

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

M/s. Sant Dnyaneshwar Hospital Pvt. Ltd.,
Heera Plaza, Pune Nasik Road,
Bhosari, Pune – 411030.

1.	Office of the Regional Provident Fund Commissioner, At Cantonment Board Building, Golibar Maindan, Pune – 1.	)))
2.	Assistant Provident Fund Commissioner, Pune. At Cantonment Board Building, Golibar Maidan, Pune -1.	))))
3.	Bhartiya Mazdoor Sangh Vishwa Karma Bhavan, 185 Shaniwar Peth, Pune – 411 030.	))))
		) ... Respondents.

CORAM : N.M. JAMDAR, J.

DATE : 21 NOVEMBER, 2015.

ORAL JUDGMENT. :-

By order dated 17 November 2015 the Petition was to be listed for final disposal. Accordingly, taken up for final disposal. Rule. Rule made returnable forthwith. Respondents waive service.

2. The Petitioner challenges the orders passed by the Assistant Provident Fund Commissioner, Pune dated 31 July 2015 and 4 September 2015, disposing off the proceedings under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and a Review Petition filed by the Petitioner.

3. The Petitioner runs a hospital at Pune. The Enforcement Officer visited the Petitioners' establishment and submitted a report that the Petitioner had failed to enroll Nursing Staff and Trainee Doctors and also provident fund contribution is based on a meager basic salary. The Petitioner gave its representation as regard the report of the Officer and contended that the report is not factually correct and the Enforcement Officer, who visited the establishment was different than the one who has given report. It was also contended that the details have been worked out from figures of the year 2008-09 on the basis of gross salary upto the year 2010-11 and all the figures have been taken as salary on a wrong factual basis. It was also contended that the

report and the proceedings be reconsidered as it was founded on a wrong legal as well as factual basis.

4. The Provident Fund Commissioner by order dated 31 July 2015 directed the Petitioner to pay an amount of Rs.51,47,407/-, and disposed off the proceedings under Section 7A of the Act. The Petitioner thereafter filed a review under Section 7B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, wherein the Petitioner pointed out that the various documents produced by the Petitioner and the contentions of the Petitioner have not been considered by the Commissioner at all and the enquiry was only instituted on the basis of a complaint by the Union and the Authority independently did not assess the amount due. It was also contended that the Commissioner has not considered the law as how to calculate the wages as mentioned in Section 2B of the Act. The Commissioner rejected the application for review by stating that no new ground is made out and there was new important evidence which could not be produced inspite of due diligence.

5. The orders passed by the Commissioner are unsatisfactory to say the least. They do not contain any reasoning at all. The impugned order is nothing but reproduction of the report of the Enforcement Officer. There is absolutely no reference to the contentions raised by the Petitioner. At various places the Commissioner has reproduced the report of the Enforcement

Officer *in verbatim*. The learned Counsel for the Petitioner submitted that even the Enforcement Officer was not allowed to be cross-examined. The proceedings under Section 7A are quasi judicial and the Commissioner is duty bound to give reasons while disposing off the proceedings. Giving reasons is a facet of the principles of natural justice, and the Act legislature has not conferred power on the Commissioner to decide the proceedings without giving any reasons. Since the order is completely unreasoned it cannot be stated to be passed under the Act and therefore, the argument of the learned Counsel for Respondent No.1 that the Petitioner can avail the remedy of a statutory appeal and therefore Petition should not be entertained cannot be accepted. Even in the Review, the Commissioner has not applied his mind at all. There was no question of discovery of new and important matter of evidence, as the Commissioner in the original order itself did not apply his mind to the evidence on record. Even the order passed in review therefore is totally unsustainable.

6. In the circumstances, both these orders cannot be sustained and will have to be quashed and set aside and the proceedings be remanded to the Provident Fund Commissioner, Pune.

7. In the circumstances, the Petition is allowed in terms of prayer Clause (a). The proceedings under Section 7A of the Act stand restored on the file of the Assistant Provident Fund

Commissioner, Pune to be disposed off as per law. The Petitioner shall appear before the Assistant Provident Fund Commissioner on 7 December 2015. It will be open to the Petitioner to make an application to seek cross-examination of the concerned Enforcement Officer, which application will be considered by the Commissioner as per law.

8. Rule made absolute in the above terms with no order as to costs.

(N.M. JAMDAR, J.)