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IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 8828 OF 2015

M/S GANGAPUR SAHAKARI SAKHAR KARKHANA LIMITED
VERSUS
THE REGIONAL PROVIDENT FUND COMMISSIONER AND ANOTHER.

...

Advocate for Petitioner : Shri Pandit P.J. h/f Shri Suryawanshi Kamlakar J.
Advocate for Respondent No.1 : Shri K.B. Chaudhari.
Advocate for Respondent No.2 : Shri Bhushan S. Kulkarni.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th September, 2015

Per Court:

1 After this matter was heard for quite sometime on 27.08.2015, I have passed the following order:-

"1. Heard.
2. Notice before the admission to the respondents, returnable on 15.9.2015.
3. Learned Standing Counsel for respondents waive notice for the respective respondents.
4. The petitioner is aggrieved by the order dated 17.8.2015, delivered by the Employees' Provident Fund Appellate Tribunal, New Delhi in Application EPF No. 8579 of 2015, by which the Appellate Tribunal has allowed the petitioner to deposit 50% of the dues under Section 7-O in relation to the assessed penalty and damages under Section 14B and 7-Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.
5. Contention of the petitioner is that the Appellate

Tribunal should have allowed the application for waiver of pre-deposit under Section 7-Q by which, 75% of the assessed dues are to be deposited as a precondition for entertaining the appeal under Section 7.

6. *Learned counsel for the petitioner submits that under various orders passed previously by this Court, an amount of Rs. 7.08 Crores was the claim of the PF authorities and the amount generated through the sale of sugar bags by the EPF authorities is about Rs. 8.28 Crores, which are available to the authorities. This aspect was not considered by the appellate Tribunal while passing the impugned order.*

7. *Prima facie, I find that there are several orders passed by this Court at the Aurangabad Bench as well as at the Principal Seat in connection with recovery of Provident Fund amounts. The order indicated by the petitioner, dated 18.7.2006, passed by the appeal Bench of this Court in LPA No.28 of 2004 is as against the assessed provident fund dues at the relevant time. Similarly, order passed by this Court, dated 18.2.2013, in Writ Petition No.10925 of 2010 was also with regard to the recovery of PF dues. I do not find that any of these orders are in relation to the penalty and damages which have been levied against the petitioner under Section 14-B and 7-Q of the said Act.*

8. *However, since the petitioner insists that the sum total of monies, either deposited by the petitioner or recovered through sale proceeds of the sugar bags is about Rs.8.28 Crores, which is about Rs.1.19 Crores in excess, which could be adjusted against the penalty and damages, subject matter of this petition, I am inclined to direct the respondent PF authorities to consider the contention of the petitioner and file an exact calculation of the total amounts available towards PF dues as against the assessed dues and whether any excess amount is lying with the PF authorities.*

9. *The respondent shall file such statement with a short affidavit on/or before 9.9.2015. Learned Advocate for the petitioner shall collect the copy of the affidavit*

> *from the Standing Counsel for respondent No.1.*
>
> *10. Rejoinder if any shall be filed thereto, on/or before the returnable date. No extension of time or adjournment would be permitted.*
>
> *11. In the light of the above, the protection granted by the appellate Tribunal is extended till 15.9.2015.*
>
> *12. Shri Kulkarni appearing on behalf of Union of India shall convey this order to the National Appellate Tribunal."*

2 Respondent No.1/Provident Fund Authorities have filed an affidavit in reply through Shri Saurabh Tiwari, presently working as Assistant Provident Fund Commissioner in the office of the Regional Provident Fund Commissioner-II, SRO, Aurangabad dated 09.09.2015.

3 For the sake of clarity, the relevant contentions of Respondent No.1 in it's affidavit in reply in paragraphs 3, 4, 5 and 6 read as under:-

> *"3. I say and submit that the amount deposited and/or recovered towards the provident fund and allied dues from the employer alongwith employees share of contribution from the establishment is apportioned and credited in five different accounts i.e. Account Nos.I (EPF), II (Administrative Charges), X (Employees' Pension Fund), XXI (EDLI) and XXII (EDLI Administrative Charges) as mandated by the provisions of the Scheme and at the rates prescribed from time to time. I say and submit that as per the office record as on 31.03.2015, the position as to the recovery of the provident fund and allied dues from the establishment was Rs.5,45,54,333/-, Rs.189156/- and Rs.1,04,47,535/- in view of the orders u/s 7A, 14B and 7Q, respectively, passed by the Competent Authority from time to time. Hereto*

annexed and marked as Exhibit R-I is the copy of the statement showing EPF recovery position in respect of the petitioner establishment as on 31.03.2015.

4. I say and submit that as per the office record as on 31.03.2015, the Competent Authority has recovered the dues from the establishment amounting to Rs.5,03,13,440/- and Rs.1,11,82,434/- pursuant to the orders u/s 7A and 7Q, respectively, passed by the Competent Authority from time to time. I say and submit that as on 31.03.2015, an amount of Rs.10,45,700/- and Rs.37,74,606/- in Account No.I (i.e. EPF) only was available with the office of the answering Respondent in excess, which amount was either deposited and/or recovered/ fetched towards the satisfaction of the dues assessed as per the orders passed u/s 7A of the Act and interest levied pursuant to the orders passed u/s 7Q of the Act. The aforesaid amount was available in excess with respect to the recovery of the amount pertaining to Account No.I only and the said excess amount, as on date, the said amount would be scaled down pursuant to the assessment orders passed by the Competent Authority during the present assessment year i.e. on and from 01.04.2015 onwards, the details whereof are mentioned in the paragraphs below. Hereto annexed and marked as Exhibit R-2 is the copy of the chart indicating the statement as to the amount deposited and/or recovered and the amount in excess available as was available with the office of the answering Respondent upto 31.03.2015.

5. I say and submit that in the present assessment year i.e. from 01.04.2015 onwards upto 09.09.2015, the Competent Authority has passed the orders u/s 7A of the Act thereby assessing the dues, damages and interest u/ss 14B and 7Q of the Act amounting to Rs.28,38,505/-, Rs.3,14,49,677/- and Rs.1,77,30,602/-, respectively, and as on date, the same is outstanding and yet to be recovered. Hereto annexed and marked as Exhibit R-3 is copy of the chart indicating the amount due and payable by the establishment assessed and levied by the Competent Authority vide orders passed u/Ss.7A, 14B and 7Q of *the Act.*

6. *I say and submit that as on 31.03.2015, an amount of Rs.10,45,700/- and Rs.37,74,606/- was lying in excess with the office of the answering Respondent in respect of Account No.I only as mentioned above and the same would be credited as mandated by the provisions of the Scheme to Account No.I only pursuant to the orders passed by the Competent Authority during the present year i.e. on and from 01.04.2015 onwards."*

4 In the light of the above, the Respondent/ PF authorities have indicated that Rs.48,21,300/- are available in excess with the PF authorities only with regard to Account No.1 (EPF).

5 Shri Chaudhari, learned Advocate for the PF Authorities, has clarified that insofar as the other account numbers are concerned like administrative charges, employees pension fund, EDLI and EDLI administrative charges, there are no amounts in excess.

6 The rejoinder has been filed by the Petitioner through Shri Bapusaheb Murlidhar Patil, presently incharge Managing Director of the Petitioner Factory. It is a short affidavit running into three paragraphs. It would be apposite to reproduce paragraphs 1, 2 and 3 of the said rejoinder as under:-

"1. *I say that I have been served with the affidavit in reply on 10.09.2015 filed by the respondent No.1 i.e.*

RPFC Aurangabad on 09.09.2015. I have noted the contents of the same. I say that there are material suppression of payments made by Karkhana and/or received by respondent No.1 RPFC Aurangabad on their behalf. I therefore filing this rejoinder to bring the said suppression of payments, received by respondent No.1, over and above the payments shown by them in the affidavit in reply dated 09.09.2015.

2. I say that the petitioner is filing the copies of challans herewith through which the petitioner has deposited various sums to the respondent No.1 on various dates, which are not included and mentioned by the respondent No.1 in their statements, annexed with the affidavit in reply dated 09.09.2015.

3. I say that as per these challans a total of Rs.02,34,25,570/- (Rupees Two Crores, Thirty Four Lacs, Twenty Five Thousand, Five Hundred Seventy only), which is paid vide annexed challans, is not shown/ included in the statements filed by respondent No.1 with their reply. I say that this is clear suppression of facts by the respondent No.1 for the reasons best known to them. I say that the annexure A herein shows the date of challn, account number and the amount deposited in respondent No.1. Hereto annexed and marked as Annexure A 1 to are the copies of challans and statement showing summary of these challans."

7 Shri Pandit, learned Advocate for the Petitioner, has therefore, vehemently contended that the Petitioner Factory has been closed down for the past seven years. The present Management is labouring for revival of the said factory. None of it's employees have worked for the last seven years or more. None of them have earned their monthly wages due to no work being available and hence, there is no issue of the outstanding provident fund dues for the past seven years.

8 Shri Pandit further submits that the Petitioner is a new Management comprising of newly elected office bearers. They have no money and are unable to pay the deposit under Section 7-O of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short, "the PF Act") as has been ordered by the National Provident Fund Appellate Tribunal (for short, "the Appellate Tribunal") vide the impugned order dated 17.08.2015.

9 The Petitioner indicates from the impugned order that the Appellate Tribunal has scaled down the deposit under Section 7-O of the PF Act from 75% to 50%. Notwithstanding the same, a huge amount of Rs.2 Crore 48 Lac approximately are required to be deposited as 50% of the assessed amount under Section 7-A, 14-B and 7-Q of the PF Act. It is, therefore, submitted that if further relief is granted to the Petitioner by scaling down the pre-deposit amount, it would meet the ends of justice since the Petitioner has placed on record the challans indicating the amounts already paid/ deposited by the Petitioner with the PF authorities.

10 He further submits that the Civil Application has been filed in Letters Patent Appeal No.28/2004 before the Principal Seat and the same is likely to be heard on 16.10.2015. It is, therefore, submitted that if the

Challans deposited before this Court from pages 279 till 403 are considered by this Court, the Petitioner is sure that this Court would come to a conclusion that no amounts towards Sections 7-A, 14-B and 7-Q of the PF Act are recoverable from the Petitioner.

11 Shri Chaudhari, learned Advocate for Respondent No.1/ PF Authorities, submits that all these Challans which have been filed by the Petitioner on record, date back to 10.04.1997. This issue has already been dealt with by this Court in various earlier matters. Several orders have been passed earlier as a consequence of which the Petitioner was required to deposit the amounts as well as the PF Authorities recovered the amounts through sale proceeds of the sugar bags.

12 Shri Chaudhari further submits that it is a matter of adjudication before the Appellate Tribunal to take into account all these Challans and onus would lie on the Petitioner to reconcile all these deposits to indicate that the amounts of the provident fund dues paid till the date of the order impugned before the Appellate Tribunal, are in excess and hence, no recovery is necessary from the Petitioner Factory.

13 He submits that the Petitioner is raising disputed questions and is coming forth with voluminous challans only to delay the hearing of

this matter so as to compel this Court to reconcile the challans and amounts deposited, as if this Court is hearing the Appeal of the Petitioner filed before the Appellate Tribunal.

14 He further submits that the order of depositing the amount under Section 7-O is an outcome of a discretionary power. The disputed questions are not to be considered in writ jurisdiction. The orders under challenge which have assessed the amounts due, are to be seen and Section 7-O is required to be complied with. He hastens to add that though there is a provision for waiver of deposit, such order can be passed only in deserving cases and only after the Appellate Tribunal is convinced that the deposit of amount deserves to be waived. In the instant case, the Petitioner has been litigating on the payment of provident fund dues in several matters before different courts only with an intention of evading the recovery of provident fund dues under the PF Act, 1952 which is a social legislation enactment. He, therefore, prays that this petition be dismissed.

15 I have considered the submissions of the learned Advocates as have been recorded herein above. Going by the statement made by the Petitioner which was recorded in paragraph 8 of the order passed on 27.08.2015, it was stated that the provident fund deposits and amounts

recovered through sale proceeds of the sugar bags were approximately Rs.8.28 crores. At the relevant time, recoverable amount was Rs.7.08 crores approximately. Consequentially, it was stated that an amount of Rs.1.19 crores is in excess which is with the Provident Fund Authorities. In the affidavit in rejoinder dated 12.09.2015, the contention is that an amount of Rs.2,34,25,570/- has been paid by the challans by the Petitioner and the said amount is not accounted for by the Provident Fund Authorities.

16 Shri Chaudhari has vehemently countered the said contention on the ground that their accounts are audited every year and the payments of this magnitude as is contended by the Petitioner, cannot either be suppressed or hidden by the Provident Fund Authorities. It was further contended that the Provident Fund Authorities have no animosity towards the Petitioner Factory. Going by their records, an amount of Rs.48,21,300/- is said to be in excess and that latitude can be given to the Petitioner Factory only to that extent.

17 I quite foresee that the challans, which have been placed before this Court from pages 279 till 403, is the bone of contention. Prima facie, I am unable to accept the contention of the Petitioner that a huge amount to the tune of Rs.2,34,25,570/- can be hidden or suppressed by

the Provident Fund Authorities. So also, the Provident Fund Authorities cannot be said to have any intent or object of hiding or suppressing this amount. It is vehemently contended by Shri Chaudhari that these amounts have been accounted for and considering these amounts, the amount of Rs.48,21,300/- only is in excess and that too under Account No.I.

18 The issue raised by the Petitioner before this Court on the basis of the said challans is in fact the issue before the Appellate Tribunal. These issues which include disputed questions and contentious issues are to be considered by the Appellate Tribunal. These issues cannot be gone into by this Court either in it's supervisory jurisdiction or as if, it is considering an appeal of the Petitioner.

19 Nevertheless, in order to ensure that a proper hearing takes place on the appeal preferred by the Petitioner and to ensure that an equitable order is passed considering the fact that the Petitioner has to deposit an amount of about Rs.2 crores 48 lac as 50% deposit before the Appellate Tribunal, this Court could cause indulgence only to the extent of balancing the equities so as to ensure that the ends of justice are met.

20 In the light of the above, taking into account that Rs.48,21,300/- is stated to be in excess, the issue is of Rs.2 crores as a

deposit for hearing on the appeal. The ends of justice would be met by directing the Petitioner to deposit an amount of Rs.1 crore (Rupees One Crore) within a period of FOUR WEEKS from today before the Appellate Tribunal as a pre-condition for hearing the appeal.

21 As such, this petition is partly allowed.

22 The impugned order dated 17.08.2015 is modified only to the extent of directing the Petitioner to deposit an amount of Rs.1 crore (Rupees One Crore) as compliance of Section 7-O of the PF Act. The impugned order only to the extent of the direction to deposit 50% of the amount is, accordingly, modified. The protection granted by the Appellate Tribunal shall continue to protect the Petitioner till Appeal No.ATA/857(9)2015 is decided.

23 Needless to state, in the event the amount of Rs.1 crore is not deposited within FOUR WEEKS from today before the Appellate Tribunal, the protection granted by the Appellate Tribunal by it's order dated 17.08.2015 and continued by this Court, shall stand automatically vacated.

(**RAVINDRA V. GHUGE, J.**)