% of wages as per the Notification dated 09.04.1997 with effect from 01.05.1997.
- (ii) Excess payment of contributions was made by depositing 12% even after 01.05.1997.
- (iii) There being delay in making the deposit from 05/2000-2003/2004 proceeding under Section 7A of the EPF Act was initiated on 22.08.2000 and demand notice dated 01.05.2002 assessing the dues under Section 7A was issued, which were duly remitted.
- (iv) Assessment of interest under Section 7Q of the Act was made for the delayed remittance of contribution.
- (v) The petitioners pray for adjustment of the excess payment made, against the interest under 7Q of the Act.
- (vi) Admittedly the said contribution made has been paid to the employees when due on superannuation etc.
- (vii) As such there is no excess amount in the fund with the authority to adjust towards the interest assessed under Section 7Q of the Act.
- (viii) And employees still in employment if any, cannot be deprived of their lawful dues.

22. From the facts on record it appears that the contribution deposited beyond the permissible limit, was deemed to be ratified by the

authorities, with no questions asked, as the same was towards the benefit of the workers under a beneficial legislation and permission was deemed to have been granted.

23. The pre condition of obtaining permission from APFC for depositing higher contribution has been laid down in Para 26(6) of the EPF scheme, but in such cases when no prior permission is taken and contribution and payment as per deposit has already been made/disbursed the amount cannot be recovered, as finally the whole process is under a beneficial legislation.
24. The establishment in this case was an exempted private provident fund trust, admittedly till 2013 and since then the exemption has been withdrawn. The interest claimed here under 7Q of the Act is for the period when there was an exemption.
25. **When the delayed payments of dues was assessed under Section 7A of the EPF Act and was duly paid by the petitioners herein without any objection raised, the interest imposed under Section 7Q of the Act follows automatically, as the orders become a composite order.**
26. As such the findings of the authority concerned in the orders under challenge dated 13.11.2009/30.11.2009 passed by the Assistant Provident Fund Commissioner, Sub-regional Office, Howrah being in accordance with law requires no interference by this Court.
27. **WPA 23925 of 2009 stands disposed of.**

- 28.** All connected application, if any, stands disposed of.
- 29.** Interim order, if any, stands vacated.
- 30.** 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.)