

## Arvind Premchand (Punamchand) Parikh Versus Vs Assistant Provident Fund Commissioner

**Court:** Gujarat High Court

**Date of Decision:** Jan. 9, 2025

**Acts Referred:** Constitution of India, 1950 " Articles 226, 227

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 " Section 2F, 7A, 7B, 7Q, 14

**Hon'ble Judges:** M. K. Thakker, J

**Bench:** Single Bench

**Advocate:** Yogi K Gadhia, Pathik M Acharya, E. Shailaja

**Final Decision:** Partly Allowed

### Judgement

M. K. Thakker, j

1. Rule, returnable forthwith. Learned advocate Ms.Shailaja waives service of notice of Rule on behalf of the respondent No.1.

2. With the consent of the parties, this matter is taken up for final disposal.

3. Present Petition is filed under Articles 226 and 227 of the Constitution of India challenging the judgment and order passed by the learned Employee

Provident Fund Appellate Tribunal, Ahmedabad in EPF Appeal (CGITA) No.24 of 2020 as well as challenging the order passed under section 7A of

the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (the Act) referred hereinafter) dated 02.12.2019 and the Order

passed under section 7B dated 07.10.2020.

4. Facts need for disposal of the case are as under:

4.1. The petitioner is engaged in the business of providing manpower and has provided the same to M/s.Adani Gas Limited and was awarded a

contract to run a CNG pump station. The petitioner covered itself under the Act and was allotted EPF Code No.VD0BRD" 66485. Inspections

were carried out by the Enforcement Officer of EPFO and an inquiry under section 7A of the Act was initiated for the period from May"2011 to

March"2018 and April"2018 to June" 2018. The petitioner has participated in the inquiry and filed its reply on 31.07.2019 and contained that

dues were paid and contract was over on 31.03.2016. It was further contended that the Enforcement Officer gave his deposition containing that on

scrutinizing the record from May 2011 to June 2018 estimated due comes to ₹ 12,52,062/-. Though it was contained by the present petitioner

to implead the principal employer as a party, however, the principal employer was not join. Ultimately, order passed under section 7A of the Act by

the authority directing to pay the amount of ₹ 12,52,062/-.

4.2. Due to COVID-19, lock-down and the petitioner being 75 years of the age, review petition could not be filed within a time prescribed and it was

filed on 22.06.2020. It was disposed of the ground that no any new matter brought to the light warranting to look under section 7B proceedings and the

review application is beyond period of limitation. Review came to be dismissed vide order dated 07.10.2023.

4.3. Due to non-availability of the learned Presiding Officer, CGIT, the petition came to be filed before this Court being Special Civil Application

No.14719 of 2020, wherein stay was granted and on availability of learned Presiding Officer, the petition came to be disposed of on 28.07.2021 by

extending the interim relief till the hearing of the Appeal being number 24 of 2020 raising the several grounds. However, without waiting for the

disposal of the appeal, the amount came to be withdrawn of ₹ 1,19,000/- lying with the Bank account of the petitioner on 18.02.2020. Thereafter, the

stay was granted on 22.12.2021, by the learned Tribunal subject to deposit of 40% amount after adjusting the amount of ₹ 1,19,000 which was already

recovered. The petitioner deposited the amount of ₹ 3,81,735/- on 31.01.2022. Thereafter, it came to the notice of the present petitioner that the

respondent authority had also recovered the amount of ₹ 2,19,720/- from Principal Employer i.e. M/s.Adani Gas Limited, which was actually due and

payable to the petitioner on 05.11.2020.

4.4. During the course of hearing before the Appellate Court, the petitioner had also given a breakup of the employees, who were excluded employees

and requested that assessment be reduced by ₹ 13,14,585/-. Learned Tribunal without considering the above aspects rejected the appeal, mainly on the

ground that document regarding excluded employees were not produced before the authority at the time of assessment of under section 7 A of the

Act and that application under section 7B of the Act wherein the list of excluded employees were produced was barred by the delay. Being aggrieved

and dissatisfied with aforesaid orders, the present petition is filed.

5. Heard the learned advocate Mr.Yogi Gadiya for the petitioners and learned advocate Ms.E. Shailaja for the respondent No.1.

6. It is submitted by the learned advocate Mr.Yogi Gadiya for the petitioner that at the relevant point of time, statutory wage ceiling was ₹ 6500/- and

the same was enhanced with effect from 01.09.2014 to ₹ 15,000/-. As per section 2F of the EPF Scheme, any employee earning more than ₹ 6500/-

would be considered as an "Excluded Employee" under the law. Learned advocate Mr.Gadiya submits that there were 4 to 6 employees, whose

salary was beyond ₹ 6500/- for the period in question up to August 2014. Learned advocate Mr.Gadiya further submits that the total contribution of

the said employees as assessed by EPFO comes to ₹ 3,14,585/-" which was explained with the tables and salary sheet attached with review

application as well as with the memo of appeal. It is submitted by the learned advocate Mr.Gadiya that as per prevailing law, the said amount ought

not to have assessed against the present petitioner.

6.1. Learned advocate Mr.Gadiya submits that the authority while passing the order of assessment has relied only on the submission of Enforcement

Officer, by overlooking the contention of Excluded Employees. Learned advocate Mr.Gadiya further submits that the learned authority has also

committed an error relying upon the minimum wage for the purpose of assessment, as if some employees are not paid any salary. Learned advocate

Mr.Gadiya submits that the question of paying EPF contribution does not arise at all, the EPF Act provides for contribution when salary is actually paid

to any person.

6.2. It is further submitted by the learned advocate Mr.Gadiya that despite the request was made to join Principal Employers to prove that the

petitioner was not directly controlling and supervising the concern employees and the contract has already ended in the year 2016, the authority

without considering the same passed an order.

6.3. It is further submitted by the learned advocate Mr.Gadiya that in the review of application, list of excluded employee, salary register, calculation

sheets, etc. have been produced. However, the learned authority has rejected the review application by holding that no new facts came to be brought

by the establishment and review was filed beyond the period of limitation. Learned advocate Mr.Gadiya for the petitioner submits that though all

documents were produced before the learned Tribunal and the appeal proceedings are continuation of original proceedings, however, instead of

examining the documents in detail, learned appellate authority has also dismissed the appeal on the ground that the documents were not placed before

the authority at the time of passing the order under section 7A of the Act.

6.4. In view of above submissions, learned, advocate Mr.Gadiya for the petitioner submits that the impugned orders may be set aside and the petition

may be allowed.

7. Per contra, learned advocate, Ms.Shailaja appearing for the respondent has submitted before the Court that the Act providing for social security to

the employees working in any establishment engaging 20 or more persons on any day, it provides for compulsory deduction of provident fund from the

employees and a contribution from the employer, which is deposited in worker's account in the EPF office. It is submitted by the learned advocate

Ms.Shailaja that as per the provisions, provident fund and other contributions have to be deposited by the employer by the 15th of the next month in

which employee has worked in the establishment and dues become payable to him, because the worker has already performed the employment up to

last day of the previous month. In case of failure to deposit the legitimate dues of worker, the EPFO under section 7A of the Act, initiate recovery

action for the purpose of compelling the employer to deposit the legitimate dues of the work. Through judicial process, dues of workers under section

7A of the Act is assessed and the employer/establishment is asked to deposit the amount.

7.1. Learned advocate Ms.Shailaja submits that after depositing the principal amount, action is initiated to levy penalty and damages under section 7Q

and section 14 of the Act provide for the interest on delayed payment by the employer and also act as a deterrent for them. Learned advocate

Ms.Shailaja submits that the establishment had not submitted any salary register for the period of 05/2011 to 03/2012. Learned advocate Ms.Shailaja

submits that the establishment had employees names on muster roll, but the names of some employees were not there in the salary register. Learned

advocate Ms.Shailaja submits that establishment has not provide any evidence to support that it had employees receiving wages higher than the

statutory ceiling and therefore the PF dues were calculated based on the records which made available and after reasonable assumption like minimum

wages and wages in the statutory weight ceiling where the records were not made available despite sufficient opportunities were given, assessment

was made.

7.2. It is further submitted by the learned advocate Ms.Shailaja that review application under section 7B against an order passed under section 7 A

order dated 02.12.2019, was filed only on 22.06.2020 i.e. the beyond period of limitation of 45 days provided in para 79A of EPF Scheme 1952, on

completion of limitation period, the competent authority becomes functus-officio therefore, review application came to be rejected on 07.10.2020.

7.3. Learned advocate Ms.Shailaja submits that so far as the contention raised with regard to ceiling limits is concerned, as per the EPF scheme para

26A even when his salaries crossed statutory wage ceiling, and a member would continue to remain a member of EPF scheme.

7.4. Learned advocate Ms.Shailaja submits that in absence of any reliable records, learned authority under section 7A of the Act has rightly passed an

order, which was confirmed by all other authorities. Learned advocate Ms.Shailaja submits that as no error has been committed, the petition deserves

to be dismissed and impugned orders are required to be confirmed.

8. Having considered the submission made by the learned advocates and on perusing the records, impugned order deserves to be set aside on

following reasons:

A. Enforcement Officer initiated the inquiry under section 7A for the period of May-2011 to March-2018 and April-2018 to June-2018. The

first date of hearing was fixed on 12.09.2018 and the last date as per the record fixed on 27.11.2019 and within a period of three months, the inquiry

came to be concluded. This Court is of the view that inquiry concluded in haste.

B. Salary register for period 05/2011 to 03/2012, has not been produced. It is observed by the Assistant PF Commissioner that enforcement officer

has verified the documents like salary register and attendance register for the above period i.e. from 05/2011 to 06/2018 and calculation of the dues

were made for the period of 05/2011 to 06/2018 on the basis of minimum wages prevalent at relevant point in time and dues were determined of

Rs.12,15,837 and the order was passed under section 7A on 02.12.2019. That wage register has not been produced, therefore how documents were

verified by the Enforcement Officer. It appears that in casual manner above statement is made.

C. Review petition was filed on 07.10.2020, which is beyond period of 45 days. Therefore, same was rejected. However, the learned Reviewing

Authority has in addition of limitation also gave the reasons that establishment has not brought any new matter to light warranting a look under Section

7B proceedings. It is not in dispute that along with memo of review petition, list of excluded workmen were attached, however by overlooking the

same above observations were made,

D. Appeal which was filed before the Appellate Authority was also rejected, mainly on the ground that the appellant has not submitted the list of

excluded employees who are getting salary more than statutory wage limit before the assessing authority under Section 7A of the Act. Learned

Appellate Authority discarded the list which was produced before the learned Appellate Authority, without considering the settled position of law that

appeal proceedings are continuation of original proceedings.

E. The provisions of the Employees Provident Fund Scheme, 1952, wherein paragraph 26 provides that every employee employed in or in connection

with the work of a factory or other establishment to which this Scheme applies, other than excluded employees, shall be entitled and required to

become a member of the fund from the day this paragraph comes into force in such factory or other establishment. Excluded employees, who are

exempted from becoming a member of the Scheme, are defined under Section 2(f), wherein (ii) provides that an employee, whose pay at the time he

otherwise becomes entitled to become a member of the Fund exceeds Rs.15,000/-per month, is excluded. This section appears to have been amended

from 01.09.2014, and as per paragraph 26(6), the enrollment of such employees was subject to a ceiling limit of Rs. 6,500/-, which was subsequently

enhanced to Rs.15,000/- per month. The learned Appellate Authority, instead of testing the above arguments with the documentary evidence produced

before the Court, concluded with a negative answer by holding that no documentary evidence was produced before the inquiry officer under Section

7A of the Act.

9. It is true that wage registers were not produced before the Enforcement Officer at the stage of inquiry under section 7A of the Act, however, from

the record it transpires that inquiry was concluded within a short span of three months. The register, which was not produced 05/2011 to 03/2012

however assessment was made for the period of seven years on the basis of minimum wages. The learned Reviewing Authority, despite the list which

was produced, has observed that no new documents were produced in addition to the ground of delay. It is not in dispute that after 45 days, the

reviewing authority would not have power to consider the case on merits however, along with time bar ground review applications came to be rejected

by observing the merit also.

10. Learned Appellate Authority has also committed an error in discarding the list which was produced along with the memo of appeal, showing that

the persons, who were named were fall under the definition of excluded employees and therefore, establishment would not liable to pay the

contribution. Merely failing to produce before the 7A authority would not debar the petitioner to produce the same before the learned appellate

authority as the appeal is continuation of original proceedings.

11. Considering overall facts, this Court is of the view that the impugned orders passed in EPF Appeal (CGITA) No.24 of 2020 dated 13.08.2024 is

required to be set aside, and the matter is required to be reminded back to the learned Appellate Authority to decide the appeal after considering the

submissions of the present petitioner and the documents produced by the petitioner along with memo of appeal.

12. Resultantly, the petition is partly allowed in the above terms and matter is remanded back to the learned Appellate Authority. Rule is made

absolute to the above extent.