

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2030 OF 1997
WITH
CIVIL APPLICATION NO. 7786 OF 2016

The Maharashtra State Electricity
Board, through Executive Engineer
(CCM), MSEB, Aurangabad.

..Petitioner

Versus

1. Officer-in-charge,
Employees Provident Fund
Organization, Sub Regional office,
Aurangabad.

2. State of Maharashtra.

..Respondents

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Advocate for Petitioner : Shri Borde R.D.h/f Shri Malte Uday S.

Advocate for Respondent 1 : Shri Chaudhary K.B.

AGP for Respondent 2 : Shri Bhagat N.T.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: November 28, 2016

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ORAL JUDGMENT :-

1. The petitioner has directly challenged the order of the Assessing Authority dated 2.6.1997 passed under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("1952 Act") in this Court. This petition was admitted by directing the petitioner to deposit Rs.50,000/- in this Court and interim relief was granted on 17.7.1997, which was confirmed subject to the deposit on 3.11.1997. The said amount has been deposited on

10.12.1997.

2. The grievance of the petitioner is that the names of the Contractors and Contract Labourers were furnished to the P.F. authority and despite the same, an exorbitant amount has been assessed. The Contractors were liable to maintain the registers in respect of the workers employed by them and these documents could not be maintained by the petitioner. As it became difficult to collect the lists with particulars of the workers engaged by the Contractors, the respondent authorities have proceeded on assumptions and have assessed an amount which is not payable.

3. It is further submitted that the burden of depositing the P.F. contribution is with the Contractors. Retrospective effect for recovery of amounts has been wrongly granted by the P.F. authorities. The petitioner, as a principal employer, has an independent P.F. Code number. At the given time, the principal employer's contribution could be only 10% and the P.F. authorities have directed the petitioner to pay 20% of the payments of salaries made to the contract labourers.

4. It is further contended that a proper enquiry was not conducted and an erroneous calculations / assessment was made by the authorities. It is prayed that the impugned order of assessment

dated 2.6.1997 be quashed and set aside.

5. Learned Advocate for the respondent - Shri Choudhary has opposed this petition as well as the request for rehearing 7A proceedings. He points out from the impugned order that the authority has recorded in the second paragraph that the calculations were made on the basis of the statement submitted by the principal employer towards Labour payment. In the last paragraph of the order, it is recorded that the principal employer did not dispute the quantum of dues assessed by the enforcement authority.

6. He also relies upon the detailed affidavit in reply filed on 14.8.1997 by the P.F. authorities to support his contention that the records were not produced despite several opportunities granted. If the Contractors do not deposit P.F. contributions, the principal employer is liable to pay the same. He further submits that the amount of Rs.2,00,000/- can at the most be reduced to Rs.1,50,000/- considering the amount of Rs.50,000/- deposited by the petitioner in this Court. The rest of the amount must gather interest from January 1998 and the damages will also have to be calculated on the said amount.

7. I have considered the submissions of the learned Advocates.

8. Though this petition is not maintainable as a statutory appeal under Section 7-I read with Section 7-O is available to the petitioner, since this Court has already admitted the matter about 19 years ago, I am not considering the said objection.

9. It is settled law and especially in the light of the Contract Labour (R & A) Act, 1970 and the Rules that after the month of working is over, the records pertaining to the work performed by the Contract Labourers is to be handed over to the principal employer by the Contractor. The burden of seeking custody of such documents and preserving them lies on the principal employer.

10. It appears from the impugned order that the petitioner had submitted the list of contract labourers and the list of contractors. Based on the same, the 7A assessment was made by the respondent. Since this Court has admitted the petition in 1997, considering the grievance of the petitioner that an opportunity of hearing was not granted, I find that the ends of justice would met by allowing the respondent to withdraw the amount of Rs.50,000/- along with accrued interest. The rest of the amount of Rs.1,50,000/- shall be deposited by the petitioner with the respondent / authorities so as to enable the petitioner to participate in the hearing of the 7A proceedings. The issue of interest and damages under Section 7Q and 14B are left open as these are statutory provisions.

11. In the light of the above, this petition is partly allowed. The impugned order dated 2.6.1997 is set aside and the matter is remitted to the P.F. authorities at Aurangabad on the following conditions:-

(A) The amount of Rs.50,000/- deposited in this Court shall be withdrawn by the respondent / PF authorities with accrued interest and the same will be accounted for with regard to the claim against the petitioner.

(B) The respondent authorities shall not invoke Section 7Q - interest provision, with regard to this amount of Rs.50,000/- only as it has already gathered interest upon being deposited in this Court on 12.10.1997.

(C) The petitioner shall appear before the respondent on 9.1.2017 at 11.00 am and shall deposit the amount of Rs.1,50,000/- on/or before 9.1.2017.

(D) Only if the said amount is deposited the respondent shall commence the rehearing of Section 7A proceedings and shall decide the issue in accordance with law and procedure.

(E) The petitioner shall extend cooperation to the respondent in the hearing and shall refrain from seeking adjournments on unreasonable and trivial grounds.

(F) If the amount directed to be deposited is not so deposited, the order dated 2.6.1997 shall stand restored and the respondent would be at liberty to initiate recovery of the 7A amount.

(G) This Court has not created any embargo on the respondent in so far as initiation of Section 7Q and 14B proceedings with regard to the amount of RS.1,50,000/-.

(H) All contentions are kept open.

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

13. Pending Civil Application does not survive and is accordingly disposed of.

(RAVINDRA V. GHUGE, J.)

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