

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.8412/2009**

Date of Decision : 22.4.2009

**M/S MAHARASHTRA STATE CO-OPERATIVE MARKETING
FEDERATION LTD.**

.....Petitioner
Through : Mr.Ranjan Kumar,
Advocate.

Versus

**ASSISTANT PROVIDENT FUND COMMISSIONER, SRO, AKOLA
& ANR.**

..... Respondents
Through : Mr.R.C.Chawla,
Advocate for respondent no.1.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

1. Whether Reporters of local papers may be
allowed to see the judgment? YES
2. To be referred to the Reporter or not ? NO
3. Whether the judgment should be reported
in the Digest ? NO

V.K. SHALI, J. (Oral)

1. The petitioner in the present writ petition has challenged the order dated 10th February, 2009 passed by the Employees Provident Fund Appellate Tribunal by virtue of which in exercise of its power under Section 7(O) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act'), the Appellate Tribunal has instead of

75% of pre deposit as is envisaged under the statute, directed the petitioner to deposit only 25% of the of the assessed amount.

2. The petitioner felt aggrieved by the aforesaid interim order and is accordingly preferring the present writ petition. The contention of the learned counsel for the petitioner is that in a similar matter earlier, the same Appellate Tribunal vide order dated 27th September, 2006 in ATA No.92 (9)/2006 between **M/s Maharashtra Co-operative Marketing Vs. RPFC, Mumbai** had stayed the recoveries pursuant to the impugned order dated 07.4.1998 in the said matter, and thereby no condition of pre-deposit was invoked as envisaged under Section 7(O) of the Act. On the basis of the said order, it has been urged that in the present case also, the learned Appellate Tribunal ought to have given a complete waiver against the pre-deposit.

3. The second submission made by the learned counsel for the petitioner is to the effect that there is already finding given by Nagpur Bench of Bombay High Court to the effect that the entire responsibility to pay the contribution towards EPF is that of new ***M/s Maharashtra Co-op. Marketing Federation Ltd. Vs. APFC, Mumbai*** (hereinafter referred to as 'New Federation') to whom the entire work was transferred by the petitioner (which is referred to as the 'old Federation' hereinafter) and therefore, in the light of such judicial finding, directing the petitioner to deposit even 25% of the amount was ex facie is not sustainable.

4. Per contra, the learned counsel for the Department who has appeared in response to the advance copy having been

served, has contested the claim of the learned counsel for the petitioner. The learned counsel has drawn my attention to Section 17B of the Act which creates a joint liability in the event of transfer of any establishment by the transferor to the transferee. Further, it has been stated that this is a question of fact to be adjudicated in the appeal itself as to whether it is new or old Federation which is responsible to pay the contribution.

5. I have carefully considered the submission made by the respective sides.

6. Section 7(O) of the Act lays down as under:-

“[7-O. Deposit of amount due, on filing appeal.—No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent of the amount due from him as determined by an officer referred to in section 7A:

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.”

7. A perusal of the aforesaid provision would clearly show that it couched in a negative form and mandates that the Tribunal shall not entertain an appeal unless a pre-deposit of 75% of the amount due and payable referred to under Section 7(A) is deposited. The proviso to Section 7(O) of the Act, which is in the nature of an exception, the Appellate Tribunal has been given power to waive or reduce the amount to be deposited for the reasons to be recorded in writing.

8. This discretion has already been exercised by the Appellate Tribunal in the instant case by granting the substantial relief to

the petitioner by reducing the pre-deposit amount from 75% to 25% of the assessed amount. Once the discretion has been exercised by the Appellate Tribunal and the reasons for the said exercise of discretion are given therein in the impugned order by stating that the petitioner has not been able to make out a prima facie case for complete waiver, it does not lie within the scope of the power of judicial review of this Court to sit as a Court of appeal and substitute its own view or discretion even if it may be contrary than the one which has been taken by the Appellate Tribunal. If this Court waives completely pre-deposit despite the fact that there is no irregularity or perversity in exercise of its discretion by the Appellate Tribunal than practically it would be difficult for the Appellate Tribunal to function while as these Tribunals have been essentially constituted for expeditious disposal of the matter.

9. The contention of the learned counsel for the petitioner that in a connected case, a complete waiver was granted by the learned Tribunal is of no consequence because interim orders cannot be quoted as precedents.

9. Another aspect of the matter is that this is only in interim order and the amount which has been deposited is only by way of an interim arrangement and if the petitioner ultimately succeeds, he will get the refund. So far as the question which has been raised by counsel for the petitioner that there is already a finding by the Nagpur Bench of the High Court that it is only a new federation and not the old one which is liable to pay the amount,

these are all questions of merit which have to be gone by the Appellate Tribunal.

10. By going into these questions in a writ jurisdiction, this Court cannot pre-empt the entire decision and leave nothing for the Tribunal to decide. Even otherwise, this Court's attention has been drawn to Section 17-B of the Act, which prima facie creates a joint liability of the transferor or transferee companies.

11. So far as the submission of the leaned counsel for the petitioner to the effect that there is already a finding given by the Consumer Forum that it is a new federation which is liable to pay the amount in question which was upheld by the Supreme Court is concerned, these are not the questions to be considered by the Court when it is examining the legality of the interim order regarding pre-deposit. These are all questions of merit to be considered by the learned Tribunal. These issues cannot be considered by this Court while exercising the power of judicial review in respect of interim order and decision of the Tribunal. The learned Appellate Tribunal has balanced the equities by only requiring the petitioner to deposit 25% of the assessed amount.

12. For the reasons mentioned above, I do not find any merit in the present writ petition and the same is dismissed accordingly.

13. At this stage, the learned counsel for the petitioner has stated that although he was given four week's time to deposit the money demand in question which has expired long back, he may be given some more time. Although instead of four weeks, the petitioner has already consumed more than ten weeks. However,

still in the interest of justice another four weeks is granted to the petitioner to deposit the amount in terms of the impugned order.

No order as to costs.

V.K. SHALI, J.

APRIL 22, 2009

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