

RPAD

OFFICE OF
THE EMPLOYEES' PROVIDENT FUND ORGANISATION,
'BHAVISHYANIDHI' BHAVAN, NR.INCOME TAX CIRCLE,
ASHRAM ROAD, AHMEDABAD-380 014.

No. GJ/PF/RC(E&R)/7959/ 1397

DATE : 16 December, 1999

In the matter of determination of dues of amount due from M/s. Patel Jivrajbhai Bidi Works, Ahmedabad(GJ/7959) under Section 7-A of the Employees' Provident Funds & Misc. Provisions Act, 1952.

- Present : 1) Shri K.M.Bhatt, Advocate on behalf of M/s. Patel Jivrajbhai Bidi Works,
2) Shri K.J.Patel, Partner, on behalf of M/s. Patel Jivrajbhai Bidi Works,
3) Miss Manali Shah, Executive Committee Member from SEWA on behalf of Bidi Workers,
4) Shri K.J.Sondharwa, the then Enforcement Officer on behalf of the Department,
5) Smt. K.H.Desai, Present area Enforcement Officer on behalf of the Department.

The Hon'ble High Court of Gujarat in Special Civil Application No.3978 of 1999 vide order dated 24.8.1999 had directed the Regional Provident Fund Commissioner to complete the 7-A Proceedings for determination of dues. As directed by Hon'ble High Court of Gujarat vide interim order dated 23.4.99, the period of determination of dues was extended upto 4 months from 23.8.1999. The Hon'ble High Court of Gujarat further directed that no further extension shall be sought by all the parties. Litigation shall be bound by time schedule fixed by this Court. As per direction of the Hon'ble High Court of Gujarat, the Regional Provident Fund Commissioner conducted 7-A Inquiry for determination of dues in respect of so called home workers(bidi).

AND WHEREAS, the concerned parties were afforded an opportunity to represent their case and to produce the relevant records on 1.9.99, and the case was adjourned to 17.9.99, 28.9.99, 7.10.99, 20.10.99, 28.10.99, 16.11.99, 24.11.99 & finally on 8.12.1999.

AND WHEREAS, Shri K.J.Patel, Partner of M/s. Patel Jivrajbhai Bidi Works submitted a letter dated 23.11.99 wherein he has mentioned that during the time of hearing held on 16.11.99 he submitted the comments on the submission dated 16.11.1999 of Enforcement Officer. Secondly, they further mentioned that on going through the list of eligibility of so called home workers and

157 so called home workers by M/s. Shree Nathji Trading Co. or by them has been taken. This action on the part of the Enforcement Officer is against the order dated 4.2.1998 of Hon'ble E.P.F.Appellate Tribunal.

In light of the order dated 4.2.1998 of the Hon'ble E.P.F.Appellate Tribunal, those individuals who purchases the raw material from M/s. Shree Nathji Trading Co. and roll the bidi out of those so called home workers(bidi) and sale those prepared bidies to M/s. Jivrajbhai Bidi Works are to be considered as employees. Thirdly, they further mentioned that during the period 91-92, 92-93, 95-96, 96-97, the raw material for preparation of bidies have not been supplied to these 157 so called home workers by M/s. Shree Nathji Trading Co. or by our establishment. NO dues may kindly be determined for the period 91-92, 92-93, 95-96, 96-97 as proposed by Enforcement Officer.

On behalf of SEWA, Miss Manali Shah submitted a letter dated 24.11.99 wherein she has mentioned that they have gone through the report dated 16.11.99 filed by the Enforcement Officer/A.A.O. and reply dated 16.11.1999 filed by M/s. Patel Jivrajbhai Bidi Works, Ahmedabad. She further mentioned that they have not calculated the Provident Fund dues for the period 5/77 to 10/82. They ought to have determine and calculate the Provident Fund dues on notional basis in absence of record. The employer can not be allowed to go scot free on the ground that they have no record. On dated 8th December,1999 Miss Manali Shah also submitted a letter dated 8.12.99 wherein she has mentioned that they have submitted the various documents and affidavits disclosing interalia the details of employment and wages of the respective employees.

AND WHEREAS, Shri K.J.Sondharwa, Enforcement Officer & Smt. K.H.Desai, Present Enforcement Officer have filed their deposition dated 16.11.1999. Shri Sondharwa mentioned that in the above matter as per direction he and Shri K.C.Vyas, Enforcement Officer/Assistant Account Officer visited the establishment for verification of eligibility of membership and calculation of Provident fund dues in respect of so called home workers(bidi). He further stated that on verification of record of the establishment it is confirmed that establishment has stated the compliance in respect of so called home workers(bidi) from 23.4.99 as per direction of the Hon'ble High Court of Gujarat.

Thirdly, as per statement given by the employer, they have not having the record prior to 10/82. Establishment has also given an affidavit for that period 11/82 onwards. The establishment has produced the other period records for verification during the proceeding. On verification of the records and as per list supplied by the SEWA of 157 so called home workers(bidi), the list of eligibility of members and calculation in respect of 191 eligible members has been made i.e. more than SEWA claimed. He further stated that SEWA produced the list of employees showing the total wages received vide its letter dated 28.6.99. The same differs with the record verified from the establishment.

He further deposed before me that a sum of Rs.4,79,960/- as per details given in the Schedule below, is payable by the employer in relation of M/s. Patel Jivrajbhai Bidi Works. The amount is based on the Provident Fund Inspector's Inspection Report which incorporated the details of the amount due from the establishment.

O R D E R

I have gone through the entire details of the case/record and order that the period for the year 91-92, 92-93, 95-96, 96-97 for which M/s. Patel Jivrajbhai Bidi Works has no record can not be set free. The employer is duty bound to produce the record before the 7-A authority. By not producing the record by M/s. Patel Jivrajbhai Patel Bidi Works, I have no alternative except to accept the record produced by the SEWA. It is further mentioned that M/s. Patel Jivrajbhai Bidi Works has also no record for the period 5/77 to 10/82. So for non-production of record, the calculation of assessment of dues is made on the basis of details produced by the SEWA.

NOW THEREFORE, I, Partap Singh, Regional Provident Fund Commissioner(II)(Enforcement & Recovery), Gujarat State, in exercise of powers conferred upon me under Section 7-A of the Act and having applied my mind to the facts of the case,

determine a sum of Rs. 4,79,960/- the details of which given in the Schedule below in respect of employer in relation of M/s. Patel Jivrajbhai Bidi Works, by identifying 191 beneficiaries so called home workers(bidi).

SCHEDULE

Period	A/c.I	A/c.II	A/c.X	A/c.XXI	A/c.XXII
6/77 to 9/1999.	3,52,912/-	15,899/-	93,255/-	15,995/-	1,899/-
(TOTAL AMOUNT Rs. 4,79,960/-)					

TOTAL : (Rs. Four lacs, Seventy nine thousand, Nine hundred sixty only).

I further order that in case the employer fails to deposit the amount mentioned above within 15 days on receipt of this order, the same may be recovered as per Order under Section 8(F) of the Act. This is without prejudice to the liability for belated remittances as provided under Section 14 of the Act.

Sum
87X11(1)

[PARTAP SINGH]
REGIONAL PROVIDENT FUND COMMISSIONER[II]

To,

M/s. Patel Jivrajbhai Bidi Works,
Gomtipur,
AHMEDABAD.

Copy to :-

1. Area Enforcement Officer,
for information.
2. S.E.W.A., Ahmedabad.
3. Assistant P.F. Commissioner (Enforcement)
4. Assistant P.F. Commissioner (Legal)