



ANISO:9001,ISO:14001 &
IGSAS:18001 COMPANY

HARYANA POWER GENERATION CORPORATION LIMITED

Regd. Office: C-7, URJA BHAWAN, SECTOR-6, PANCHKULA.

Corporate Identity Number:- U45207HR1997SGC033517

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From

Chief Engineer/Admn.,
HPGCL, Panchkula.

To

URGENT

1. Chief Engineer/PTPS, HPGCL, Panipat.
2. Chief Engineer/DCRTPP, HPGCL, Yamuna Nagar.
3. Chief Engineer/RGTPP, HPGCL, Hisar.
4. Chief Engineer/Projects, HPGCL, Panchkula.
5. Chief Engineer/Planning, HPGCL, Panchkula.
6. Chief Engineer/Fuel, HPGCL, Panchkula.
7. Chief Engineer/REO, HPGCL, Panchkula.
8. Controller of Finance/Accounts, HPGCL, Panchkula.
9. SE/FTPS, HPGCL, Faridabad.
10. All Dy. Secy./Under Secy. in HPGCL, Panchkula.

Memo No. Ch. 125 /GB/HPGC-457 (Vol-I)/ 303
Dated: 20.01.2020


Subject:- Appeal no. ATA 550 (16) of 2013 titled HVPN Vs M/s DKP Associates.

Kindly refer to subject noted above.

In this context, enclosed please find herewith copy of memo no. 319/LB-3(315)ARB dated 14.01.2020 alongwith enclosures (order dated 29.07.2019) received from Legal Officer O/o LR, HPU, Panchkula for facility of reference and for placing reliance in similarly situated cases praying dismissal in terms of law laid down by the Appellate Tribunal.

This is for your information and necessary action please.

DA/As above


Dy. Secy./Genl.,
for Chief Engineer/Admn.,
HPGCL, Panchkula.

CC:-

1. PS to Chief Engineer/Admn., HPGCL, Panchkula.
2. LR, HPU, Panchkula with reference to your office memo no. 319/LB-3(315)ARB dated 14.01.2020 for information please.



HARYANA VIDYUT PRASARAN NIGAM LTD.

(A Govt. of Haryana undertaking)

O/o Legal Remembrancer

Shakti Bhawan, Sector-6, Panchkula

Phone: 0172-2560769, 2571107

E-mail: lr@hvpn.org.in

To

1. The C.E./Admn., HVPN, Panchkula.
2. The C.E./Admn., HPGCL, Panchkula.
3. The CGM/HR & Admn., DHBVN, Hisar.
4. The C.E./Admn., UHBVN, Panchkula.

Memo No. 319 /LB-3(315)ARB.

Dated: 14.01.2020


Subject: Appeal no.ATA 550(16) of 2013 titled HVPN Vs M/s DKP Associates.

It is brought to your notice that the Employees Provident Fund Appellate Tribunal, New Delhi vide order dated 29.07.2019 held that a contractor having been allotted separate code no. is responsible for deposit of EPF amount and Nigam is not liable to deposit the same. Further, without identifying the beneficiaries before assessment of defaulted amount of EPF, no liability can be fastened upon the Nigam.

A copy of order dated 29.07.2019 is enclosed herewith with the advice to circulate the same to the offices under your control for facility of reference and for placing reliance in similarly situated cases praying dismissal in terms of law laid down by the Appellate Tribunal.


This issues with the approval of L.R./HPU.

DA: As above.


Legal Officer,
for L.R./HPU, Panchkula

DAIRY NO. : 167
DATE : 17-1-2020
ADD/GENL.
S. P. DT./GENL.
DY. SUPDT./GENL.
ASSTT. 1/GENL.
ASSTT. 2/GENL.

Memo No. 507
Dated. 17/01/2020
DS/Estt.
DS/NGE
US/NGE
DS/General
DST&M
XEN/HR&TRG
US/Rectt.


CE/Admn.

Re discuss
DS/GENL.

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to all WODS

**EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL
NEW DELHI**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

M/s. Haryana Vidhut Prasaran Nigam Ltd.

Appellant

Vs.

APFC, Faridabad.

Respondent No.1

M/s. DKP Associates.

Respondent No.2

Appeal No. 550 (16)13

ORDER DATED:- 29.07.2019.

Present: - Shri S.K. Gupta, Ld. Counsel for the Appellant.
Shri Puneet Garg, Ld. Counsel for the respondent.

The present appeal has been preferred u/s 7-I of the EPF and MP Act 1952 (herein after referred to as 'The Act') challenging the order dated 13.05.13 passed u/s 7A by the Assistant Provident Fund Commissioner Faridabad directing the appellant to deposit the Provident Fund dues amounting to Rs. 16,42,714/- for the period from 06/2010 to 04/2011.

The stand of the appellant, according to the narratives in the appeal memo in short is that it is a Limited Company and a Government of Haryana undertaking, having its Divisional Offices at different places of the state and engaged in transmission and distribution of electric energy.

The respondent no.2 M/s. DKP Associates is a contractor validly engaged by the appellant for supply of manpower after tendering process. The said contractor (herein after referred to as respondent No.2) is covered under the EPF and MP Act 1952 and the EPF scheme 1952 and has been allotted a separate EPF code No. w.e.f. 26/12/2009.

The Assistant Provident Fund Commissioner on the basis of the report received from EO, initiated an inquiry u/s 7A of the Act and issued a show cause notice, on respondent no.2. The appellant also appeared and participated in the inquiry to advance a plea that the respondent who is the contractor is the employer in terms of the definition laid u/s 2(e) of the Act and under the obligation of depositing the PF contribution as per Section 6 of the Act and Para 38

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of the scheme and for that purpose it has to make deposit of employer contribution and make deduction of the employees contribution from the wage.

The appellant though during the course of inquiry intimated APFC that the records of DKP Associates i.e. respondent No.2 clearly shows that, it had deducted EPF contribution from the wage of its employees but failed to make deposit of the same. During course of inquiry, though the appellant had pointed out the same, to the respondent, the later intentionally took no action against the respondent and thus the appellant had lodged FIR against respondent no.2, alleging misappropriation. It is the further stand of the appellant that the APFC, took the inquiry in a wrong direction and without considering the facts on record and objection raised by this appellant, took an erroneous view that the contractor respondent No.2 is the employer and liable to make deposit of the PF dues of the employees for the period 12/2009 to 02/2011 but the appellant being the principal employer is under the obligation of ensuring such deposit as provided under the Para 30 of the EPF scheme. Thereby, in the impugned order respondent no.1 directed that the contractor respondent no.2 is liable make deposit of Rs. 16,42,714/- for the period 06/2010 to 04/2011 within 15 days from the date of receipt of the order and in case of non compliance of the direction of respondent no.2, the appellant being the principal employer shall be liable for payment of the said amount. The respondent no.1 without taking steps for recovery of the assessed amount from respondent no. 2, straightway sent recovery notice on 21.06.2013 the office of the appellant at Narwana and Rohtak. Being aggrieved, the present appeal has been filed.

The respondent no. 2 did not appear inspite of all steps taken for service of notice on it including publication of notice in local daily newspapers.

The respondent no.1 appeared through its counsel and filed written reply supporting the impugned order. The stand taken by respondent no.1 in written reply is that the APFC after considering all the materials on record and being fully aware of the different provisions of EPF and MP Act and scheme has passed the impugned order and the appellant being the principal employer, as provided under Para 30 of the scheme, is under the obligation at the first instance to make deposit of both the employers and employees contribution to recover the same from the contractor, as if it is a debt, in case of the employees employed through the contractor.

Ld. Counsel for both the parties advanced detail argument in support of their respective stand.

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On behalf of the appellant, the Ld. Counsel argued that u/s 2(e) of the act the employer has been defined in relation to a factory, the owner or occupier of the factory and in relation to any other establishment, the person who, or the authority, which has the ultimate control over the affairs of the establishment.

By filing a copy of the work order issued by the appellant to respondent no.2 dated 31.5.2010, he submitted that there was a valid contract between the appellant and respondent no.2 for supply of manpower and as per the terms and conditions of the contract, the respondent no.2 had agreed to comply the requirements of EPF Act and submit the bank draft along with the list of the workers for necessary compliance and on such submission, the dues of the current month shall be released.

He also argued that under the provisions of EPF and MP Act, no distinct definition of principal employer has been provided. The person under whose control the employees work is the employer and in this case the contractor having a specific EPF code no. is the employer. To support his argument, the Ld. Counsel for the appellant has placed reliance in the case of **Brakes India Ltd. vs. EPFO**, represented by it's RPFC reported in 2015 LLR 635 decided by the Hon'ble High Court of Madras. He also cited the case of **BHEL vs. RPFC** decided by the Hon'ble High Court of Delhi reported in 2019LLR 307 and in the case of **M/s Calcutta Construction Company vs. RPFC and Others**, decided by the Hon'ble High Court of Punjab and Haryana reported in 2015 LLR 1023.

The argument, thus advanced by the appellant is that when there is no dispute that the manpower supplied by the contractor under a valid contract are his employees and he has been allotted a separate code no by the EPFO, the order of respondent no.1 directing recovery of the assessed amount from the appellant is illegal and not sustainable in eye of law.

The other limb of argument advanced by the appellant is that the impugned order is not a reasoned order since the respondent no.1 had made no effort of identifying the beneficiaries. In such a situation, the order is illegal in as much as it would not serve the underlying purpose of the Act and the assessed amount, on recovery would lie in the coffers of the EPFO.

To support this stand, appellant placed reliance in the case of **Himachal Pradesh State Forest Corporation vs. RPFC** reported in (2008) 5 SCC 756.

In the impugned order, the APFC has discussed about the respective stand taken by the appellant and respondent no.2 and focused his reasoning on the point that the contractor respondent no.2, though primarily responsible for the deposit of EPF dues of it's workers the appellant being the principal employer is under the obligation of ensuring timely deposit and having not done so, is liable for making payment of the assessed amount.

The impugned order nowhere shows that steps were taken for identifying the beneficiaries in respect of whom, the default in payment was made. In the case of Himachal Pradesh state Forest Corporation referred supra, the Hon'ble S.C have categorically held that when the assessment of default is made without identifying the beneficiaries, the order is not sustainable.

In the case of **RPFC vs. Assam Biri Factories Pvt. Ltd. and another reported in 2007 LLR 331** the Hon'ble Calcutta High Court have also held that, the authority under the EPF Act, in order to identify the beneficiaries can summon the records of the contractor too.

In the impugned order, no effort in the line, by the APFC is evident, which leads to a conclusion that the APFC, without identifying the beneficiaries, made assessment of the dues. On the contrary, the APFC, remained satisfied with regard to the identity of the beneficiaries on the basis of the report of the EO as observed by him in clause (h) of his order that quantification of dues is based on records verified by him.

This alone makes the impugned order not sustainable in the eye of law.

While arguing on the liability of the appellant as the principal employer the Ld. Counsel for the respondent no.1 pointed out that Para 30 of the EPF scheme clearly provides that the principal employer shall in the first instance pay both contribution payable by himself and by the employee. If the employee is engaged through the contractor, the later shall recover the employee share and pay to the principal employer.

He also argued that the APFC in the impugned order has made a distinct discussion on the definition of employer and principal employer under the Act and scheme respectively and as per the Para 30 (3) of the scheme the principal employer is under obligation of making the deposits.

In reply the Ld. Counsel for the appellant submitted that Para 36 of the scheme dealing with the duties of the employer clearly provides that every employer shall send to the commissioner a return



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within 15 days of the close of each month. This provision is to be read with reference to the definition of employer provided u/s 2(e) of the Act and the contractor being the employer is under the obligation of complying the direction under Para 36 of the scheme and Para 30(3) has no applicability in the facts and circumstances of the matter under appeal.

On hearing the argument advanced by the Ld. Counsel for both the parties on perusal of the relevant provisions of the EPF Act and Scheme, it appears that under the definition u/s 2(e) person having control over the employee is the employer.

The employer as per the mandate of Para 36 shall submit the return regarding the EPF deposits to the commissioner within 15 days of the close of each month.

The employer in compliance of Para 30 of the scheme shall in the first instance pay both contribution payable by himself as employer and also on behalf of the employee. If the employee is employed through a contractor, such contractor shall recover the contribution from the employee and reimburse to the principal employer which has been provided under clause 2 of Para 30 of the scheme.

Perhaps, by looking into the provision of Para 30(3) of the scheme, the APFC came to a finding that the defaulted EPF contribution is payable by respondent no.2 and in case he would fail to deposit the same the amount would be recoverable from the principal employer. And with that view, recovery notice has been sent to the appellant.

✓ The undisputed fact is that the respondent no.2, the contractor is an independent establishment and has been allotted with a separate code no. It was supplying manpower to the appellant pursuant to a proper work order under a valid contract, agreeing to comply with the provisions of EPF and MP Act and ESI Act. Hence, the contractor respondent No.2 is the employer of the employees working for the appellant and primarily under the obligation of making the deposits.

Now it is to be determined, if the appellant as the principal employer and under any kind of obligation under the EPF and MP Act.

No doubt, Provisions of Para 30 of the scheme shaddles the principal employer with the responsibility of depositing the EPF dues at the first instance and recover the same later. But a plain reading of the provision leads to a conclusion that the establishment would be construed as the principal employer when the workers are employed

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through the contractor which is intended as a safe guard of the interests of the employees. But under a situation, where the contractor is an independent entity having a separate code no. the establishment with which the contractor is under a contract for supply of manpower, the former can't be said to be the principal employer, to be fastened with the liability as provided under Para 30(1) of the scheme.

In the case of **Brakes India and Calcutta Construction Company** referred supra, the Hon'ble High Court of Madras and Punjab and Haryana, respectively have clearly held that the beneficiaries when employed by the contractor, who has been allotted a separate EPF code No. the said contractor is liable to pay the contribution and the principal employer is not liable to make deposit. Not only that in the case of **Madhurai District Central Cooperative Bank vs. EPFO** reported in 2012 LLR 702 the Hon'ble High Court of Madras have also held that when the matter is with respect to the contractor who is registered with the provident fund department having independent code no., he is to be treated as the independent employer.

A careful reading of the above mentioned judgments with reference to the provisions of Para 30 and 36 of the scheme lead to a conclusion that, the EPF and MP Act being a beneficial legislation having the object of safeguarding the interest of the employees has taken care of the situation when the contractor is not allotted with a code no. If a separate code no has been allotted, the contractor is the employer in terms of the definition of Section 2(e) of the Act and the establishment having a contract with the contractor can't be held the principal employer so as to make itself liable for compliance of Para 36 or 30 of the EPF scheme. The responsibility of the principal comes to the fore front, with the object of safeguarding the interest of the employee, when the contractor has not been allotted with the code No.

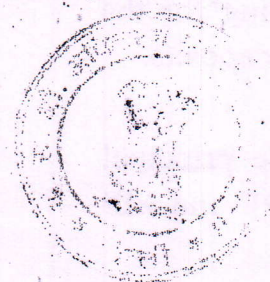
In this case, the contractor having been allotted with the code no. is responsible for making the deposit and the direction of the APFC for recovery of the assessed amount from the appellant is illegal.

The order of the APFC, impugned in appeal is also illegal for not identifying the beneficiaries before the assessment of defaulted amount. Hence, for the reasons discussed in the preceding paragraphs, the order passed by the APFC is liable to be set aside. Hence, ordered.

ORDER

The appeal be and the same is allowed and the impugned order is hereby set aside.

Presiding Officer



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