IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3526 OF 2014

M/s FAUJI DHABA PETITIONER

VERSUS

THE ASSISTANT PROVIDENT FUND COMMISSIONER, AURANGABAD RESPONDENT

Mr.S.S.Vidwauns, Advocate for the petitioner.
Mr.K.S.Hoke Patil, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 20/10/2015

PER COURT :

1. The petitioner is aggrieved by the orders dated 22/06/2006 u/s 7-A, 28/09/2007, u/s 7-B passed by respondent No.1/Authority as well as the order dated 15/10/2010 delivered by the E.P.F. Appellate Tribunal, New Delhi. The only ground raised by the petitioner is that an opportunity of hearing was not given to the petitioner. An amount of Rs.5,34,000/-, which comes to about 50% of the assessed amount u/s 7-A, has been deposited by the petitioner in 2006.

2. It is further submitted that the petitioner is willing to abide by any condition as may be imposed by this Court for facilitating a

hearing in the matter. The petitioner shall not seek an adjournment on any count and shall extend co-operation to the competent authority dealing with the Section 7-A proceedings.

3. Mr.Hoke Patil, learned Advocate appearing on behalf of the respondent/ authority vehemently opposes the request put forth by the petitioner. He points out from the order dated 22/06/2006 passed by the respondent that the hearing of the matter was posted on the following dates in between 07/07/2003 upto 02/06/2005 :-

> *"The hearing had been held on 07/07/2003, 06/08/2003, 11/09/2003, 16/10/2003, 04/12/2003, 19/01/2004, 19/02/2004, 24/03/2004, 28/04/2004, 21/05/2004, 23/06/2004, 21/07/2004, 11/08/2004, 01/09/2004, 23/09/2004, 18/10/2004, 17/11/2004, 08/12/2004, 28/12/2004, 17/01/2005, 08/02/2005, 28/02/2005, 11/04/2005, 09/05/2005, 02/06/2005, 28/06/2005, 25/07/2005, 29/07/2005, 18/08/2005, 21/09/2005, 19/10/2005, 07/11/2005 and 18/11/2005 during the enquiry under Section 7-A of the Act.*
>
> *None appeared for the establishment in the hearings from 07/07/2003 to 02/06/2005."*

4. He further points out that even in Section 7-B proceedings, the petitioner remained present only on 21/06/2007. On all other dates,

the petitioner was continuously absent. He, therefore, submits that the impugned orders have been passed in these circumstances. He, prays that this petition be dismissed. In the alternative, he submits that if a re-hearing is ordered, the petitioner be directed to deposit 100% of the assessed amount u/s 7-A.

5. I have considered the submissions of the learned Advocates as have been set out hereinabove.

6. It is not in dispute that the orders dated 22/06/2006 and 28/09/2007 have been passed u/s 7-A and 7-B of the 1952 Act. It is also apparent that the petitioner did not remain present for the hearing in the matter on the above mentioned dates, which are more than 30 in number. Nevertheless, the order u/s 7-A and Section 7-B has been passed ex-parte. The Appellate Tribunal, while considering the Appeal No.675/2008, could have looked into this matter while passing the impugned order dated 15/10/2010.

7. It also cannot be overlooked that this petition is filed on 17/02/2014 after the order dated 15/10/2010 was served upon the petitioner.

8. In the light of the above, this petition is partly allowed on the following conditions :-

[a] Since an amount of Rs.5,34,000/- has been deposited in 2006, the petitioner shall further deposit an amount of Rs.2,75,000/- before the respondent/Authority on or before 21/11/2015 u/s 7-A of the Act.

[b] If the above said amount is deposited as directed above, the orders dated 22/06/2006, 28/09/2007 and 15/10/2010 shall stand set aside.

[c] After the directions as above are complied with, the petitioner shall appear before the respondent on 30/11/2015 at 11.00 a.m., failing which the respondent shall be at liberty to conclude the proceedings on account of the absence of the petitioner and pass necessary orders.

[d] In the event the petitioner complies with the directions as set out in clause (a) and (c), the respondent shall commence the hearing in Section 7-A proceedings and shall post the matter on such dates as it may deem fit and proper.

[e] The respondent will be at liberty to direct the petitioner to produce documents, failing which the respondent shall conclude that the petitioner does not desire to place on record any documents.

[f] The petitioner shall refrain from seeking an adjournment on trivial and unreasonable grounds and shall ensure continuous presence on the dates of hearing.

[g] Needless to state, the petitioner is at liberty to canvass all the contentions and averments as it may deem proper and the respondent shall, after concluding the hearing, pass a

speaking order.

9. In the event, any of the conditions set out hereinabove are not complied with by the petitioner, this order shall stand recalled and the orders dated 22/06/2006, 28/09/2007 and 15/10/2010 shall stand restored.

(RAVINDRA V. GHUGE, J.)