

ORDER

under

Section 7A of EPF & MP Act, 1952



BEFORE THE REGIONAL PROVIDENT FUND COMMISSIONER-II

DISTRICT OFFICE, BILASPUR, CHHATTISGARH- 495001



ORDER u/s 7A/ of E.P.F. & M.P. Act, 1952

PF Code No: CGRAI3329262000
Diary No: 760/2024
Period: 04/2014 TO 06/2024

Central Board of Trustees (EPF)
Through EPFO, DO, Bilaspur
Vs M/s SHRISHTI INSTITUTE OF
MEDICAL SCIENCE AND RESEARCH
CENTRE, KORBA

APPEARANCES:

- A. For Central Board of Trustees (EPF) - the department**
- Shri S K Shrivastava, Enforcement Officer
- B. For M/s SHRISHTI INSTITUTE OF MEDICAL SCIENCE AND RESEARCH CENTRE - the establishment**
- Vineet Ruelal Kumar (Principal)
 - Pratik Chandu (Vice-Principal)
 - Sh Ganesh Sharma (Accounts Incharge)

ORDER (Issued under section 7A of EPF & MP Act 1952)

- The order is being passed under the Section 7A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act') by way of which I propose to dispose of the case initiated vide Summons dated 12/7/24 issued against the establishment.
- Whereas the Establishment M/s **SHRISHTI INSTITUTE OF MEDICAL SCIENCE AND RESEARCH CENTRE, KORBA**, CGRAI3329262000 (hereinafter referred to as Establishment) is covered under EPF & MP Act, 1952. The establishment is situated in the territorial jurisdiction of Employees' Provident Fund Organization, District Office, Bilaspur (hereinafter referred as the 'Department')
- After coverage under the provisions of the Act, it is duty of the establishment to deposit contributions in respect of all of its eligible employees engaged in or in connection with the work of the establishment on monthly basis under account heads such as:
 - The Provident Fund contribution (A/c No 1) under section 6 of the Act
 - The Provident Fund administrative charges (A/c No 2) under para 38 of the Employees' Provident Fund Scheme 1952
 - The Pension Fund contributions (A/c No 10) under with para 3 of the Employees' Pension Scheme 1995



BEFORE THE REGIONAL PROVIDENT FUND COMMISSIONER-II

DISTRICT OFFICE, BILASPUR, CHHATTISGARH- 495001



ORDER u/s 7A/ of E.P.F. & M.P. Act, 1952

- iv. The Employees' Deposit Linked Insurance contributions (A/c No 21) under section 6C of the Act read with para 8 of the Employees' Deposit Linked Insurance Scheme 1976
- v. The Employees' Deposit Linked Insurance administrative charges (A/c No 22) under section 6C of the Act read with para 8 of the Employees' Deposit Linked Insurance Scheme 1976

Besides this, the establishment is also required statutorily to submit monthly and yearly returns under provisions of the Act and three schemes framed there under.

4. As per section 7A of the EPF & MP Act 1952 –

7A. Determination of moneys due from employers-

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the 3[Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order shall be made under sub-section(1), unless the employer concerned is given a reasonable opportunity of representing his case.

(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so,



BEFORE THE REGIONAL PROVIDENT FUND COMMISSIONER-II

DISTRICT OFFICE, BILASPUR, CHHATTISGARH- 495001



ORDER u/s 7A/ of E.P.F. & M.P. Act, 1952

the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record

5. The inquiry was initiated on the basis of **Complaint from Smt Kamala Bai** (ex-employee) dated 20.12.23 to **Office of Assistant Labour Commissioner, Korba** stating that she had been working as employee since 2014 and has not been extended benefit of EPF and Other schemes under the Act. The said complaint was forwarded by ALC letter dated 14/2/24. Subsequently Show Cause Notices were issued and establishment was given an opportunity to explain its case. Since establishment failed to reply, Inspection was assigned from Shram Suvidha Portal dated 21/5/24 where it was reported that institution was functional since 2005 and had intake of 50 nursing students as a State Nursing Council Recognised Institution offering B.Sc(N) Programme. Further along with the Nursing college, it also had an operational hospital till 2022-23.
6. Subsequent to inspection by the office, the establishment took coverage w.e.f 1/7/24 without addressing the complaint employee specifically stated that she had been working since 2014. Accordingly Summons dated 12/7/24 for initiation of Section 7A inquiry for period 4/2014 to 6/2024 were issued.
7. The purpose of the inquiry was to determine the dues for this period for which establishment was bound to deposit the dues with the department, which it has not fully remitted as on the date of the order.

PROCEEDINGS -

8. In hearing dated 7/8/24, None appeared on behalf of establishment. EO requested that establishment had been non-cooperative in producing records. Accordingly Summons under Section 30 CPC 1908 be served to the employer for appearance on next date of hearing.
9. On 13/9/24, EO submitted that despite issuance of Summons under Section 30 of CPC, employer has not appeared in hearings. Further establishment has not cooperated to provide complete records. Department requested for imposition of fine since establishment has deliberately avoided appearance and is casual in its approach towards inquiry. The inquiry itself was initiated on the basis of complaint. It is observed that despite issuance of Summons for appearance and production of certain records none has appeared in hearing thereby wasting previous man-hours of office. Accordingly a **Fine of Rs 5000/-** was imposed under



BEFORE THE REGIONAL PROVIDENT FUND COMMISSIONER-II

DISTRICT OFFICE, BILASPUR, CHHATTISGARH- 495001



ORDER u/s 7A/ of E.P.F. & M.P. Act, 1952

Section 32 of CPC 1908. EO submitted on record that department is proposing to take help of Squad of EOs and assistance of local police to seize records under Section 13 of the Act

10. On 10/10/24, EO submits that records from June 2020 to 2024 has been provided by establishment. Establishment representatives submitted that records before 2020 is not available since it was being maintained by hospital unit which was subsequently closed. EO submits that Period of inquiry is from 2014 to 2024, department may alternatively carry back the payments from 2020 to 2014 since establishment has given in writing that record is not available. **Establishment had no objection to the same.**
11. On 5/11/24 Establishment reiterated that it had no records prior to 2020 and has already submitted same via letter dated 4/10/24. EO submits that in given case he has no option but to take same wages as per the last available month. Establishment also submits that there has been no pay revision since last 8 years. EO submits that he may be allowed to prepare report on the basis of available record.
12. On 12/11/24, EO presented deposition dated 11/11/24 and same has already been mailed to the establishment. Copy of EO Report dated 11.11.24 was also provided to establishment representatives during hearing. Establishment was given an opportunity to contest the findings of the department with substantiating evidence in support of their representation on next date .
13. On 22/11/24, Sh Pratik Chandu (Vice Principal) appeared virtually on behalf of establishment with submission that establishment's financial situation is not good and that the dues as per EO report are beyond establishment's fiscal capacity. EO submits that he has arrived at dues on the basis of submitted records and that any other ground may be considered by the authority in final order. Since no substantive dispute was raised on merits, case was reserved for orders.

ANALYSIS

14. The extant case is initiated on the basis of complaint from one employee Smt Kamala Devi. Establishment has till date not granted any benefit to her during the period of inquiry. The complaint was duly inspected and it was found that establishment had not taken coverage. The establishment tried to avoid granting benefits from back date by taking coverage w.e.f 1/7/24. During the Section 7A inquiry also establishment failed to provide complete records. After levying of fine during the proceeding, establishment provided Financial Statements, Salary Sheets and Attendance Registers but only for period 2020 to 2024.
15. On analysis of the financials it is clear that establishment is having receipts from Hospital, Hostel Fee, Tuition Fee and Mess Fee from Students. Further, as per audited Financials reports



BEFORE THE REGIONAL PROVIDENT FUND COMMISSIONER-II

DISTRICT OFFICE, BILASPUR, CHHATTISGARH- 495001



ORDER u/s 7A/ of E.P.F. & M.P. Act, 1952

of the establishment, it is clear that establishment had been running both Hospital and Nursing college and Salaries were paid to staff in both the units as per following details -

Year	Salary to Staff (Hospital)	Salary to Staff (Nursing College)	Total Salary
2020-21	1915771	4064219	5979990
2021-22	1591534	4984309	6575843
2022-23	Contingent Expenses including Salary Details Not enclosed in financials		
2023-24	1771459	4541875	6313334

16. EO vide Report dated 11/11/24 has calculated dues on the basis of salary sheets and attendance records for period 2020-24 which show an average of **33 employees** for both hospital and nursing college details of whom are available in the attendance and salary records from 2020-24, while financials are incomplete. For period 2014-2020, establishment has stated during hearing and through a written letter dated 4/10/24 that it has no records for the said period. The letter is as under -

SHRISHTI INSTITUTE OF MEDICAL SCIENCE & RESEARCH CENTER
KORBA (C.G.)
Affiliated by Chhattisgarh Ayush and Health Science University, Raipur (C.G)
Recognized by Indian Nursing Council, New Delhi & Chhattisgarh Nurses Registration Council

U&RC/20961/10/24 Date: 04/10/24

प्रति
क्षेत्रीय भविष्य निधि आयुक्त
जिला कार्यालय बिलासपुर छ.ग.

विषय : रिकॉर्ड उपलब्धता संबंधित पत्र ।
महोदय,

उपरोक्त विषयगत लेख है कि हमारे महाविद्यालय में जून 2020 से पहले का रिकॉर्ड उपलब्ध नहीं है।
अतः हम पूर्व का रिकॉर्ड देने में अस्मर्थ है । हम जून 2020 के बाद का रिकॉर्ड आपको उपलब्ध करा कर आपकी ओर प्रेषित कर रहे है।

संलग्न
1. ऑडिट रिपोर्ट
2. वेतन रिकॉर्ड 2020-21-22
3. उपस्थिति रिकॉर्ड 20-21 ले.
जा. 04.10.24

प्राचार्य
PRINCIPAL
Shrishti Institute of Medical Science & Research Center



BEFORE THE REGIONAL PROVIDENT FUND COMMISSIONER-II

DISTRICT OFFICE, BILASPUR, CHHATTISGARH- 495001



ORDER u/s 7A/ of E.P.F. & M.P. Act, 1952

17. Moreover, in hearings dated 4/10/24 and 5/11/24 where in establishment has stated that there has been no substantial salary revision and that it had no objection to department using best judgement method for calculating dues for period 2014-2020.
18. EO has prepared the following dues in his report dated 11/11/24 -

देय निर्धारण इस प्रकार है-

अवधि	विवरण	वेतन	खाता क-01		खाता क 02	खाता क-10	खाता क-21	खाता क-22	कुल राशि
			कर्मचारी	नियोक्ता					
माह 04 / 2014 से 08 / 2024	कुल अंशदान देय राशि	40377889	4845332	1481859	262160	3363473	201913	5724	1,01,60,461
माह 04 / 2014 से 08 / 2024	कुल जमा राशि	87119	10454	3497	500	6957	436	0	21844
माह 04 / 2014 से 08 / 2024	बकाया राशि	40290770	4834878	1478362	261660	3356516	201477	5724	1,01,38,617

उपरोक्त देय राशि के संबंध में वर्कशीट, संबंधित दस्तावेज संलग्न है।

विलंब से जमा की गई राशियों पर धारा 14B एवं धारा 7 Q के अंतर्गत कमरा: क्षतिमूल्य एवं ब्याज की गणना अलग से की जावेगी।

प्रतिलिपि-
क्षेत्रीय भविष्य निधि आयुक्त-II
जिला कार्यालय, बिलासपुर- सूचनार्थ।

(शिव कुमार श्रीवासा)
प्रवर्तन अधिकारी
जिला कार्यालय, बिलासपुर, छ.ग.
(INDUSTRY OF EMPLOYMENT, GOVT. OF INDIA)
DISTRICT OFFICE, BILASPUR, C.G.

19. The Copy of EO report has been provided to establishment and it has raised no dispute on merits except that the dues are beyond its fiscal capacity, which is no reason for non-compliance of the law.
20. The employees are duly identified for period 2020-24. However, the establishment has failed to provide any record prior to 2020. Under all labour laws including EPF& MP Act, Employer is the custodian of the records. As per Section 106 of Indian Evidence Act, 1872 -



BEFORE THE REGIONAL PROVIDENT FUND COMMISSIONER-II

DISTRICT OFFICE, BILASPUR, CHHATTISGARH- 495001



ORDER u/s 7A/ of E.P.F. & M.P. Act, 1952

When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

21. In the present case, all employee related records are within the exclusive possession of the establishment and the onus of providing them in case of default under the Act and Scheme is therefore of the establishment only. Hon'ble Delhi High Court in **Bright Exports Ltd vs Central Board of Trustees, EPF 2016** has held that -

In the present case, the question regarding number of employees and the names of employees who are employed with the petitioner establishment is well within the knowledge of the petitioner, thus, the burden was upon the petitioner establishment in terms of Section 106 of Indian Evidence Act...it was incumbent on the petitioner to have placed sufficient cogent documentary evidence so as to rebut the said inspection report and despite numerous opportunities granted to the petitioner before Assistant Provident Fund Commissioner, the petitioner failed to produce any such evidence. It is pertinent to mention here that all the service records of the employees i.e. the date of employment, attendance register, wages register, eligibility register, cash-book, ledger/ vouchers, etc. were in the exclusive knowledge, custody and possession of the petitioner establishment. But the petitioner failed to substantiate its case by means of any documentary evidence for the reason best known to it.

22. Hon'ble Supreme Court in **Employees' State Insurance Corporation vs. M/s. Harrison Malayalam Pvt. Ltd.** {30 August, 1993, AIR1993 SC2655} has held that

"Since the respondent-Company failed in its obligation, it cannot be heard to say that the workers are unidentifiable. It was within the exclusive knowledge of the respondent-Company as to how many workers were employed by its contractor. If the respondent-Company failed to get the details of the workmen employed by the contractor, it has only itself to thank for its default."

23. Hon'ble High Court, Calcutta in **M/s Hindustan Steel Works Construction Ltd. versus Regional Provident Fund Commissioner & Anr.** (W.P.No.26081 (W) of 2015] endorsed and approved the calculations, methodology and final liability arrived at by the RPFM who back calculated and arrived at the admitted number of employees and their likely wages on an average, since the petitioner principal employer failed to submit specific particulars of the wages paid over a period of 11 years.
24. The extant case has similar facts and situation as the establishment did not take coverage and failed to enrol employees whom it engaged in breach of multiple statutory provisions. In the course of inquiry, the establishment was directed to provide records. If unscrupulous/negligent employers denying the workers their entitlements are allowed to gain



BEFORE THE REGIONAL PROVIDENT FUND COMMISSIONER-II

DISTRICT OFFICE, BILASPUR, CHHATTISGARH- 495001



ORDER u/s 7A/ of E.P.F. & M.P. Act, 1952

at the expense of the workers, then it would incentivize non-compliance of law thereby depriving low income earning workers of their legitimate statutory rights. Such a practice also militates against the timeless jurisprudential principle **that no one should be allowed to reap the benefit of his own wrong**. The principle demands that a defaulter must be prevented from retaining the known profits or taking advantage of their own wrongs.

25. This principle being a compelling one, leads to the only option that assessment for period 2014-20 is done by best judgement method by considering available records and department can give public notice to general public through Newspaper to claim employee's entitlements under EPF & MP Act. Further, there cannot be two opinions on the fact that all out efforts should be made to identify the employees but in case even after best efforts, employment record is not traceable then it should not be taken as a constraint to determine the dues by way of best assessment.
26. In view of the forgoing discussions, after going through the facts of the case, documents and contentions placed before me, considering the provisions under the Act and the cited judgments and after due application of mind, I decide that as the establishment has negligently failed to provide record therefore the department's reasoning for assessment based on the available records in respect of employees engaged cannot be faulted.

ORDER

27. I have gone through the records, as well as oral and written submissions made by the establishment and the department. It is very clear that the establishment has not paid the statutory dues as required under the Act and schemes framed there under, for the enquiry period. During the course of enquiry sufficient opportunities were given to the establishment, and department to raise and counter the objections, which they have availed. The final report submitted by the department has not been disputed by the establishment. Thereby, I agree with the dues calculated in EO's deposition.
28. In view of the facts and submissions as discussed above I, **Gaurav Dogra**, Regional Provident Fund Commissioner II, District Office, Bilaspur, Chhattisgarh in exercise of the powers conferred upon me by virtue of provision under section 7A of the Act, think fit, and accordingly determine the dues against the establishment to be paid under the provisions of the Act and various schemes framed there under, in respect of below mentioned accounts for the period from **4/2014 to /2024** as per following details -



BEFORE THE REGIONAL PROVIDENT FUND COMMISSIONER-II

DISTRICT OFFICE, BILASPUR, CHHATTISGARH- 495001



ORDER u/s 7A/ of E.P.F. & M.P. Act, 1952

Subject	Dues					Total
	A/c. I	A/c II	A/c X	A/c XXI	A/c XXII	
As per EO report	63,13,240	2,21,660	33,56,516	2,01,477	5,724	1,01,38,617/-
Fine under S 30 CPC			5000/-			5000/-
Total						1,01,43,617/-

(In words -Rupees **One Crore One Lakh Forty Three Thousand Six Hundred Seventeen Only**)

29. Penal damages under Section 14B and Interest under Section 7Q is separately liable to be paid by the establishment.
30. The establishment is directed to deposit the amount as determined above within Sixty days from receipt of this order through challans online and submit the proof of remittance failing to which action may be taken in accordance with provision under section 14 of the Act read with para 76 of the Employees' Provident Fund Scheme 1952, apart from recovery of dues under section 8B to 8G of the Act without any further notice.
31. The determination of dues as made above is without prejudice to any other dues which may be liable on the part of the establishment under the provisions of the Act, and the department is free to place request for further enquiry for assessment and quantification of such liability against the establishment, even if the period or nature of default concerning such additional liability overlaps with the period or nature of default of instant inquiry, in case such a situation arises on discovery and examination of such relevant records or facts which may have not been placed on record, or may have escaped attention, as the case may be during the proceeding. The case is disposed accordingly.

Issued under my hand and seal on this 4/12/24

Regional PF Commissioner II
DO, Bilaspur (C.G)

Shrishti Institute of Medical Science and Research Centre
In-Front of District Jail, Rajgamar,
Road, Risdi, Korba (Chhattisgarh)-495677.
principal@shristiinstitutionkorba.com