IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 572 OF 2015

Bhaichand Hirachand Raisoni,
Multi State Co-operative Credit
Society Ltd., Jalgaon
Through its General Manager,
E 2/345, Raymond, Chaufalli, Ajantha Road,
MIDC, Jalgaon, Taluka and District Jalgaon
(Maharashtra) ...Petitioner

versus

1. Union of India,
Through its Secretary of Labour Department,
Delhi
(Copy to be served through Office of the
Additional Solicitor General, Aurangabad).

2. The Secretary,
to the Government of India,
Ministry of Labour,
New Delhi.

3. Additional Central Provident Fund Commissioner,
Head Office, New Delhi
Employees' Provident Fund Organization,
Bhavishya Nidhi Bhavan,
14, Bhikaji Cama Place,
New Delhi 110066.

4. The Regional Provident Fund Commissioner,
Nasik.

5. Assistant Provident Fund Commissioner,
Sub-Regional Office, Bhavishyanidhi Bhavan,
Satpur, Nasik. ...Respondents

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Mr. A. S. Bajaj, Advocate for the Petitioner
Mr. S. B. Deshpande, A.S.G. for respondent Nos. 1 & 2
Mr. K. B. Choudhari, Advocate for respondent Nos. 3 to 5.

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CORAM : R. M. BORDE AND
V. K. JADHAV, JJ.

Date : 25.03.2015

JUDGMENT (PER R. M. BORDE, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of parties, petition is taken up for final hearing.

2. The instant petition is presented by the petitioner-Multi State Cooperative Society seeking quashment of the order passed by respondent No. 2 on 30.09.2014. The petitioner-society had tendered a proposal seeking exemption from the applicability of the provisions of The Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'P.F. Act' for brevity). The application is stated to have been presented under Section 17 of the P.F. Act to the Government of India, Ministry of Labour and Employment. The application tendered by the petitioner came to be rejected by respondent No. 2 on 30.09.2014 which order is subjected to challenge in this writ petition.

3. The petitioner contends that the order has been issued without extending opportunity of hearing to the petitioner. It is also contended that although the relevant record was produced with respondent No. 1, it has been observed in the order in

paragraph No. 6 that such record has not been produced in-spite of issuance of notice by respondent No. 1 directing production of record. The petitioner has invited our attention to the communication issued on 1st September, 2014, issued by the petitioner to the Assistant P.F. Commissioner, Sub Regional Office, Nasik, as well as communication issued on the same date to the Under-Secretary, Government of India, issued in compliance of the directives in respect of production of record alongwith the communication dated 01.09.2014 . The petitioner is stated to have produced relevant record as required by respondent No. 1. In any case, it does appear that the order has been issued by respondent No. 1 without extending opportunity of hearing to the petitioner. Since the impugned order has been issued in contravention of the observance of principles of natural justice, the same needs to be quashed and set aside.

4. The learned ASG appearing for respondent Nos. 1 & 2, on instructions, states that the case of the petitioner would be re-considered by respondent No. 1, if, in case, the petitioner produces the relevant record detailed in the communication issued by respondent No. 1 on 22.09.2014. It is noticed by respondent No. 1, on scrutiny of the documents produced by the petitioner on 01.09.2014, that there are certain deficiencies in the record tendered by the petitioner. The petitioner agrees to comply with the

deficiencies and produce the record as required by respondent No. 1 through its communication dated 22.09.2014.

5. So far as item No. 2 in the letter dated 22.09.2014, i.e. Income Tax Recognition Certificate is concerned, the learned Assistant Solicitor General appearing for respondent No. 1 states that the petitioner shall have to tender details in respect of the application made with the Income Tax Authorities for securing recognition certificate.

6. So far as the certificate regarding enrollment of contract employees is concerned, the petitioner submits that since there are no contract employees engaged by the petitioner, such a certificate cannot be produced. There are difficulties in complying with the directives in respect of production of such certificate. The learned A.S.G. appearing for respondent No. 1, on instructions, states that in the event of occurrence of any difficulty by the petitioner in respect of production of such certificate, the petitioner shall have to permit inspection of the relevant record to the respondent No. 1 with a view to ascertain the truthfulness of the contentions of the petitioner as regards engagement of contract employees. The counsel appearing for the petitioner, on instructions, agrees to permit inspection of record for facilitating respondent No. 1 to take appropriate decision in the matter.

7. The petitioner agrees to comply with the requirements communicated by respondent No. 1 on 22.09.2014 within a period of four weeks from today. The respondent No. 1 shall take appropriate decision in the matter after extending opportunity of hearing to the petitioner, as expeditiously as possible and preferably within a period of three months from the date of compliance of the requirement recorded in the letter dated 22.09.2014.

8. The order impugned in the petition dated 30.09.2014 is quashed and set aside and the matter stands remitted back to the respondent No. 1 for re-consideration in accordance with the directions recorded above.

9. The counsel appearing for the petitioner has informed that a sum of Rs.5,23,73,891/-(Rs. Five Crores Twenty Three lacs Seventy Three thousand eight hundred ninety one) is deposited towards P.F. contribution of the employees in the savings Account or in the fixed deposit or in the name of B.H.R. Provident Fund Trust in Punjab National Bank, Jalgaon. The amount deposited with the aforesaid Bank would be invested in fixed deposit initially for a period of 12 months and the petitioner shall not be entitled to withdraw the aforesaid amount or the interest accrued thereon, without seeking prior permission of the Court.

10. It is informed that some of the Directors, who are authorized signatories of the petitioner, are behind the bars. They shall be permitted to sign the necessary forms and cheques for facilitating the deposit of amount in fixed deposit as directed above. Shri Choudhary, the learned counsel appearing for P.F. Authorities, assures to communicate the directions issued by this Court to the appropriate Authority.

11. The respondents are further directed not to take any coercive action against the petitioner until the disposal of the application/proposal tendered by the petitioner with the respondent No. 1 and subject to the outcome of the said proposal/application. The petitioner shall continue the practice of deposit of amount in the account of the Trust until disposal of the application by the respondent No. 1.

12. Writ Petition is disposed of. Rule is accordingly made absolute. There shall be no order as to costs.

(V. K. JADHAV, J.) **(R. M. BORDE, J.)**

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