

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 582 OF 2015

M/s. Konkan Air Products Pvt. Ltd.
A company registered under the
Companies Act,
Represented by its authorized representative
Shri Prashant Anand,
Age 36 years,
with its factory at
Plot No. L-26,
Phase-II,
Verna Industrial Estate,
Verna Goa, 403 722.

..... Petitioners

V e r s u s

1. The Asst. Provident Commissioner
Employees Provident Fund Organization,
Bhavishya Nidhi Bhavan,
24, Patto Plaza,
Panaji, Goa, 403 001.

2. The Enforcement Officer,
Bhavishya Nidhi Bhavan,
24, Patto Plaza,
Panaji, Goa, 403 001.

..... Respondents

Mr. Vijay Palekar, Advocate for the Petitioner.

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

Coram :- **F. M. REIS, J**

Date : **31st July, 2015.**

ORAL JUDGMENT

Heard Shri V. Palekar, learned Counsel appearing for the Petitioner
and Shri P. P. Singh, learned Counsel appearing for the Respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel.

Learned Counsel appearing for the Respondents waives service.

3. I have heard Shri Palekar, learned Counsel appearing for the Petitioner and Shri P. P. Singh, learned Counsel appearing for the Respondents with regard to the rival contentions in the above Writ Petition.

4. It is pointed out by Shri Palekar, learned Counsel appearing for the Petitioner that the impugned Order has been passed in breach of the principles of natural justice as, according to him, the Enforcement Officer gave her deposition on a date when the matter was not even notified for hearing to the Petitioner. The learned Counsel has thereafter taken me through the impugned Order passed by the Authority to point out that the Order itself reflects that the matter was posted on the subsequent date and the deposition was recorded on 30.01.2015. Learned Counsel further pointed out that as the Petitioner did not get an opportunity to cross examine the concerned official nor lead evidence to dispute the correctness of the claim of the Respondents, grave injustice has occasioned to the Petitioner which calls for interference by this Court under Article 227 of the Constitution of India.

5. On the other hand, Shri P. P. Singh, learned Counsel appearing for the Respondents, has supported the impugned Order. Learned Counsel has pointed out that the conduct of the Petitioner itself dis-entitles the Petitioner from any discretionary relief in exercise of jurisdiction under Article 227 of the Constitution of India. Learned Counsel further pointed out that the Petitioner has been seeking successive adjournments and, in fact, according to him, the evidence was not

recorded on 30.01.2015, but however, on the subsequent day, the concerned Official had confirmed the notes which were already placed on record by such Official. Learned Counsel has further pointed out that the Petitioners have an alternate remedy in challenging the impugned Order before the Appellate Authority. Learned Counsel as such submits that the Petition be rejected.

6. Upon hearing the learned Counsel and on perusal of the record, no doubt, the Petitioners have an alternate remedy, but, however, the challenge in the present proceedings is on the ground that there was a breach of the principles of natural justice. In fact, the records no doubt reveal that the Petitioners have been taking successive adjournments on flimsy grounds but, however, in the interest of justice and taking note that the Official had also partly supported the stand of the Petitioner that the establishment was closed from the year 2011 and the dispute narrows down to ascertain the actual amount payable by the Respondents, I find that, another opportunity may be given to the Petitioners to lead their evidence and cross examine the said Official, if so advised, subject to the payment of costs to the Respondents. The costs are quantified at Rs.10,000/- as condition precedent.

7. In view of the above, I pass the following :

ORDER

(i) The impugned Order dated 07.05.2015 is quashed and set aside.

(ii) The Respondent no. 1 is accordingly directed to proceed to examine the proceedings under Section 7-A of the Employees Provident Fund &

Miscellaneous Provisions Act of 1952, afresh after giving an opportunity to the Petitioners to cross examine the concerned Official and lead evidence in accordance with law, subject to payment of costs of Rs.10,000/- to the Respondent no. 1 as condition precedent.

(iii) The parties are directed to appear before the Respondent no. 1 on 27.08.2015 at 2.30 p.m.

(v) Rule stands disposed of.

(vi) Petition stands disposed of accordingly.

F .M. REIS, J.

arp/*