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कर्मचारी भविष्य निधि संगठन

(श्रम एवं रोजगार मंत्रालय, भारत सरकार)

EMPLOYEES' PROVIDENT FUND ORGANISATION

(Ministry of Labour & Employment, Govt. of India)

मुख्य कार्यालय / Head Office

भविष्य निधि भवन, 14-भिकाजी कामा प्लेस, नई दिल्ली-110 066

Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi - 110 066.

LC-4/Builders. Asso. Cont. case/

Date: 18.09.2014

To

All Addl. Central P.F Commissioner(Zone)
All Regional P.F Commissioners
Regional Offices/Sub-Regional Offices

19 SEP 2014

Subject:-Forwarding of important judgement by Hon'ble High Court of Delhi in WP (C) No. 3588/2002 titled as Builders Association of India & Ors.Vs. Union of India & Ors.- regarding.

Sir,

Please find enclosed herewith a copy of the judgement delivered by Hon'ble High Court, Delhi in WP(C) No. 3588/2002, dated 28.08.2014.

2. The main stand of the petitioners in this case was that till an easy mechanism is created for workers (whether pass book or 10 digit permanent account number) they are unable to deposit the contribution under the Act. Hon'ble Court while dismissing the petition, held that denial of such facility to workers cannot be a grievance of the employer/petitioners, because a statutory provision cannot be nullified on the ground of procedural deficiency.

3. This landmark order of Hon'ble High court of Delhi, may kindly be used while defending the similar cases.

Enclosure: As Above

Yours faithfully,

(J.R.Sharma)

Addl. Central P. F. Commissioner (Legal)

Copy to : RPFC, NDC for web uploading please.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on February 03, 2014

Judgment Delivered on August 28, 2014

+ **W.P.(C) 3588/2002**

BUILDERS ASSOCIATION OF INDIA & ORS.

..... Petitioners

Represented by: Mr.Dhruv Mehta, Sr. Advocate
with Mr.Somesh Arora,
Mr.Gulshan Sharma, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.Ruchir Mishra, Advocate
for R1
Mr.R.C.Chawla, Advocate for
R2

+ **W.P.(C) 7253/2002**

HARCHARAN DAS GUPTA ENGG. & BLDR. AND ORS.

..... Petitioners

Represented by: Mr.Somesh Arora and
Mr.Gulshan Sharma, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.R.C.Chawla, Advocate for
R2

+ **W.P.(C) 8956-57/2005**

SKYLINE ENGINEERING CONTRACTS

..... Petitioners

Represented by: Mr.Jevesh Nagrath, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.R.C.Chawla, Advocate for
R2

+

W.P.(C) 12-13/2006

SOM DATT BUILDERS LTD. AND ANR. Petitioners

Represented by: Mr.Somesh Arora and
Mr.Gulshan Sharma, Advocates

versus

UNION OF INDIA & ORS. Respondents

Represented by: Mr.R.C.Chawla, Advocate for
R2

+

W.P.(C) 9500/2009

TIRATH RAM AHUJA PVT. LTD.

.... Petitioners

Represented by: Mr.Somesh Arora and
Mr.Gulshan Sharma, Advocates

versus

UNION OF INDIA & ORS.

.... Respondents

Represented by: Mr.R.C.Chawla, Advocate for
R2

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. Since this batch of writ petitions involve the question of applicability of the P.F Act/Scheme on the casual labour/temporary/peripatetic workers, the procedure evolved and the proceedings initiated under Section 7-A for computation of dues, with regard to casual labour/temporary/peripatetic workers, the writ

petitions are being decided by this common order.

FACTS:

W.P.(C) 3588/2002

2. In this writ petition the petitioners have in substance prayed for a direction against the respondents not to enforce the provisions of para No.26(2) of the Provident Fund Scheme ('Scheme' in short) insofar as temporary and/or casual site workers engaged in the multi-tire system in the petitioners' business and by further declaring that such workers are not required to become members of the Provident Fund Act ('Act' in short) or the Scheme. Since the vires of the said provision has been upheld by the Supreme Court in the case of J.P.Tobacco Products vs. Union of India 1996 (1) LLJ 822, the only relief which the petitioners in this writ petition have pressed for is the prayer in para No.e and f, which are reproduced as under:

“(e) Issue a writ in the nature of mandamus, directing the Respondent to evolve modified Scheme & create mechanism for its implementation, as directed by this Hon’ble Court, in Pyarelal Hari Singh and till such modification and consequent implementation, not to force the Petitioners to cover casual/labour/site worker under the provisions of Provident Fund Act or Provident Fund Scheme and not to levy and/or realize and/or require payment of Provident Fund Contribution from the Petitioners for such Site workers engaged by the sub contractor’s of the Petitioner.

(f) Quash the order dated 23rd December, 1994 passed by the Respondent No.5 whereby the order passed by the Respondent No.4 dated 8th February, 1994 was set aside by the Respondent No.5.”

3. The facts as culled out from the record are, the petitioner No.1 is a registered body constituted under the Societies Registration Act, 1860. The petitioners No.2 to 12 are its members. The government

vide notification dated September 17, 1964 had brought the establishment of engineers, engineering contractors who were not exclusively engaged in building and construction industry within the purview of the Act with effect from October 31, 1964. By way of a subsequent notification dated September 23, 1980, the building and construction industry was also brought within the purview of the Act with effect from October 31, 1980. Vide notification dated November 01, 1990, para 26(2) of the Scheme was amended to read as under:

“After this paragraph come into force, in a factory or other establishment, every employee employed in or in connection with the work of that factory or establishment other than excluded employee who has not become a member already shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.”

4. From the above it is noted that the Act was made applicable to every workman from the date of joining as against continuous 3 months service stipulated in erstwhile para 26(2) of the Scheme. The petitioner No.1 association invoked the provisions of 19(A) of the Act to seek clarification regarding giving effect to the provisions of the Act to casual/temporary workers/peripatetic workers employed on work sites of the petitioners' establishment. The question raised before the authority was whether the workers employed at the work sites of the establishment engaged in the building and construction industry are not the employees as defined in Section 2 of the Act because (i) they cannot be termed as employees of the establishment; (ii) they are temporary/casual workers.

5. Even though the competent authority vide its order dated February 08, 1994 was of the view that the casual workers engaged at

sites are not covered under the provisions of the Act, subsequently the said view was reviewed and vide order dated December 23, 1994 the earlier order of February 08, 1994 stood cancelled. In the mean time, the validity of the para 26(2) of the Scheme which was challenged before the Madhya Pradesh High Court in the case of *Khemchand Motilal Tobacco Products Ltd. vs. Union of India* 1995 (II) CLR 360 was upheld, which decision was later confirmed by the Supreme Court in *J.P.Tobacco Products* case (supra), wherein the Court has held that the amendment to para 26(2) of the Scheme was valid and compulsory contribution towards provident fund does not amount to denial of minimum wages. The Court further held that the amendment is not impracticable and unworkable and it is not ultra-vires to the Act and Articles 14 and 19(1)(g) of the Constitution of India.

6. It may be noted here that the petitioners had filed a writ petition under Article 32 before the Supreme Court which was clubbed with the *J.P.Tobacco* case (supra).

7. A writ petition was filed in this Court in the name of *Pyare Lal Hari Singh vs. Union of India & Ors.* W.P.(C) No.792/1991, wherein the vires of para 26(2) of the Scheme was challenged. During the pendency of the writ petition, the Division Bench of this Court had time to time passed certain orders on the measures taken by the respondents with regard to the contribution to be made by the migrant labourers going from place to place. In this writ petition the orders passed on November 27, 1991, May 19, 1992 are reproduced as under:

“27/11/1991

Present:- Counsel for the Petitioner.

C.W.P. No.792/91

Additional affidavit has been filed but in our opinion the problem is not resolved. Merely having a pass-book will not serve any useful purpose because in the very nature of things a migrant labourer goes from the place to the other and there is no solution as to how and from where the migrant labourer would be able to withdraw the money due to him. These and other related problems should be considered and a more detailed and an effective proposal for a scheme should be presented to the Court on the next date of hearing.

Adjourned to 20th January, 1992. Interim orders to continue.

A copy of the order be given dasti to counsel for the respondents.”

“19-5-1992

*Present:- Mr.Rajiv Nayar, Advocate,
Mr.R.K.Kapur, Advocate,
Mr.Kuldip Pabley, counsel in items 24, 25,
43, 84.*

*Mr.M.R.Chawla, Advocate for the
Petitioners*

*Mr.S.Mukherjee, Advocate
Mr.K.C.Sharma, Advocate
Mr.R.C.Chawla, Advocate for the
Respondents.*

C.W.P. NO.792/91

Mr. Mukherjee states that an affidavit has been filed giving proposed revised accounting procedure in respect of workers engaged in building and construction industry. The said additional affidavit is, however, not on nor record but during the course of hearing a copy of the same was made available to us.

We have perused the proposed scheme and we have our apprehensions about the same only with regard to one aspect viz., whether it will be easy or convenient for the workers to be able to realize the amounts due to them. The proposal, as envisaged, contemplates about 64 Centres in all the whole of India come using the Headquarters, the Regional Offices and the Sub-Regional offices which are supposed to cater to lakhs of villages in which the labour force may be residing. Considering the size of India, the workmen in order to claim a refund, or their legal heirs in order to realize the money on the death of a workman, may have to travel hundreds of miles only for the purpose of putting in an application and then waiting for getting the money due to them. The scheme should be so formulated so as to make it easy and convenient for the persons entitled to receive the money to do so without much difficulty. Where aware of the fact that according to the Provident Fund Rules money is not payable to an employee merely at his request. The Provident Fund is like retirement benefit of in any case is a benefit which is available towards the end of one's serving years. But during the period when one is working loans can be taken or withdrawal made under certain circumstances. It is possible that if easy withdrawal of money is allowed this object may be frustrated but, on the other hand, if realization of money is inconvenient then the result would be that large sums of money would continue to remain with the Provident Fund Commissioner without the workmen getting benefit thereof. As at present there are about 37 crores of rupees lying with the Provident Fund Commissioner which are unclaimed. This amount will multiply many fold if it is un-economic or impractical for workers to realize small amounts of money which may be individually due to the under the revised Provident fund Scheme. Therefore, every effect

should be made to see that the scheme is made workable and it will be a lesser evil if the workers obtain their money before it would ordinarily be due to them rather than the workmen losing the money in toto.

One of the suggestions which as been mooted during the course of discussion is that into the main computer data should be fed in, indicating the name and nominees of every worker. If during a particular period of time say six months or one year or more, no contribution into that account has been made, a red flat should be raised which will warn the Provident Fund authorities to ascertain from the account holder as to why no contribution is being made. If no reply is received which is satisfactory then, possibly, after sometime, the Provident Fund authorities should on their own refund or pay to the account holder or his nominee the amount standing to his credit in that account on the presumption that the amount has become due to the employee. This will be on the basis that as and when a worker, who is a member of the Provident Fund account decides to resign or retire or cease working, he comes, entitled to the refund of the money. When no contribution is made to an account of the worker for a length of time it can safely be presumed that the said worker has stopped working and is, therefore, entitled to the refund of money. In this way all moneys will be paid to the workmen.

Another suggestion which has been made is that money should be paid with the assistances to stamps being affixed on the pass-book to be maintained by the worker. Suggestions to this effect have already been made by the Managements of different concerns.

Another suggestion is also that electronic teller cards should be issued to the workmen which will

keep a complete record off all the transactions and will take the place of a pass-book.

All the aforesaid suggestions should again be examined by the Board and a detailed scheme be made available to the Court on 8th July, 1992 for final disposal.

Copy of the order be given dasti to counsel for the parties.”

8. On May 02, 1995 attention of the Division Bench of this Court was drawn to the judgment of the Supreme Court in *J.P.Tobacco* case (supra), when this Court had passed the following order:

“Our attention has been drawn to a decision of the Supreme Court in J.P.Tobacco vs. Union of India & Others in SLP(C) No.21752/94 & 5475/95 dated 17.4.95. Mr.Mukherjee says that this judgment will fully cover the issues involved in the present petitions as well. It is however, controverted by Mr. Jaitley who says that the Supreme Court considered only 4 points in the SLPs which were against the judgment of the Madhya Pradesh High Court and he says that there is a 5th ground which is yet to be considered. He formulated this ground as:-

“If a casual worker for a very brief period works in an establishments will he be covered under the definition of the work ‘employee’ under the Employees Provident Fund and Miscellaneous Provisions Act, 1952?”

Mr.Jaitley further says that three High Courts namely – Rajasthan, Orissa and Karnataka, have upheld the provisions of the Act but read down the provision holding that casual labourer is not an employee under the Act. Mr. Mukherjee however, submits that 5th point will in fact be squarely covered under point No.3 of the

aforesaid judgment of the Supreme Court. Mr. Jaitley submits that as far as casual workers are concerned he need not deposit the amount of provident fund, if any, deducted from their wages, but as far as regular employees are concerned the amount deducted from their wage is being paid. In view of the decision of the Supreme Court however, we will vacate the interim order granted earlier. We however, direct that on respondents 1 & 2 complying with modified scheme the petitioner shall deduct the provident fund and deposit the same with the respondents 1 & 2 in respect of casual worker also.”

9. The aforesaid writ petition along with the connected writ petitions had come up for hearing on September 09, 1996 when the Division Bench of this Court passed the following order while disposing of the writ petitions:

“In this batch of writ petitions, the issues which survive for determination have been incorporated in the order dated 2 May 1995 in CWP No.792/91. That order refers to decision of the Supreme Court in J.P.Tobacco vs. Union of India & Ors. in SLP(C) No.21752/94 and 5475/95, dated 17th April, 1995. It also records the submissions of Mr. Mukherjee that the Supreme Court judgment will fully cover the issues involved in the present petitions as well. The submission of learned Counsel for the petitioners have also been recorded to the effect that the point which is yet to be considered by this Court is as under:

“If a casual worker for a very brief period works in an establishment will he be covered under the definition of the word “employee” under the Employees Provident Fund and Miscellaneous Provisions Act, 1952?”

After we had heard learned Counsel for the parties for some time. Mr. Mukherjee submitted that amended

Scheme which is in question in these Petitions would be applicable to an employee within the meaning of Section 2(f) of the aforesaid Act. Learned Counsel for the parties also drew our attention to the decision of the Supreme Court in The Regional Provident Fund Commissioner Vs. T.S.Hari Haran 1971 (2) SCC 68. The question whether a person is or is not an employee within the meaning of Section 2(f) would depend upon facts and circumstances of each case. In this view, the point noticed hereinbefore also does not require any determination in these proceedings. If a person is not an employee within the meaning of the Act, the Scheme impugned in the writ petitions would not be applicable to him. We may notice the contention of Mr. Mukherjee that the Act and, therefore, the scheme would not apply to those employees who are casual employees within the meaning of interpretation of the expression employee as per Hari Haran's case (Supra) so long as the ratio of the said decision holds the field and also the submission that whether a person is a casual employee or not would depend upon facts and circumstances of each case.

Mr.Nayar appearing for the Petitioners brought to our notice additional affidavit filed on behalf of respondent by Shri R.C.Jain, Regional Provident Fund Commissioner, New Delhi, dated 26 November, 1991, inter alia, stating that a pass-book system has been introduced w.e.f. 1 November 1991. The order dated 2 May 1995 directs that on respondents 1 and 2 in respect of casual workers also. It is admitted that reference to the modified procedure as mentioned in the aforesaid affidavit dated 26 November, 1991. On objection being raised by Mr. Nayar that modified procedure as stated in the affidavit dated 26 November, 1991 has not been introduced, Mr. Mukherjee explained that the same was introduced w.e.f. November 1991 as stated in the affidavit. We only record this submission as it is not necessary to say anything more on this aspect in view of what has been stated by Mr. Mukherjee.

Accordingly, this and the connected writ petitions are

disposed of in the above terms no costs.

10. From the perusal of the aforesaid orders it is revealed that the question which was to be considered by the Court was if a casual worker worked for a brief period in an establishment would be covered under the definition of the word 'employee' under the Act. The Court was of the view that this aspect is not required to be determined in the said proceedings. On the issue, which will facilitate the withdrawal of money from any place, a modified scheme was to be evolved. An affidavit was filed by Mr.K.C.Jain, Regional Provident Fund Commissioner, New Delhi, dated November 26, 1991, wherein he has stated that that the passbook system has been introduced with effect from November 01, 1991. The said fact was also reiterated by the counsel appearing for the RPFC. A revised accounting procedure was formulated which inter-alia stipulated as under:

“Every establishment covered under the scheduled head “building and construction industry” would be issued a block of 1000 or so permanent number indicating the permanent number that would be allotted to the workers as soon as the establishment employ a worker who are peripatetic in nature, the permanent number would be given by the establishment itself. Further, the establishment would also issue a passbook to the employee giving complete details as provided for in the passbook.

The employer would intimate the service office of the details of the number issued to the worker, serial number of the passbook issued in the special format that would be designed. (The number issued to the peripatetic member would be the permanent number assigned to him for all times to come until taxes his retirement).

The office would feed in to the computer the details as received in the return. Copy of the data received would be made in the floppy and sent to a Central Accounting Unit which will be functioning either in the Central Office or in any office designated by the Central Office.

Every employer after furnishing the return regarding the commencement of employment of a person for and after the issue of a permanent number would be required to furnish a monthly return. This monthly return would indicate the name of the establishment and code number given to them. Further, the return will also contain the permanent number of each of the employee engaged by them during the month and the details of wages paid, employer and employees' share paid etc. This will be a consolidated return for the E.P.F., F.P.F. and E.D.L.I. Schemes. The return would be so designed that it facilitate easy data input in computer. (Alongwith the above return the employer would also be required to make separate payment alongwith a specifically designed challan form to distinguish that dues are in respect of peripatetic employee). The employer would also be required to furnish monthly return along the copy of the challan and the certificate that the amount has been fully paid. He will also make suitable entries in the passbook of the employee."

11. It is noted that the petitioner No.1, on October 30, 1996, made a representation to the Chief Provident Fund Commissioner bringing to his notice that till that date its members have not been allotted permanent number of 10 digits for further allotment to each individual member. It is also the case of the petitioners that they have made further representations on November 20, 1996, January 24, 1997, December 24, 1999 to the extent calling upon the respondents to comply with the order dated September 19, 1996 passed by this Court in W.P.(C) 792/1991. According to the petitioners, a joint meeting

was held between the petitioners and officers of the Employees Provident Fund Organization on November 15, 1999, when it was decided to set up a Joint task Force in order to work out the Permanent Account Number of ten digit. As nothing was done by the respondents to work out the modalities for giving Permanent Account Number of ten digit, a legal notice was sent on behalf of the petitioners, calling upon them to introduce modified scheme/procedure. It is also the case of the petitioners that the respondents could not have enforced the provisions of the Provident Fund Act and the Provident Fund Scheme against the petitioners in respect of the site workers, who are not in the employment of the petitioners but are employees with *Thekedars/Contractors*. This writ petition has been filed in the year 2002. As has been stated above, the writ petition subsists for prayers at (e) and (f) respectively, on May 30, 2002, when this writ petition was listed before this Court, the Court while issuing notice recorded an undertaking of the counsel for the respondent Nos. 2 and 3 that till the next date, the respondents will not take any coercive steps in respect of the coverage of casual workers of the petitioners. However, proceedings under the Act would continue. It is noted that two more writ petitions Nos. 7253 and 12264 of 2002 were also filed before this Court, one of which W.P.(C) No. 7253/2002 has been filed by M/s Harcharan Das Gupta Engineering and Builders and eight others, primarily, seeking a direction against the respondents not to enforce the amended para 26(2) of the Scheme insofar as temporary and/or casual site workers engaged in the multi-tier system in petitioners' business.

12. When the said writ petitions [i.e. W.P.(C) Nos. 7253 & 12264

of 2002] were listed, this Court had passed the following order on November 29, 2003:

“It has been argued before me by the counsel for the petitioner that necessary infrastructure for disbursement of provident fund under the scheme has not yet been created by the number has been assigned. On the other hand, counsel for respondent Nos. 2 and 3 stays that the pass book and assignment of ten digit number will not be possible on physical verification or the petitioner providing the requisite information as to how many casual/temporary workers are engaged in the construction industry. Mr. Chawla says that as that part has not been done by the petitioner, no blanket stay can be created in favour of the petitioner. I find force in the argument of counsel for the respondent Nos. 2 & 3. Let petitioner supply all the relevant information with regard to casual/temporary workers to the respondents within three weeks. Thereafter, respondents will verify the same.

It has also been contended by Mr. Chawla that petitioners are not participating the proceedings before the Regional Provident Fund Commissioner. Mr. Sangi counsel for the petitioner says that the petitioner undertake to participate in the proceedings before the Regional Provident Fund Commissioner. No coercive steps be taken till such time the verification is done by respondents.

13. The interim order passed in this writ petition [i.e. W.P.(C) 3588/2002] on May 30, 2002 was made absolute.

14. On the other hand, in the counter-affidavit it is the stand of respondent No.3- Office of the Regional Provident Fund Commissioner that the building and construction establishments were brought under the purview of the Act with effect from October 31, 1980. The coverability of short term employees employed in the

regular course of business was upheld by the Supreme Court. Insofar as issue of passbook is concerned, it is the stand that as far as back 1997 passbooks have been sent to most of the builders/construction establishments with a direction to requisition more passbooks as per their requirement, if any, but the builders/construction establishments have failed to respond or make entries in the passbooks and have also failed to send the same to the Employees Provident Fund Officer for authentication after the close of the financial year which amounts to violation of the Act.

15. On July 25, 2013, an additional affidavit was filed by the respondents wherein the following stand has been taken:

“The Department continued to address the cause in order to improve upon the existing procedure.

The Para 40A of the EPF Scheme regarding Supply of Pass Book to the members was introduced vide G.R.S 341 dated 9th July, 1992 (w.e.f. 25th July, 1992), however the preparatory action was taken well before the insertion of the said Para and initially in the 125th CBT meeting held on 07/12/1990, the Central Board of Trustees, EPF (in short CBT) approved introduction of Pass Books to subscribers in the unorganized sector especially to the migrants workers on experimental basis. Prototype Pass Books prepared were circulated among the CBT members as also among the representative of the Builder Association of India. It was decided that the Pass Book will be supplied to each employer in this industry in respect of both the existing as well as future members for this purpose. A procedure was also approved and spade work to this effect was started. Copy of the circular dated 06/09/91 is enclosed and marked as Annexure A (Colly).

Subsequently revised accounting procedure in respect of the employees engaged in Buildings and construction

industry was also framed and placed before the Central Board of Trustees, with whom the Funds are vested, in the 129th meeting held on 06.03.92. The Central Board of Trustees approved the draft formulation and accorded its approval in principal.

The Hon'ble High Court would appreciate that the following steps were also taken by Respondent Department in the form of a series of executive instructions to all the field offices located in the country issued by the Head Office of the Answering Respondents from time to time.

The brief contents of the instructions are stated as under and copies have also been annexed for perusal of the Hon'ble High Court:-

- (i) The EPFO Head Office issued directions and exhaustive guidelines to all the field offices to issue Pass Books to establishments engaged in building & construction. A system was also devised to keep proper accounts of the Pass Books by each office.*
- (ii) The office of RPFC, Delhi provided Pass Books to the employers of unorganized sector and wherever the employers demanded, the same were provided. Copies of two forwarding letters of Regional Provident Fund Commissioner, Delhi dated 13.01.1997 addressed to 23 establishments and letter dated 24.01.1997 addressed to 29 establishments engaged in building & construction vide which Pass Books were initially sent is enclosed as Annexure-B (Colly) as testimony. Also a photocopy of the sample Pass Book is enclosed as Annexure-C (Colly).*
- (iii) Further circulars were issued to by the Head Office to all the field offices regarding implementation of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to the*

worker engaged in Building and construction. A copy of the circular dated 21.10.98 and 12.11.98 is enclosed as Annexure-D (Colly). The EPF members were free to submit any type of claims under the EPF Act at any of the field offices for settlement and a mechanism to this effect was framed in the field offices.

12) As has been submitted above, these measures were subject to the prevailing circumstances. The respondent department also introduced computerization for maintenance of PF accounts of the PF members from the year 1990 onwards in an incremental manner. Till the computerization was achieved fully, the Department, evolved mechanism of settling the claims of worker specially the mobile workers to accept and process the claims in any of the offices through out India and to get the same settled expeditiously from the concerned office so much so as to received claims during office hours as well as during the holidays also as can be seen from the enclosed circulars. Also exhaustive guidelines were issued for improving the working of the offices and expeditious settlement of P.F. claims vide circular dated 11.06.02 issued to the field offices by the Central Provident Fund Commissioner. Copy enclosed as marked as Annexure-E (Colly). Some of them are as details below:

- (i) The directions provide for organizing of Bhavishya Nidhi Adalats or Shikayat Niwaran Manch on 10th of every month,*
- (ii) Opening of Facilitation Centre,*
- (iii) Installation of computer terminals at Public Relation Officer's office.*
- (iv) Receiving of claims even on holidays and*

beyond working hours.

(v) Acceptance of claims pertaining to jurisdiction of other Regional Provident Fund Commissioner etc.

13) Many of the employers/employees similarly placed have abundantly made use of these mechanisms. It is for the petitioner to state why they could not make use of this facility evolved by the Organization. The fact that the petitioner has not taken note of this facility speaks of the scant interest being taken in respect of their workers. It is to be inferred that by such action the petitioner wanted to avoid the legal responsibility cast on them for ensuring compliance in respect of the workers engaged by them.

14) That the delivery of benefits under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and schemes framed there under is dependent upon a number of statutory duties and responsibilities cast upon the employer which includes payment of monthly contributions and submission of statutory monthly and annual returns, for all eligible workers of the establishment. Only after receipt of statutory remittance and returns the P.F. amount of each employee of the establishment is updated and issued".

16. A response, by way of a reply affidavit has been filed by some of the petitioners. In the said affidavit, the petitioners' attempt has been to relate the modified scheme to the issuance of 10 digit unique numbers in relation to the peripatetic workers. Meaningfully read, without the issuance of the PAN, the contribution is not possible, as the benefit would not reach the beneficiary and continued to remain

deposited in the department.

W.P.(C) 7253/2002

17. This writ petition has been filed by eight petitioners who are members of the Builders Association of India {petitioner No.1 in W.P.(c) 3588/2002} primarily seeking a relief that the amended para 26(2) of the Scheme insofar as temporary and/or casual site workers engaged in the multi-tire system may not be enforced in petitioners' business. It is the case of the petitioners that contribution towards provident fund with respect to casual worker is possible on framing of a modified scheme. The respondent Nos.2 & 3 –Central Provident Fund Commissioner and Regional Provident Fund Commissioner in their counter-affidavit have stated that the petitioners had not joined the proceedings being undertaken under Section 7A of the Act, neither had produced the record particularly no list of casual workers have been filed. According to the respondent Nos.2 & 3, there is no pre-condition for enforcement of the Act in the building and construction industry. The main object and effort of the department is to keep the interest of casual/short term employees in view, to ensure that such employees are benefitted by the Scheme and the Act, which the petitioners have failed to comply.

18. I note that this Court has from time to time passed the following orders in this writ petition:-

“29.11.2002

Notice to respondents to show cause as to why the rule nisi be not issued. Mr.R.K Sharma accepts notice on behalf of respondents 1,4 & 5 and Mr.R.C. Chawla accepts notice on behalf of respondent 2 and 3.

It has been argued before me by the counsel for the

petitioner that necessary infrastructure for disbursement of provident fund under the scheme has not yet been created by the number has been assigned. On the other hand counsel for respondents 2 & 3 says that the pass book and assignment of ten digit number will not be possible on physical verification or the petitioner providing the requisite information as to how many casual/temporary workers are engaged in the construction industry. Mr. Chawla says that as that part has not been done by the petitioner, no blanket stay can be created in favour of the petitioner. I find force in the argument of counsel for the respondents 2 & 3. Let petitioner supply all the relevant information with regard to casual/temporary workers to the respondents within three weeks. Thereafter, respondents will verify the same.

It has also been contended by Mr. Chawla that petitioners are not participating in the proceedings before the Regional Provident Fund Commissioner. Ms. Sanghi counsel for the petitioner says that the petitioner undertake to participate in the proceedings before the Regional Provident Fund Commissioner. No coercive steps be taken till such time the verification is done by respondents.

Let counter affidavit be filed within four weeks. Rejoinder, if any, be filed within four weeks, thereafter.”

“30.04.2004

List on 7th July, 2004 on which date a similar matter is said to be listed.

The petitioner will comply with the order dated 29th November, 2002 before the next date of hearing.

Interim order to continue.”

“07.07.2004

By an order dated 29.11.2002, the petitioner was directed to supply all the relevant information with regard to casual/ temporary workers to the respondents within three weeks. The said order is yet to be complied with by the petitioner. Unless the aforesaid information is supplied, it is not possible for the respondents to verify such information in terms of order of this Court. The information as directed and observed in the order dated 29.11.2002 shall now be furnished within two weeks from today, as a last opportunity failing which appropriate orders in accordance with law shall be passed on the next date.

An application is also filed by the petitioner, which is registered as CM No.6447/2004. It requires consideration by this Court. By order dated 28.5.2004, the said application was adjourned to July 27, 2004. The application will be taken up for consideration on the next date.

Renotify on 27th July, 2004.”

“27.07.2004

WP(C) 7253/2002

Respondents No.4 and 5 are not necessary parties. On oral request they are deleted from the memo of parties.

Rule.

To be heard along with W.P.(C) 3588/2002.

CM 12264/2002

The interim order passed on 29th November, 2002 is made absolute till the disposal of the writ petition.

CM stands disposed of.

CM 6447/2004

Notice.

Learned counsel accepts notice and seek time to file a reply. They may do so within four weeks. Rejoinder, if any, be filed within four weeks thereafter.

The matter be listed before the Registrar (Protocol) on 27th September, 2004, who will list the matter in Court after pleadings are complete.”

W.P.(C) 8956-57/2005

19. This writ petition has been filed by Skyline Engineering Contracts India Pvt. Ltd. & Mr.Pradeep Behl, General Manager (Finance) of the said company challenging the notices dated February 10, 2005 and May 19, 2005 issued by the Enforcement Officer of the Employees Provident Fund Organization calling upon the petitioner to produce the records and enforce provisions of the Act, and further for prosecuting the petitioner for non-deposit of the provident fund dues in relation to casual workers and for prosecution and punishment for violation of provisions of the Act. The grounds of challenge to the impugned notices in this writ petition are that the petitioners have always been making regular payments with respect to its regular employees and the impugned notices could not have been issued as far as casual employees are concerned as the provisions of the Act are not applicable to them in view of the order passed by the Division Bench of this Court in *Pyarelal Hari Singh vs. Union of India, W.P.(C) 792/1991*. The respondent's stand in its counter-affidavit primarily is that the provisions of the Act are applicable to employees under Section 2(f) of the Act and petitioners having violated the provisions of the Act, they have been rightly proceeded against. I note, on May

26, 2005 a statement was made by the learned counsel for the respondents that no coercive step shall be taken against the petitioners in respect of coverage of casual workers. The proceedings initiated against were directed to be continued.

20. The order dated May 26, 2005 is reproduced as under:-

“26.05.2005

It is contended by learned counsel for the Petitioner that the matter is covered on all fours by the orders passed in CW No.3588/2002. Rule has been issued and interim orders passed on 30th May, 2002 has been confirmed.

Mr.Chawla states that till the next date of hearing, the Respondents will not take any coercive steps in respect of the coverage of casual workers of the Petitioner, however, the proceedings will continue. Since, the proceedings under the Act are continuing before the Regional Provident Fund Commissioner the petitioner will extend cooperation for completion of the proceedings.

It is stated that the Attendance Register for the period 1.4.2004 to 31.3.2005 may be produced. Mr.Sanghi states that needful will be done within 30 days from today.

Renotify on 3rd August, 2005.

Dasti.”

W.P.(C) 9500/2009

21. This writ petition has been filed by M/s Tirath Ram Ahuja Pvt. Ltd. inter-alia seeking directions against the respondents that they should not enforce the provisions of amended para 26(2) of the Scheme in connection with the casual and/or temporary site workers engaged by the petitioner company. The ground for seeking such a relief primarily is that para 26(2) of the Scheme is applicable to

persons who are in permanent or at least semi permanent nature of employment and not to casual workers that too site workers engaged in multi-tire system peculiar to building and construction establishment. In other words, the builder who sub contracts the work to the sub-contractor/thekeदार and the daily labour employed by sub-contractor, are not even on the rolls of the builder. In the counter-affidavit filed by the Regional Provident Fund Commissioner, it is stated that proceedings under Section 7-A were initiated which culminated in the order dated December 23, 2008 against which the petitioner had filed an appeal before the Appellate Tribunal under Section 7(I) of the Act for waiver of pre-deposit. The Tribunal has waived the pre-deposit. That apart the respondents have stated that the question of the applicability of the Act/Scheme to the casual labourers stands settled in the case of J.P.Tobacco case (supra), wherein the notification amending the para 26(2) has been upheld. It is also the case of RPFC that however taking note of the difficulties, para 40(A) was added in the Scheme on July 09, 1992, whereby it was decided to supply passbooks to the members i.e. casual labourers. It is also the stand of RPFC that the passbooks were issued. It was also incumbent for the establishment to furnish the number and details of casual labourers making it possible for the department to issue passbooks in respect of casual labourers. Mere mention that the establishment is having so many regular employees and so many casual labourers cannot be treated as sufficient. It is also the stand of RPFC that the judgment of this Court in Pyarelal Hari Singh's case (supra) has been completely complied with. The proceedings initiated against the petitioner under Section 7-A of the Act are proper and the petitioner

had intentionally and deliberately not produced complete records during 7-A proceedings. In the rejoinder it is the case of the petitioner that the Appellate Tribunal vide order dated July 14, 2011 had set aside the order dated December 23, 2008 and remanded the matter back to the respondents for a decision in the matter as per law. It is also the case of the petitioner that it has submitted the annual returns for the period in question i.e. March, 1999 to September, 2005.

22. Insofar as passbooks are concerned it is the stand of the petitioner that the respondents failed to provide passbooks in respect of casual workers and showing its unconcerned attitude regarding issuance of the same by saying that it is not necessary to issue a passbook as facility of electronic return cum challan, monthly updating of member P.F Account and online viewing of P.F balance has been introduced with effect from April 01, 2012.

W.P.(C) 12-13/2006

23. This writ petition has been filed by M/s Som Datt Builders and one of its officer inter-alia praying for quashing and setting aside the notices dated December 20, 2005 and December 27, 2005 threatening the petitioner with arrest and initiation of prosecution and punishment for violation of provisions of the Act.

24. The challenge primarily is that they have been making contribution with regard to regular employees. The respondents have not given the list of workers with regard to whom the provisions of the Act/Scheme have been violated. The respondents in their counter-affidavit have taken a stand that the petitioner No.1 is covered under the provisions of the Act with effect from October 31, 1980. A special squad appointed by the EPFO visited the establishment for

verification of records relating to workers engaged by the establishment directly or through contractor for project executed in respect of golden quadrilateral, no accounts/complete records were produced. Even again when the squad had visited the establishment, the ledger/cash book/wages register/I.T record such as balance sheet, profit and loss account were not produced by the establishment. It is the stand of the respondents that in terms of the interim order dated January 03, 2006 calling upon the petitioner to appear and participate in the enquiries conducted by the respondents and to make available all the records necessary for effective assessment, the petitioner, on January 20, 2012 when the squad had visited the petitioner, failed to produce the records and sought another opportunity. Even on the next visit no records were produced. Summons under Section 7-A of the Act were issued to the establishment for the period between April, 2002 till date i.e. 2012. The respondents have also taken a stand about the issue of non-applicability of provisions of the Act with regard to casual labourers by stating that the same stands settled by the Supreme Court in J.P.Tobacco's case (supra). The respondents have justified the proceedings against the petitioner under Section 7-A of the Act. It is their stand that the non-compliance of provisions of the Act by the petitioner in not depositing the PF and allied contributions with regard to casual/temporary workers is leading to jeopardising the interest of the intended beneficiaries i.e. the workers with meagre income.

25. A rejoinder has been filed by the petitioner and a reading of the rejoinder would reveal that the petitioner's stand is that, it is not possible to implement the provisions of the Act with regard to casual worker who is primarily a migrant labour goes from one place to

another and there is no solution as to how and from where the migrant labour would be able to withdraw the money due to him. The petitioner has referred to the orders passed by this Court from time to time in various litigations, the correspondence entered by the Builders Association of India with the respondents and also a letter dated May 06, 2013 wherein the Employees Provident Fund Organization has taken the following stand:

“Subject:- Employees Provident Fund and M.P Act- Implementation and Difficulties-reg.

1. Please refer to the letter No.BAI/DC/30/2013/11 dated 28.03.2013 on the above subject.

2. In this regard, it is stated that the present computerisation in EPFO is based on decentralized architecture and the issue of any permanent P.F number in the decentralized environment would not be able to provide desired account portability.

3. It is also stated that EPFO is actively considering the implementation of centralised architecture and the provision of Permanent PF. Number would be one of the core objectives of this implementation.”

26. It may be necessary to state here that on January 03, 2006 this Court had passed the following order:

“03.01.2006

Issue notice to the respondents to show cause why the petition be not admitted to hearing.

Mr.Rajeev Mehra and Mr. R.C.Chawla, Advocates accept notice on behalf of reply. Let counter affidavits be filed within six weeks. Rejoinder thereto may be filed before the next date of hearing.

List on 3rd May, 2006.

CM No.15/2006

Issue notice.

Mr.Rajeev Mehra and Mr. R.C.Chawla, Advocates accept notice on behalf of respondent no.1 and respondent nos.2,3 and 4 respectively and prays for time to file a reply. Let replies be filed within six weeks. Rejoinder thereto may be filed before the next date of hearing.

The petitioner contends that it has paid all provident fund dues which according to it are due and payable for the period up to December, 2004, even according to the respondents and have relied on order dated 3rd February, 2005 passed by the enforcement officer. This position is disputed on behalf of the respondents who have contended that the petitioners are not depositing any provident fund dues in respect of casual labourers who are not outside the purview of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. In these circumstances, subject to the petitioner participating in the Inquiry before the respondent and making available all records as are necessary for effective assessment by the respondents, there shall be a stay of coercive methods of recovery of any dues which are found payable by the petitioner in respect of its casual labourers.

The respondents shall be at liberty to seek appropriate variation of this orders upon assessment being made.

It is made clear that the petitioner has to produce all relevant records relating to the casual labourer which may be required by the respondents.

List on 3rd May, 2006.

Dasti."

27. Mr.Dhruv Mehtra, learned Senior Counsel appearing for the petitioner in W.P.(C) 3588/2002 has taken me through the various orders passed by this Court from time to time in Civil Writ

No.792/1991, including orders dated November 27, 1991, May 19, 1992, May 02, 1995 and September 19, 1996 in Civil Writ No.792/1991, to contend that the respondents were to take instructions on amending the then existing scheme so as to make it less cumbersome or difficult for the beneficiaries to realise provident fund and make the scheme workable. The modified scheme proposed by the respondents was issuance of passbook with which the Court was not satisfied and was of the view that the passbook would not serve any useful purpose as the migrant labour goes from place to place and there is no solution as to how and from where the migrant labour would be able to withdraw the money due to him. According to him, the Court was of the view that a better proposal needs to be submitted. He would state that even as per the subsequent proposal submitted by way of an additional affidavit of Mr.K.C.Jain, the then Regional Provident Fund Commissioner in the nature of a revised accounting procedure to be made applicable to casual labourers/peripatetic employees, the following steps were required to be taken:-

- (i) *As a first step the Respondents had to generate and issue a 10 digit number called permanent unique number;*
- (ii) *Then the department had to generate and give a block of 1000 or so such permanent unique numbers to the employers who are registered under the Building Construction industry category. These numbers after generation had to be issued by the Respondents to the employers. The department had not to take any information regarding any employee before issuing such number and that is why a block of 1000 or so numbers had to be issued. It was not the department but the employer which was to give a particular number to a particular employee;*

- (iii) *As soon as the establishment employed a worker who is peripatetic in nature, the establishment itself would give the permanent number to such worker from the block of 1000 or so numbers that had to be given by the department;*
- (iv) *The number issued to the peripatetic worker would be assigned to him for all times to come till he retires;*
- (v) *Further the department would also issue a passbook;*
- (vi) *The return in respect of the peripatetic worker would contain his permanent unique number;*
- (vii) *A centralized accounting system would be put in place so that the peripatetic worker can know about his account and can avail the benefits from any place, since he is migrant in nature. Even the forms and challans to be submitted for the peripatetic worker were to be separate from the regular employees; and*
- (viii) *Further with the revised system, no transfer of individual account would be involved when the peripatetic worker moves from one employer to the other.*

As is clear from the above, the first move for the entire process was the generation of the 10 digit permanent unique number by the Respondents and assignment of a block of 1000 or so permanent unique numbers to the employer.”

28. Mr.Mehta would also submit that the aforesaid procedure was accepted and adopted in the 129th and 130th meeting of the Central Board of Trustees. In support of the procedure the respondents filed an additional affidavit in Civil Writ Petition No.792/1991 to contend that the issuance of 10 digit unique numbers may kindly be accepted as a mode of implementing para 26(2) of the Scheme for casual

labourers/peripatetic workers. He would further draw my attention to the order dated May 02, 1995 in Civil Writ Petition No.792/1991 to state, the Court had observed that the employer shall deduct and deposit the provident fund with the respondents only on respondents' complying with the modified scheme. He would also refer to the order dated September 19, 1996 to contend that a submission was made that the modified scheme as stated in the affidavit dated November 26, 1991 has not been introduced and the passbook system introduced with effect from November 01, 1991 is not the modified scheme expected to be put in place. The compliance of the modified scheme by the respondents of revised accounting procedure was a condition precedent before any contribution towards provident fund for casual labourers/peripatetic workers could be made. He would also state that amongst other things issuance of 10 digit permanent unique number for each employee was the first step. According to him, para 26(2) of the Scheme stood modified as per additional affidavit dated November 26, 1991 read with subsequent affidavits submitted by the respondents in Civil Writ Petition No.792/1991, in compliance with various directions issued by this Court from time to time. According to him, the applicability of the scheme in respect of casual/ peripatetic workers in construction industry was kept in abeyance till the respondents complied with the modified scheme i.e. issued 10 digit unique number and issued a block of 1000 or so to each of the employers. He has laid stress on the fact that the respondents till date have not complied with the modified scheme inasmuch as the 10 digit unique number has not been issued by them. He would state that the respondents in response to an RTI reply dated May 06, 2013 have

admitted the following:-

“In this regard it is stated that the present computerization in EPFO is based on decentralized architecture and the issue of any permanent PF number in the decentralized environment would not be able to provide desired account portability.

It is also stated that EPFO is actively considering the implementation of centralized architecture and the provision of permanent PF number would be one of the core objectives of this implementation.”

29. Mr.Mehta also relied upon the minutes of 198th meeting of CBT, wherein, according to him it was observed that 10 digit account number is critical and in its absence the work of EPFO was becoming unsustainable creating serious difficulties for all stakeholders and the same should be issued by April, 2013, however, the same has not been issued. By not issuing the 10 digit permanent unique number the respondents are in violation of the order passed by this Court. In effect they have nullified the proceedings and orders passed by this Court in CWP No.792/1991. In the last it is his submission that as per the employees provident fund organisation's balance sheet as on March 31, 2013, an amount more than Rs.26,000/- Crores is lying with it in the inoperative account. This shows that the respondents are merely collecting money and the benefit is not reaching the ultimate beneficiary i.e. the workman.

30. He makes a request that the prayer which survives for consideration of this Court and as reflected above be granted.

31. On the other hand, Mr.R.C.Chawla, learned counsel appearing for the respondent Nos.2 and 3 has opposed the maintainability of the writ petition in view of the fact that against the members of the

petitioner No.1 association proceedings under Section 7-A have been initiated and in some cases culminated. According to him, despite directions by the authorities to produce the records, the same have not been produced. Hence, under such circumstances the remedy of writ should be denied to the petitioners.

32. On merit, it is his submission that para 26(2) of the Scheme contained a condition of three months continuous service to attract the liability to pay the contribution under the Act was amended on November 01, 1990. In the amended para 26(2) of the Scheme the condition of three months continuous service was deleted. This amendment was challenged as being impractical and ultra vires in Madhya Pradesh High Court. The Madhya Pradesh High Court rejected the petition and upheld the validity of amendment so made.

33. In appeal filed against the judgment of Madhya Pradesh High Court, the Supreme Court upheld the same.

34. He would state that spirit of the orders passed on November 27, 1991, May 19, 1992 and September 19, 1996 is for framing modified scheme so that the money reaches the beneficiary. He by way of compilation filed by him has taken me through the various orders.

35. According to him, various writ petitions were filed in this Court. The leading petition was Pyare Lal Hari Singh. These writ petitions were disposed of by the Division Bench of this Court on 19.09.1996. In the writ petitions filed in this Court, the Court examined the question, how and in what manner the casual worker/peripatetic worker would receive his remuneration after he has shifted his assignment and/or shifted the station where he was previously working. A question was mooted and approved by the

Court that the department should evolve a scheme of issuing passbook so as to enable the worker to receive his money wherever he wants. It was so done and duly noticed by the Division Bench of this Court in its judgment.

36. Passbooks were issued to various establishments as would be evident from the document filed as R-1 at page 278. Thereafter the present writ petition was filed wherein a question was raised that whether an employee is casual or not have to be verified by the statutory authorities. It cannot be so accepted as claimed by the petitioners. In support, he relied on the observation made by the Division Bench in the judgment dated September 19, 1996 to contend that the question whether a person is or is not an employee within the meaning of Section 2(f) would depend upon facts and circumstances of each case. The order dated May 02, 1995 in W.P(C) 792/1991 by Hon'ble Justice D.P.Wadhwa and Hon'ble Mr. Justice M.K. Sharma can be said to be a declaration of law limited only to introduce modified procedure. The Court was not dealing with the question that whether an employee is casual/temporary. The Court was not dealing with the question how the character or the status of an employee is to be determined whether he/she is casual/temporary or not. The ratio of the two orders passed dated May 02, 1995 and September 19, 1996 would be attracted/applicable after the employee status is determined as casual/temporary employee.

37. According to him, this submission is supported by the observation made in the order dated September 19, 1996 which reads "the question whether a person is or is not an employee within the meaning of Section 2(f) would depend upon the facts and

circumstances of each case. This point noticed hereinabove also does not require any determination in these proceedings.”

38. He would further state that this core question was dealt with and an order dated November 29, 2005 was passed wherein the petitioners were directed to furnish all the relevant information with regard to casual/temporary workers to the respondent within three weeks. Thereafter the respondent will verify the same. The exercise could not be completed for want of required information as directed by the Court. In view of the submission reference to orders passed on May 02, 1995 is not attracted.

39. He would state that the petitioner in W.P.(C) 7253/2002 never supplied any information regarding claim of so-called casual workers within the time allowed by the Court and even till date inspite of a lapse of 10 years. Almost all the Courts where this writ petition was heard reiterated and directed the compliance of order dated November 29, 2002 viz. vide orders dated April 30, 2004, July 07, 2004 and July 27, 2004. According to him, when some of the documents were filed, these were found fabricated. The genuineness of these documents whether they are genuine or fabricated were referred to the Government of India, Ministry of Home Affairs, National Crime Record Bureau and the report was that these documents are fabricated.

40. According to him, at present the respondents are only investigating as a result of a complaint received from one of the Members of the Parliament regarding the charges of corruption qua labourers employed by the petitioners in Commonwealth Games projects. The issues raised by the petitioners are procedural and not substantive and cannot be allowed to take precedence over the

statutory provisions with regard to applicability of the Act to all the establishments in respect of the employees as defined under Section 2(f) of the Act. There cannot be any pre-condition to be made before they comply with the provisions of the Act. According to him, the demand of the members of the petitioner organization for PAN is an excuse and a ploy for not contributing the dues of the workers.

41. The issue of passbook to the so called casual workers was considered feasible on the basis of circumstances and technology existed in 1991. There was no restraint for seeking and applying improved avenues which could facilitate more effectively the dues known and received by the casual workers wherever they are. The said efforts were being taken by the department. Thereafter, due to advance technology such as introduction of computer, internet, e-mail, online transaction and after thorough consistent research, the infrastructure had been provided to redress all the grievances being raised by the petitioners. He has referred to the additional affidavit filed by Mr. Rakesh Kumar Ahuja, Asstt. P.F. Commissioner, EPFO to contend that in the writ petition (C) 12-13/2006, M/s Som Dutt Builders despite the direction of the Court, has failed to provide details of casual/temporary/peripatetic workers. Even during the Section 7A proceedings, some of the petitioners have evaded enrolment of its majority of workers and payment of their contribution by arbitrarily, categorizing them as excluded employees and depriving them their rights under the Act. He would state that in few cases, the Section 7A proceedings culminated in orders and substantial amount have been held to be due. He would rely upon the additional affidavit to contend that the pass book was sent to the members of the petitioner

organisation but still the details of the workers were not forthcoming. He would state, when the details of the workers/casual labourers has not been furnished to the respondents, the scheme cannot be evolved. It was very simple for the employer to give details by showing the Account books. In the last, he would state that the petitioner cannot deprive respondents from exercising its obligation under the Act.

42. Mr. Dhruv Mehta, learned Senior Counsel for the petitioner in his rejoinder arguments has re-read the order dated May 02, 1995. He would state that it is not the case of the petitioners that casual labour/temporary/peripatetic workers are not covered under para 26(2) of the scheme. According to him, the writ petitions arise in the backdrop of the earlier petitions and the order passed by this Court in W.P. 792/1991. He also joins Mr. Chawla to submit that the spirit of the scheme is that the benefit must reach the beneficiary, with a caveat, the respondents evolving a procedure in that regard. He also states that the employer being the stakeholder, they have to ensure that the benefits reach the workers. It is the respondents EPFO/RPFC who had to take the first step to give Permanent Account Number to the employer. He dispute the stand of the respondents that it is the petitioners who have to give the details of casual labour/temporary/peripatetic workers so as to enable the employer to give the PAN number. In this regard, he states that no such stand has been taken in the additional affidavit. According to him, that amounts to rewriting the scheme.

W.P.(C) Nos.7253/2002, 8956-87/2005, 12-13/2006 & 9500/2009

43. Insofar as the counsels for the petitioners in the other writ petitions are concerned, they have stated that they would adopt the

arguments put forth by Mr. Dhruv Mehta, learned Senior Counsel appearing in W.P. (C) 3588/2012. That apart, they have also filed the written submissions. I note that Section 7A proceedings have been initiated against the petitioners in W.P.(C) Nos. 7253/2002 & 12-13/2005.

44. Having heard the learned counsel for the parties and perused the written synopsis filed by them, first of all, I would consider the W.P.(C) No. 9500/2009 as in this writ petition, the reliefs prayed for are as under:

(a) Issue appropriate writs, orders or directions in the nature of Mandamus directing the respondents, their servants and agents not to enforce the provisions of amended para 26(2) of the Provident Fund Scheme in connection with the casual and/or temporary site workers engaged by the petitioner company;

(b) Issue appropriate writs, orders or directions in the nature of mandamus directing the respondent, their servants and agents declaring that the temporary and casual site workers engaged by the petitioner company are not required to become members of the Provident Act and/or the Provident Scheme, unless such workers are employed in permanent or semi-permanent capacity;

(c) Pass such other and further orders/directions as may be deemed just and fit in the interest of justice.

45. By notification dated October 19, 1990 effective from November 01, 1990, para 26(2) of the Scheme was amended as under:

“26(2). After this paragraph comes into force, in a factory or other establishment, every employee employed, in or in connection with the work of that factory or establishment, other than excluded employee, who has not become a member already shall also be entitled and

required to become a member of the fund, from the date of joining the factory or establishment”.

46. The aforesaid provision was challenged before the Madhya Pradesh High Court in the case of *Khem Chand Moti Lal Tobacco Products and Ors. Vs. Union of India and Anr. and connected writ petitions*, wherein, the vires of para 26(2) was upheld vide order dated 31.08.1994, the challenge to which was also rejected by the Supreme Court vide its order dated April 17, 1995 in an appeal filed by M/s. J.P. Tobacco Products Ltd. In fact, during the submissions in W.P.(C) 3588/2002, learned Senior Counsel for the petitioners has conceded that the petitioners therein are not disputing the applicability of the said para to the casual labour/temporary/peripatetic workers. In view of the fact that the vires of amended para 26(2) has been upheld by the Supreme Court, the prayer made in this writ petition for a direction not to enforce the provision of amended para 26(2) of the scheme is totally misconceived and unsustainable. The challenge in that regard is liable to be rejected. I dismiss this writ petition.

W.P.(C). Nos.3588/2002, 7253/2002, 8956-57/2005 & 12-13/2006

47. Insofar as these writ petitions are concerned, the issue as stated above falls in a very narrow compass whether the issuance of 10 digit PAN Number is a prerequisite for the petitioners to make contribution of P.F. dues in respect of casual labour/temporary/peripatetic workers engaged at the project site of the members of the petitioner No. 1-organization. As noted above, this Court has, from time to time, passed orders in different writ petitions, which includes orders passed in this batch of writ petitions as well. These orders include orders dated 27.11.1991, 19.5.1992, 2.5.1995 (CWP 792/91), orders dated

19.09.1996 (CWP 792/91), 30.05.2002 (CWP 3588/2002), 29.11.2002 (CWP 7253/2002), 30.04.2004 (CWP 7253/2002), 7.7.2004 (CWP 7253/2002) & 27.7.2004 (CWP 7253/2002).

48. From the stand taken by the parties before this Court and after hearing counsel for the parties, I note that it is not in dispute that the passbook system was put in place by the respondents with effect from November 01, 1991 and this fact was noted by this Court in its order dated November 27, 1991 in W.P.(C) 792/1991. The concern of the Court was, given the nature of things a more effective scheme be proposed so that the migrant worker should be able to withdraw money due to him. A revised accounting procedure was formulated, which contemplated giving of permanent account number by the respondents to be allotted to each worker. On May 02, 1995 this Court in W.P.(C) 792/1991 directed subject to the respondents complying with modified scheme the petitioner shall deduct the provident fund and deposit the same with the respondents. The order dated May 02, 1995 was in the nature interlocutory order. There was an issue, which modified scheme the Hon'ble Court was referring to. The Court during the hearing on 19.09.96 recorded the submission of learned counsel for the respondents that the modified scheme was the one introduced on November 01, 1991. The writ petition was disposed of on 19.09.96 by recording the aforesaid submission. It can be inferred that the petitioners were required to follow the passbook system. That apart I note in a meeting held on November 15, 1999 between the petitioner No.1 and the officers of the EPFO it was clarified to the petitioner No.1 that they would maintain books of account, a provident fund register in a proper way and submit returns to the

office timely. It was also agreed that joint task force be constituted to draft out the permanent account number of 10 digit to be earmarked. That apart this Court also while issuing notice on the W.P.(C) 7253/2002, on November 29, 2002 had by agreeing with the learned counsel for the respondents, directed the petitioner therein to supply the relevant information with regard to casual/temporary workers. The said order was continued and later made absolute. In other words, the petitioner therein was under obligation to give the requisite information as directed. The other members of the petitioner No.1 association being similarly placed and no different were also required to follow the same procedure with regard to the casual/temporary workers working at the site. I also note, even in the petition where the notices issued by the respondents initiating 7A proceedings have been challenged, the Court has directed the petitioners to make available the complete records/details with regard to casual labourers. Surely, the purpose of the decision dated November 15, 1999 and the various orders passed by the Court is to ensure that the petitioners discharge their obligation under the Scheme, without delay. From a legal perspective, it has to be said that a statutory provision cannot be nullified on the ground of procedural deficiency, if any.

49. In this regard I refer to the judgment of the Supreme Court in *Associated Cement Company Ltd. vs. CTO 48 STC 466 (SC)*, wherein the Court has held as under:-

“5. It is settled law that a distinction has to be made by court while interpreting the provisions of a taxing statute between charging provisions which impose the charge to tax and machinery provisions which provide the machinery for the quantification

of the tax and the levying and collection of the tax so imposed. While charging provisions are construed strictly, machinery sections are not generally subject to a rigorous construction. The courts are expected to construe the machinery sections in such a manner that a charge to tax is not defeated.”

50. Further I note, it is a facility to be made available to a worker to withdraw the amount from any place of his convenience. Denial of such facility to worker can't be a grievance of the employer/petitioners. In fact while upholding the vires of para 26(2) the High Court of Madhya Pradesh had rejected the contention of the employer, that the provision is impracticable and unworkable. The provisions of the Scheme of the PF is designed to induce thrift so that the employee may lay by from his present earning a portion for his old age. As the workman cannot be expected to spare very much, regard being had to the gap between what he earns and what he must spend, the employer is expected to make a contribution [*Ref. Burhanpur Tapti Mills Ltd. vs. Burhanpur Tapti Mills Mazdoor Sangh, 1965 I LLJ 453 (S.C.3J)*]. The objective of the Act/Scheme can't be defeated only on the ground that the facility of withdrawing the money has not been evolved.

51. The stand of the petitioners till such time the PAN number is allotted, they were/are unable to deposit the contribution is surely unsustainable.

52. Insofar as the reliance placed by Mr.Mehta on the decision of CBT in the month of April, 2013 is concerned, suffice to state that the Board of Trustees have only made observations with regard to 10 digit

Permanent Account Number and the difficulties which the stakeholders are facing including EPFO authorities. It would not follow that the petitioners shall not make contribution as is required under the Scheme. The submission of Mr.Mehta that as per the balance-sheet of the EPF Organization as on March 31, 2013 an amount of Rs.26,000/- Crores is lying in the inoperative account which shows that the respondents are merely collecting money without ensuring that the benefits reaches the workman concerned. This figure has been contested by Mr.R.C.Chawla. There can be many reasons for the accumulation of the said amount. In any case this can't be a ground for the petitioners to make a provision of the scheme unworkable. That apart I find that the respondents in their additional affidavit filed on July 25, 2013 have narrated the steps they have taken to ensure that the benefit reaches the casual labour/temporary/peripatetic workman. It has also come on record that the system of passbook is in place. At least some measures are in place to ensure that the benefit reaches the workman. No doubt the issuance of 10 digit Permanent Account Number would be more convenient and facilitate the withdrawal of benefits by a workman from any part of the country. There are certain apprehensions expressed by PF authorities, more particularly in the RTI reply dated May 06, 2013. Keeping in view the orders passed by the Supreme Court (in W.P.(C) 1212/1989) and by this Court as reproduced above, I am of the view that the respondents must put in place a scheme which would facilitate the withdrawal of money by a peripatetic worker from any place in the country, at the earliest, if not done till date.

53. The petitioners are not entitled to any relief. Action initiated by the respondents against the petitioners under the provisions of the Act is liable to be continued in accordance with law.

54. The writ petitions are dismissed with the observations as made above.

55. No costs.

(V.KAMESWAR RAO)
JUDGE

AUGUST 28, 2014

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