IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 5968 of 2026

Ganeshdham Business Private Limited
Vs
Regional Provident Fund Commissioner-II & Anr.

with

WPA 5969 of 2026

Gangadhar Agencies Private Limited
Vs
Regional Provident Fund Commissioner-II & Anr.

For the Petitioner	:	Mr. Soumya Majumder, ld. Sr. Adv. Mr. Dwaipayan Sengupta, Ms. Sanjukta Dutta.
For the Respondent Nos. 1 & 2	:	Mr. Rajib Ray.
Judgment reserved on	:	28.07.2026
Judgment delivered on	:	31.08.2026

Shampa Dutt (Paul), J.:

1. The writ applications have been preferred challenging an order dated 20th December, 2024, passed by the respondent no.1/Regional Provident Fund Commissioner-II under Section 7A of the Act of 1952, and notices dated 29.01.2026 and 19.02.2026 issued by the recovery officer.

2. Vide the impugned order the authority concerned held as follows:-

> *"Whereas, an inspection was conducted at the establishment by Shri Saket Nandan Sahay, the then Enforcement Officer through Shram Shuvidha Portal for verification of default in payment by the establishment. In his report, dated 06/12/2021and 10/12/2021, Sh. Saket Nandan Sahay the then Enforcement Officer submitted an outstanding dues of Rs.9,18,562/- payable by establishment towards dues related to excluded employees.*
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> *And whereas, pursuant to the Inspection Report as above of the Enforcement Officer, a Show Cause Notice dated 27/12/2021 was issued to the establishment with the direction to comply as per Section 2(f) of EPF & MP Act, 1952 monthly P.F. contribution & allied dues be deposited with the Statutory Fund as per provision under Section 6 of the Act, 1952 read with Para 29,30,36,36-B and 38 of the Employees' Provident Fund Scheme, 1952 from 09/2019 to 01/2022. In reply to the said Show Cause Notice the establishment sent a letter dated 12.01.2022, which was not satisfactory.*
>
> *An Establishment named BMA Wealth Creators Ltd. Bearing PF code no. WB/PRK/42136 which was all of a sudden closed by SEBI orders w.e.f. 08/2019 and at the time of closure, its employees strength was nearly 1160 as per PF records. Subsequently its maximum staff joined two establishments namely M/s Ganeshdham Business Pvt. Ltd. Bearing PF Code No. WB/CAL/2015725 and M/s. Gangadhar Agencies Pvt. Ltd. Bearing PF code no. Wb/CAL/2017589 from*

> *09/2019 and the date of start of PF in these two establishments itself is also the very 09/2019 after closure of M/S BMA Wealth Creators Ltd. It is found that establishment has* ***discontinued PF membership of nearly 29 employees*** *upon joining M/s Gangadhar Agencies Pvt. Ltd. enhancing basic salary to Rs.15050. Establishment did not submit any F/11. It is found that establishment has not acted in accordance with Para 69(5) of the scheme, 1952."*

3. It appears from the said impugned order that the authority concerned has proceeded by the parties and finally, the authority concerned relying upon the provisions of the Provident Fund Scheme held as follows:-

> *"The establishment has failed to remit the dues in respect of all the Employees who were working in M/s BMA Wealth Creators Pvt. Ltd. Bearing PF code no. WB/PRK/42136" and subsequently joined the present Establishment.*
>
> *In terms of Para 26A, the Member of Establishment M/s BMA Wealth Creators Pvt. Ltd. Bearing PF code no. WB/PRK/42136 continued to be member as they did not withdraw the Amount from their Provident Fund in terins of Para 69(5).*
>
> *The Establishment and the Department have already made their submissions and does not have any further submissions to make. The employer has been given a reasonable opportunity of being heard and of putting forward his explanation. The notice had been duly served on the employer. Time expended in recording futile proceedings could be utilized*

purposefully in other pressing matters apart from avoiding unnecessary expenditure incurred in adjournment letters/notices etc. The enquiry cannot be allowed to prolong unnecessarily. The Inquiry U/s 7A stands concluded on the basis of available facts on the record.

ORDER

1. ***AMIT ATHALEY**, Regional Provident Commissioner (Compliance & Recovery), in exercise of powers conferred on the under section 7A(3A) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 hereby assess the dues of Rs. 1,31,47,107 (Rupees One Crore Thirty one lakh forty seven thousand one hundred seven only. only as per details given below, as due from them on account of the Provident Fund, Pension Fund contributions and administrative/inspection charges towards the Provident Fund and Deposit Linked Insurance Fund for the period **09/2019 TO 01/2022** deposited within **15 (Fifteen)** days from the date of the receipt of this Order otherwise appropriate legal action will be initiated against the establishment and its Employer, as per provision under the Act and Schemes framed there under, in order to realise the said outstanding dues, without further notice"*

4. It appears that the period under consideration was from September 09/2019 to 01/2022. The total period is covered by the COVID pandemic which was in three phases.

5. It further appears from the impugned order that the authority concerned has referred to **an inspection conducted by an enforcement officer and submitted two reports dated 06.12.2021 and 10.12.2021.** None of which was served upon the petitioners nor has the contents of the reports been discussed in the impugned order. The authority concerned also reiterated the reply to the show-cause notice filed by the establishment by holding t hat the same is not satisfactory.

6. Mr. Majumder learned senior counsel appearing for the petitioners submits that during the said period when the dates were fixed for hearing, the hearings were being conducted virtually or in hybrid manner and, as such, there was a gap in receipt of copies and there was lack of connection. Though the authority in the show-cause notice recorded that the P.F. membership of 29 employees of Gangadhar Agencies Pvt. Ltd. has been discontinued. It appears that there is no discussion as to the said 29 employees in the impugned order.

7. The case of the respondent authority in their show-cause notice dated 16.12.2021 (COVID pandemic) contents the following questions asking the petitioner to show-cause:-

> *"Whereas, an Enforcement Officer has visited your establishment and submitted his report after verification of records/documents so produced by your establishment and served Part II dated 29/11/2021 mentioning following irregularities found during the course of inspection.*

1. M/s Ganeshdham Business Pvt Ltd covered itself under the Purview of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 w.e.f. 01-09-2019 after sudden closure of M/s BMA Wealth Creators Ltd w.e.f. 08/2019 and subsequently its maximum staff joined in M/s Ganeshdham Business Pvt Ltd during 09/2019 but PF membership of nearly 10 employees have been discontinued upon joining in M/s Ganeshdham Business Pvt Ltd which clearly shows that you have failed to extend PF benefit to nearly 10 employees from 09/2019 as a result total dues arrived Rs. 303214/- upto July 2021.

2. It has been found that the establishment has failed to follow the statutory provision as stipulated under Paragraph 69(5) of the EPF Scheme 1952.

3. It has been found that the establishment has failed to provide Form-11 in support of excluded employees.

4. It has been found that salary of employees of the establishment bifurcated in different heads such as Other allowances, Conveyance allowance, HRA, Medical allowance, Miscellaneous, Performance Incentive, Special allowance etc so as to bear minimum PF liability and kept Basic salary nearly 10 to 25 percent of the gross salary as such you are required to pay PF and allied statutory dues on Other allowances including Special allowance in terms of provisions stipulated under Section 6 read with Section 2(b) of the EPF & MP Act, 1952.

8. The respondent/P.F. Authority herein has filed a report in the form of affidavit wherein the inspection report has been annexed.

9. It appears from the said report that the enforcement officer stated as follows:-

> *"3. That, M/s Gangadhar Agency Private Limited, was issued a Show Cause Notice, as to why necessary actions as per provisions of EPF & MP Act, shall not be initiated against the establishment vide letter No. R-NE-WB/CAL/2017589/CC-IV/1138 dated 27.12.2021 (Annexure-A) wherein it is mentioned that as per Area Enforcement Officer's report dated 10.12.2021 the establishment has failed to pay PF and other allied dues in respect of newly 29 employees from 09/2019 and the establishment bifurcated the Salary Structure in different heads such as Other Allowances, Convenience Allowances, Medical Allowance, Special Allowances etc so that the establishment bear minimum liability. PF compliance remitted on Basic which is nearly 10 to 25% of the Gross Salary. Which is the violations of the guidance vide Section 6 read with 2(b) of the EPF Act.*
>
> *On going through the records submitted by the establishment such as Salary Sheet from 09/2019 to 01/2022, it was observed that* ***the establishment has remitted the PF dues on Earned Basic Salary excluding the Convenience Allowance, HRA, Medical Re-imbursement, Performance Incentive, Special Allowances."***

10. It appears from paragraph 4 of the said report that there is **no details given as to what is considered as evaded wages.** The enforcement officer has noted only a **consolidated amount** without giving the details specification of such evaded wags as claimed. The statement of accounts to that extent is totally silent on the said fact.

11. In respect of WPA 5968/2026 the report filed by the respondent nos.1 and 2 reads as follows:-

"Due to default inspection was caused & undersigned visited address of Gangadhar Agencies P(LTD) but couldn't find any such functional office there. Later the authorized person was contacted and he produced salary sheet from 09/19 to 07/21, Challan from 09/19 to 03/20 and some other challans, P/L account of 2019-20. Upon verification of all these records and gathered information it is to submit that there was an establishment named BMA Wealth Creators Ltd bearing PF code no. WB/PRK/42136 which was all of a sudden closed by SEBI orders w.e.f 08/2019 and at the time of closure its employee strength was nearly 1160 as per PF records. Subsequently its maximum staff joined two establishments namely M/s Ganeshdham Business Pvt Ltd. bearing PF code no. WB/CAL/2015725 and M/s Gangadhar Agencies Pvt Ltd. bearing PF code no. WB/CAL/2017589 from 09/19 and the date of start of PF in these two establishments itself is also the very 09/19 after closure of M/s BMA Wealth Creators Ltd. It is found that estb. ***discontinued PF membership of nearly 29 employees upon joining M/s Gangadhar Agencies Pvt Ltd enhancing basic salary to Rs. 15050.*** *Establishment did not submit any F/11. It is found that estb. has not acted in accordance with para 69(5) of the epf scheme. As such the dues related to excluded employees is Rs. 918562. Other excluded employees as claimed may not be the excluded employees either in true sense. Further* ***establishment has bifurcated its salary structure in Basic, HRA, Conveyarice, Medical, Performance incentive, LTA, special allowances, LTA, Miss. etc to mitigate the PF liability and made basic to nearly 10 to 30%.*** *This type of bifurcation to mitigate PF liability should not be accepted if agreed to. Estb. was directed to comply within seven days but it has not replied. Undersigned recommends to initiate*

7A hearing for determination of dues. The indicative dues is.......”

12. Exception to the said report was filed by the petitioner who has denied the entire case of the petitioner herein.

13. In the exception it is submitted that the contentious issue raised as regards alleged discontinuation of nearly 29 employees, is absolutely vague, baseless and without identification as they had crossed the wage ceiling. The adjudication directly determines the statutory status of individual employees. Whether an employee is an excluded employee, existing member, or required to contribute directly affects his statutory rights. Despite this, none of the concerned employees was heard. That apart the respondents have not disclosed or identified the said 29 employees.

14. Initially, the show cause notice dated 27.12.2021 alleged dues of only Rs.9,18,562/ upto July 2021. Subsequently, without any fresh inspection or disclosed material, the liability suddenly increased to Rs.1,31,47,107/- from 9/2019 upto 1/2022 in the said order passed u/s 7A of the Act. The authority appears to have enlarged the scope of the proceedings from the original show cause to a final demand of Rs.1.31 crore without issuing any fresh show cause notice. The action and the order of the respondents thus completely violates the basic and fundamental principles of natural justice.

15. Section 7A order determines dues for September 2019 to January 2022 whereas the recovery notice seeks recovery for April 2019 to

March 2022 although the establishment itself came under coverage only from 1st September 2019. The Inspection report as disclosed in the said Report for the first time, also relies upon the inspection report dated 10.12.2021. Even this disclosed Inspection Report does not give any basis for the calculation of dues, and on such vague and oblique disclosure, no civil consequence can entail on the petitioner.

16. The petitioners submit that at first they aware of the proceedings when they were served with a recovery notice.

17. Learned counsel for the PF Authority has subsequently field salary sheets of the establishment.

18. Admittedly, the salary sheets are not part of the report of the enforcement officer and is a record which was produced before the enforcement officer.

19. Written notes of argument placed by the parties reiterated their submission in the case as made out in the writ applications and the report filed in the form of affidavit.

20. The petitioner has relied upon the following judgments:-

i) Narinder Mohan Arya v. United India Insurance Co. Ltd. (2006) 4 SCC 713;

ii) Gurbir Kaur and Regional Provident Fund Commissioner, Employees' Provident Fund Organization & Ors. 2006(2) L.L.N. 791.

21. The respondent no. 2 has challenged the maintainability of the writ application on the ground that the same is subject to appeal. Admittedly, considering that the prima facie case has been made by the petitioners that the findings of the enforcement officer is perverse and an abuse of the process of law, the writ application was admitted for hearing.

22. The respondent has relied upon the judgment of the Supreme Court in ***Whilrpool Corporation v. Registrar of Trade Marks (1998) 8 SCC 1.***

23. On hearing the parties and considering the materials on record, it further appears that **the authority concerned has gone beyond his show-cause notice dated 16.12.2021** and held that the petitioner establishment failed to remit the dues in respect of the employees as follows:-

> *"The establishment has failed to remit the dues in respect of* ***all the Employees*** *who were working in M/s BMA Wealth Creators Pvt. Ltd. Bearing PF code no. WB/PRK/42136 and subsequently joined the present Establishment."*

24. The said finding is prima facie beyond the show-cause as in the show cause dated 16.12.2021/27.12.2021, the issue against the petitioner herein was that PF number of nearly 10/29 employees was discontinued on joining M/s. Ganeshdham Business Private Ltd./M/s. Gangadhar Agencies Private Ltd. and bifurcation of salary under different heads to bear minimum PF liability.

25. That though the show cause notices note alleged default in respect of 10/29 employees, the authority initially in it's order has **only** noted alleged default of 29 employees in case of M/s. Ganeshdham. Nothing is noted about the 10 employees as noted in the show cause notice dated 16.12.2026.

26. Subsequently the authority in the impugned orders in both the writ applications has held that the respective establishments have failed to remit the dues in respect of **all employees** who later joined the present establishments, which is not only beyond the show cause notices issued, but also without proper reasons.

27. It appears that **hearing dates were fixed during the covid pandemic,** and the authority has also noted that hearing could not take place on several dates due to **technical problem during virtual hearing sessions.**

28. The impugned order gives no reasons as to it's findings and has recorded default beyond the show cause notice.

29. There is also no details as to how the amount assessed has been arrived at.

30. There is also no finding as to the alleged bifurcation of salary to reduce P.F. liability as stated in the show cause notices.

31. Thus, considering the said facts, this Court finds that the impugned orders are beyond the notices to show-cause and have been passed on the basis of report of the enforcement officer which has not been discussed nor has any copy of the said report been served upon the petitioners. The decision of the authorized officer is also on the basis of only the said report, **without any independent findings/reasons of his own.**

32. It further appears that the impugned order is not a reasoned order, where no discussion has been given in respect of the documents relied upon. The erroneous findings of the authority concerned relates to what was stated in the notice to show-cause in respect of the number of employees discontinued and **no findings as to alleged bifurcation of salary.**

33. Considering the said facts, the impugned order being perverse and not in accordance with law and also against the principle of natural justice and an abuse of the process of law **is quashed and set aside.**

34. WPA 5968 of 2026 with WPA 5969 of 2026 are allowed.

35. Applications, if any, connected thereto stand disposed of consequently.

36. Interim order, if any, stands vacated.

37. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Shampa Dutt (Paul), J.)