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**(2009) 01 AHC CK 0168**  
**In the Allahabad High Court**

Raj Kamal Electroplaters

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

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**Date of Decision :** 21-01-2009

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

**Citation :** (2009) 121 FLR 41 : (2009) 3 LLJ 681

**Hon'ble Judges :** Tarun Agarwala, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Tarun Agarwala, J.—Heard Sri R.K. Awasthi and Sri Mohit Kumar, the learned Counsels for the petitioner. List of hearing cases has been revised. No one appears on behalf of Provident Fund Commissioner.

2. It appears that the Provident Fund Commissioner initiated proceeding u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. A notice dated December 26, 1988 was served upon the petitioner advising the petitioner to submit a statutory return for the period June 1978 to November 1989 (sic). It is contended that the petitioner replied to aforesaid notice indicating that the provision of the Provident Fund Act was not applicable and that only 9 persons were employed in the petitioner's firm. This fact has been specifically stated in paragraph No. 3 of the writ petition. In paragraph No. 4 of the writ petition, it is alleged that the reply of the petitioner was duly acknowledged by the Inspector. In paragraph No. 7 of the writ petition, it has been stated that a fresh notice was issued directing the petitioner to appear on June 20, 1989, pursuant to which, the petitioner applied for an adjournment, and thereafter, another notice dated June 27, 1989 was issued intimating the petitioner that August 1, 1989 has been fixed as the next date, in which, the petitioner also applied for an adjournment. These averments, as stated aforesaid, has been mentioned in paragraph Nos. 1 to 8 of the writ petition which has not been denied in paragraph No. 2 of the counter affidavit.

3. The impugned order, dated December 27, 1989 has been passed ex parte determining the provident fund and other dues payable by the petitioner for the period June 1978 to February 1989. The petitioner, being aggrieved, has filed the present writ petition.

4. After hearing the counsel for the petitioner the Court is of opinion that the impugned order cannot be sustained. The impugned order has been passed ex parte. A notice dated May 9, 1989, was issued directing the petitioner to appear on June 20, 1989, which date was adjourned to November 6, 1989. The petitioner has categorically stated in paragraph No. 8 of the writ petition that he had sent a telegram for adjournment of the case, which fact has not been denied by the respondent in his counter affidavit. Further, this Court finds that the petitioner had submitted a reply, a copy of which has been filed as Annexure No. 2 to the writ petition alleging that the provision of the Act was not applicable since only 9 persons were employed. This reply was admitted by the respondents in their counter affidavit. The fact that 9 persons were employed or not and whether the Act is applicable upon the petitioner's firm has not been considered by the authority.

5. Consequently, the impugned order passed u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 being violative of the principles of natural justice and without considering the reply of the petitioner cannot be sustained and is quashed. The writ petition is allowed. It would be open to the Provident Fund Commissioner to initiate fresh steps under the Act after due notice and opportunity of hearing is provided to the petitioner.