



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, Bhikaiji Cama Place, New Delhi - 110 066.

(Web Circulation)

No. LC-12011(15)/18/2020-LEGAL

Dated-19.01.2021

To,

The Addl. CPFC Zones

All RPFC-I/RPFC-II/APFC Regional Offices/District Offices.

Sub: Order dated 09/11/2020 of Hon'ble Delhi High Court in M/s United News of India Vs Regional Provident Fund Commissioner, Delhi (Central)[W.P.(C) 8851/2020 & CM APPLs. 28443/2020, 28444/2020].

Sir,

Judgment dated 09/11/2020 of Hon'ble High Court of Delhi in stated writ petition is shared herewith for information and necessary compliance.

Yours faithfully,

Amit

(Amit Vashist) 19.01.2021

Regional P.F. Commissioner -I Legal

\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 9th November, 2020
+ **W.P.(C) 8851/2020 & CM APPLs. 28443/2020, 28444/2020**
M/S UNITED NEWS OF INDIA Petitioner
Through: Ms. Shruti Munjal, Advocate. (M:
9818080077)
versus
REGIONAL PROVIDENT FUND COMMISSIONER, DELHI
(CENTRAL) Respondent
Through: Mr. B.B. Pradhan, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. The present petition has been filed by the Petitioner – M/s United News of India challenging the impugned order dated 19th February, 2020 passed by the Central Government Industrial Tribunal (*hereinafter*, 'CGIT') directing pre-deposit of 25% of the assessed amount of damages i.e. Rs. 61,63,590/-, as a pre-condition for granting stay on the implementation of the original assessment order.
3. The original assessment order was passed by the Employees' Provident Fund Organization (*hereinafter*, 'EPFO/Authority') on 24th October, 2019 under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (*hereinafter*, 'EPF Act'). The said order is an *ex-parte* order, as is clear from a perusal of page 44 of the paperbook.
4. Ms. Munjal, Id. counsel appearing for the Petitioner submits that the pre-deposit ought to be reduced, as the Petitioner is a non-profit organization

and the EPFO assessment order, which has been impugned before the CGIT, was passed *ex-parte*.

5. Mr. Pradhan, Id. counsel on the other hand submits that the order of pre-deposit is in terms of the provisions of the EPF Act.

6. This Court has repeatedly seen in recent times that several writ petitions have come up before the Court where the EPF Authorities have passed *ex-parte* orders in respect of assessment of damages under Section 14B of the EPF Act. In most cases, the only reason why the order is passed *ex-parte* is that the notice of hearing is served belatedly upon the assessee and the assessee is not able to appear on the date fixed.

7. Even in the present case, the same problem has arisen. The hearing before the Authority was fixed for 26th July, 2019. On the said date, the Presiding Officer was not holding proceedings. No date was intimated to the Petitioner/Assessee and thereafter notice dated 29th August, 2019 has been issued to the Assessee for a hearing on 3rd September, 2019. Unfortunately, however, the same was received only on 3rd September, 2019 by the Assessee. A perusal of the envelope and tracking report of the notice dated 29th August, 2019 shows that the said notice was dispatched only on 2nd September, 2019 and was received on 3rd September, 2019. By the time the Assessee appeared before the Authority on 3rd September, 2019, the hearing was concluded. The order was then passed on 24th October, 2019. The relevant portion of the order of the EPFO in fact records as under:

“PROCEEDINGS

2) *Whereas on the date 12.07.2019, Sh. Surrender Sharan and R.P. Arora appeared on behalf of the establishment and submitted authority letter which was taken on record. They further requested for*

some time to verify the record. In the interest of natural justice, one more opportunity was given to the establishment and the case was adjourned to 26.07.2019.

3) On 26.07.2019, none appeared on behalf of the establishment and matter was adjourned on 03.09.2019.

4) On 03.09.2019, none appeared on behalf of the establishment. Thus, it is clear that the establishment has nothing to say against the demand raised under section 14B.

5) Therefore, the enquiry stands concluded.

8. This order is therefore passed *ex-parte*, assessing the amount payable by the Assessee to be to the tune of penal damages of Rs.2,46,54,362/-. It is this order which was challenged before the CGIT, where the impugned order directing pre-deposit of 25% of assessed amount has been passed.

9. This Court has observed that repeated filing of writ petitions and appeals before the CGIT against *ex-parte* orders passed by the EPFO, due to non-receipt of notices in a timely manner is leading to multiplicity of proceedings and enormous inconvenience to the assesseees as also the Authorities and the Tribunals concerned. It is also observed that communication of notices is made in a completely haphazard manner. The notices are not dispatched until two or three days before the next date of hearing, by which time the assessee does not get sufficient time to make arrangements to attend the hearing.

10. This entire problem can be obviated if the EPF Authority communicates the next date of hearing on the particular date when the matter is listed so that the assessee can then appear and has notice of the next date of hearing.

11. This Court has considered similar grievances of assessees in *W.P.(C) 3243/2020* titled *M/s Hingiri Automobiles Pvt. Ltd. v. Regional P.F. Commissioner-II, Delhi (East)* and *W.P.(C) 8281/2020* titled *M/s Durable Doors and Windows v. Assistant P.F. Commissioner Gurugram*.

12. Under these circumstances, while exercising jurisdiction under Article 226/227, this Court directs that the EPF Authorities ought to completely streamline their proceedings. Accordingly, the following directions are issued:

- i) Whenever dates of hearing are fixed before the EPF Authorities, the company/assessee would be informed not just by speed post but also by e-mail. If the authorised representative's mobile number is available, notice shall also be served through WhatsApp;
- ii) Once the date of hearing is fixed and the assessee has appeared before the Authority, the next date of hearing would be communicated by the Presiding Officer or by the staff concerned to the assessee, at the end of the hearing itself, so that notice of the next date of hearing is with the assessee and there is no justification for non-appearance on the next date;
- iii) The notice for the next date of hearing shall also be communicated by e-mail and WhatsApp, if required as per procedures, at least one week before the next date, even if the date of hearing may have been conveyed on the previous date.
- iv) Whenever *ex-parte* orders are appealed against before the CGIT, the CGIT shall take into consideration whether notice of hearing was served in time upon the assessee, and pass pre-deposit directions accordingly.

13. On the facts of the present case, it is clear that the assessment order dated 24th October, 2019 was an *ex-parte* order and the Assessee did not have the opportunity to put forward its case before the Authority. Accordingly, the order dated 24th October, 2019 passed by the Regional Provident Fund Commissioner-II is set aside.

14. The appeal before the CGIT being *Appeal No. D-1/120/2019 titled M/s United News of India v. RPFC, Delhi (S)* shall stand disposed of in view of this order.

15. The Petitioner-Assessee shall now be given an opportunity to put forth its case before the EPFO and a speaking order shall be passed after hearing the Assessee. The order shall be passed by the EPFO, within three months from today.

16. The present petition is disposed of, in these terms. All pending applications are also disposed of. Copy of this order be circulated to the Central Provident Fund Commissioner, EPFO Head Office, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi-110066 by the Registrar (Appellate), so as to ensure onward communication to all EPFOs and authorities, to ensure compliance. Copy of the order be also communicated by the Registrar (Appellate), to the Presiding Officers, Central Government Industrial Tribunal-cum-Labour Court Delhi – I and II, Rouse Avenue Court Complex, Delhi – 110002.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 9, 2020

Rahul / A