

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 346 OF 2004

Shri Gujrathi Shikshan Sanstha's
Shri Gujrathi English School, Latur
Through it's Secretary
Pradeep Navneethlal Shah

..PETITIONER

VERSUS

1. The Assistant Provident Fund Commissioner,
SRO, Solapur, Dist. Solapur.
2. The Assistant Provident Fund Commissioner,
SRO, Aurangabad, Dist. Aurangabad.

..RESPONDENTS

**WITH
CIVIL APPLICATION NO. 1703 OF 2016
IN
WRIT PETITION NO. 346 OF 2004**

1. The Assistant Provident Fund Commissioner,
SRO, Solapur, Dist. Solapur.
2. The Assistant Provident Fund Commissioner,
SRO, Aurangabad, Dist. Aurangabad.

..APPLICANTS

VERSUS

Shri Gujrathi Shikshan Sanstha's
Shri Gujrathi English School, Latur
Through it's Secretary
Pradeep Navneethlal Shah

..RESPONDENT

....

Mrs. Anjali Dube-Bajpai, Advocate for petitioner in petition.
Mr. K.B. Chaudhari, Advocate for respondent in petition.

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CORAM : RAVINDRA V. GHUGE, J.
DATED : 17th FEBRUARY, 2016

ORAL JUDGMENT :

1. This petition was admitted by order of this Court dated 19.07.2004 which reads as under:

“1. In pursuance of the order dated 11.06.2004 of this Court affidavit is filed clarifying the powers to grant waiver in respect of the employees shares for the pre-discovery period, along with the letter dated 25.03.1997 issued by the Regional Provident Fund Commissioner, is submitted.

2. Heard Smt. Anjali Dube, learned Counsel for the petitioner and Mr. K.B. Chaudhary, learned standing Counsel for the Respondent Nos.1 and 2.

3. Rule.

4. Interim relief in terms of prayer clause 'D'.”

2. Prayer clause 'D' set out in the memo of the petition reads as under:

“D) Pending hearing and final disposal of this writ petition, the operation implementation and

execution of the impugned order dated 20.10.2003 may kindly be stayed.”

3. I have heard the submissions of the learned Counsels for the petitioner and the respondents at length. In the light of the order that I intend to pass, I am not required to advert to their entire submissions since the matter is being remanded for a rehearing of Section 14B and 7Q and the observations of this Court may influence the PF authority.

4. Suffice it to say, the issue of pre-discovery for the period 8/1987 upto 1/1994 is at issue. By order dated 04.10.1999, the respondent PF authorities have waived the employees share of the PF contributions for the pre discovery period mentioned above.

5. In so far as Section 14B under the EPF and MP, 1952 is concerned, same pertains to the damages to be recovered on account of delayed payments even for the pre-discovery period.

6. Mrs. Dube-Bajpai, learned Counsel for petitioner has strenuously criticized the impugned order dated 20.10.03 on the

ground that the authorities do not have any right to invoke Section 14B so as to impose damages upon the petitioner establishment for the pre-discovery period. This aspect of the matter has not been considered by the respondent-authorities.

7. She further submits that the calculations have not been properly done under Section 14B. The impugned order dated 20.10.2003 is defective and calls for interference. She prays that the said order be quashed and set aside and this petition be allowed. In the alternative, she submits that the proceedings be remitted back to the respondent for a hearing on Section 14B and the petitioner would cooperate in the hearing of the matter.

8. Mr. Chaudhary, learned Counsel for respondents submits that Section 14B is “fait accompli” after an order is passed under Section 7A of the 1952 Act. No element of discretion is involved in deciding the Section 14B proceedings. The respondent-authorities have to follow a specific pattern as set out in the Act and the Rules applicable.

9. He further submits that the respondent-authorities have properly calculated the Section 14B dues only on the employer's contribution pursuant to its order dated 04.10.1999. He therefore submits that no interference is called for and this petition be dismissed.

10. I have considered the submissions of the learned Counsels as above.

11. The basic grievance of the petitioner in the petition is that the waiver of employees' share for the pre-discovery period also tantamounts to the waiver of damages over the employer's share in so far as Section 14B is concerned. It is also contended that a proper hearing was not done. It is also contended that proper calculations of the dues under Section 14B have not been done.

12. In my view, ends of justice would be met by directing the petitioner to deposit the amount as is assessed by the authorities

under the impugned order and by setting aside the impugned order, the proceedings can be relegated to the respondent-authorities so as to hear the petitioner and pass a reasoned order.

13. In the light of the above, this petition is partly allowed with the following directions:

(A) An amount of Rs.1,28,242/- shall be deposited by the petitioner with the Respondent No.1-authority at Solapur on or before 23.03.2016.

(B) After the said amount is deposited, the petitioner shall appear through its authorised representative or an advocate on 30.03.2016 before Respondent No.1 at 11.00 a.m.

(C) If the amount as directed above is not deposited, Respondent No.1 shall close the proceedings on 30.03.2016 and the impugned order dated 20.10.2003 shall then stand restored.

(D) After the amount is deposited, Respondent No.1 shall commence the hearing on Section 14B and 7Q and shall afford a reasonable opportunity to the respondent to address

Respondent No.1 and file all relevant documents as it may so desire.

(E) The petitioner shall participate in the proceedings on the dates on which Respondent No.1 would post the matter for hearing.

(F) After the hearing is completed, Respondent No.1 shall pass a reasoned order as expeditiously as possible and preferably on or before 30.06.2016.

(G) Needless to state that the amount deposited by the petitioner shall be subject to the decision of Respondent No.1.

(H) Decision so arrived at shall be communicated to the petitioner expeditiously.

14. Rule is made partly absolute in the above terms.

15. In the light of the above, Civil Application No. 1703/2016 does not survive and is disposed off.

(RAVINDRA V. GHUGE, J.)