IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 312 of 2015

Mr. Nilkanth Phadte,
A Proprietor, major of age,
Of M/s Swastik Enterprises,
having its office at
House No.626, Mangeror,
Karambolim, Karmali, Goa … Petitioner.

Versus

1. The Regional Provident Fund
Commissioner-I,
Bhavishya Nidhi Bhavan,
24, Patto Plaza,
Panaji- Goa 403 001.

2. The Asst. Provident Fund
Commissioner,
Bhavishya Nidhi Bhavan,
24, Patto Plaza,
Panaji-Goa 403 001. … Respondents.

Mr. Vijay A. Palekar, Advocate for the petitioner.

Mr. P. P. Singh, Advocate for the respondents.

CORAM :- **M. S. SANKLECHA, J.**

DATE : 22nd April, 2015

ORAL ORDER :

At the request of the learned Counsel for the parties, the petition is disposed of finally, at the admission stage.

2. This petition challenges the order dated 23/05/2012 passed by the Assistant Provident Fund Commissioner, under Section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (the Act, for short). By the impugned order, the petitioner was directed to pay an amount of Rs.1,63,350/- being provident fund dues, payable from April, 2008 to March, 2012 under the provisions of the Act.

3. The grievance of the petitioner is that the impugned order was passed without the petitioner having received any notice of the proceedings, initiated by the Assistant Provident Fund Commissioner or of the various dates on which personal hearing was granted as noted in the impugned order. Immediately on receipt of the order dated 23/05/2012, the petitioner, by various letters, beginning from 26/09/2012 onwards, addressed communications to the Assistant Provident Fund Commissioner seeking recall of order dated 23/05/2012 and passing of fresh order, after giving personal hearing to the petitioner. This is on the ground that he had no notice of the proceedings against him under the Act. The petitioner kept on reminding the Assistant Provident Fund Commissioner from time to time and last such letter was addressed on 16/07/2014. It is further submitted that the impugned order itself is in breach of

principles of natural justice, as no documents relied upon in the impugned order, were served upon the petitioner, before passing of the same. It is also contended that the order covers a period of demand beyond the date of the notice to the petitioner, for failure to comply with the provisions of the Act.

4. Mr. Singh, the learned Counsel appearing for the respondents contends that this Court should not entertain the petition in view of the fact that there is an alternative remedy of an appeal available to the petitioner in terms of Section 7(I) of the Act. Besides, it is also contended that there is gross delay on the part of the petitioner in moving this Court against the impugned order, which was passed as far back as in May, 2012. Thus, it warrants dismissal on ground of laches. It is also submitted that there is no power to review on account of non-service of notice upon the petitioner. In these circumstances, it is submitted that the Court should not exercise its writ jurisdiction with regard to the impugned order.

5. At this stage, I am not inclined to interfere with the impugned order dated 23/05/2012. However, the fact is that the petitioner, on receipt of the impugned order, has been writing to the Assistant Provident Fund Commissioner from 2012 onwards that he had no notice of the proceedings under the Act, leading to

the passing of the impugned order. It was in the above circumstances that the petitioner sought recall of the impugned order and passing of fresh order, after grant of personal hearing. Last such letter was addressed on 16/07/2014. The Assistant Provident Fund Commissioner has neither replied to nor disposed of the application for recall filed by the petitioner. The Supreme Court in ***Grindlays Bank Ltd Vs. The Central Government Industrial Tribunal and others,*** reported in AIR 1981 (SC) 606, while deciding an application for recall of an ex-parte order, has observed as under :

> *“........... But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary.”*

6. Thus, every Court has an inherent jurisdiction to recall its own orders, in case there has been a procedural irregularity in passing an order. A procedural review is different from substantive review. In this case, the petitioner had not

received any notice of the hearing and the Authority proceeds to pass an order adverse to the petitioner, then, the Authority has inherent powers to recall its order and hear the party and pass a fresh order, after complying with all the necessary procedural formalities. The petitioner's various applications, beginning from 26/09/2012 and ending on 16/07/2014, have not even been acknowledged much less considered.

7. In view of the above, the Assistant Provident Fund Commissioner is directed to dispose of the petitioner's application for recall dated 26/09/2012 and subsequent reminders at the earliest. It may be pointed out that Section 7B of the Act itself provides for review of orders passed under Section 7A of the Act. The provision is very widely worded and would also cover a case, where the party has not received notice of any proceedings before the Authority under the Act. Appropriately, the Assistant Provident Fund Commissioner ought to have disposed of the application for recall being in the nature of review under Section 7B of the Act.

8. However, Mr. Singh pointed out that such an application has to be made in a particular form and manner, before it can be entertained. However, if that be the case, the Assistant Provident Fund Commissioner ought to have directed

the petitioner, to file an application in the prescribed form and manner so as to entertain it. In any view of the matter, the Assistant Provident Fund Commissioner under the Act was required to consider the petitioner's application for recall dated 26/09/2012, as it is his contention that no notice of the proceedings, leading to impugned order, was received by him, consequently leading to miscarriage of justice. The respondent no.2 is directed to dispose of the petitioner's application for recall/ review as expeditiously as possible, after following the principles of natural justice.

9. It is made clear that at this stage the impugned order dated 23/05/2012 is not disturbed. The same would be subject to the decision taken on the recall application filed by the petitioner.

10. It is agreed between the parties that the petitioner shall appear before the Assistant Provident Fund Commissioner on 28/04/2015, at 11.00 a.m., at which time, an appropriate direction will be given by him, for fixing the hearing of recall application.

11. The petition is disposed of in the aforesaid terms.

M. S. SANKLECHA, J.

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