

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

WRIT PETITION NO. 6669 OF 2016

M/s Indira Gandhi (Urdu) D.Ed. College,
(Tyre Board) Qudwai Nagar, Nanded-431604.
Through its:- Principal/ Authorized Signatory
Shri Shaikh Salam Bavazeer,
Age : 63 years, Occupation : Authorized Signatory,
R/o Nanded.

...PETITIONER

-VERSUS-

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub Regional Office at Town Centre, CIDCO,
Aurangabad,
Taluka and District Aurangabad.

...RESPONDENT.

...

Advocate for Petitioners : Shri Sagar S Vidwans.
Advocate for Respondent : Shri K.b.Chaudhari.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th October, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner/ Educational Institution is before this Court

challenging the order dated 27.04.2016 passed by the Appellate Provident Fund Tribunal as well as the order dated 22.01.2015 passed by the Respondent Authority under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

3 This Court by order dated 07.04.2016 passed in Writ Petition No.3854/2016, had permitted the Petitioner to prefer an appeal under Section 7-I of the 1952 Act. The said appeal was filed within 15 days from the date of the order of this Court, on 22.04.2016. By the impugned order dated 27.04.2016, the Appellate Tribunal declined to condone the delay on the ground that the appeal is time barred.

4 I have heard the learned Advocates for the respective sides.

5 The Respondent/ Provident Fund Authority by the order dated 22.01.2015 under Section 7-A has assessed the provident fund dues for Rs.26,79,010/-.

6 Shri Chaudhari, learned Advocate for the Respondent, submits that the main grievance of the Petitioner is that the Institution was not given an adequate opportunity of hearing and hence, is seeking a remand of the Section 7-A proceedings. If the Petitioner deposits the entire

amount with the Respondent, the prayer for rehearing of the matter may be considered. However, if the amount is not deposited, this petition deserves to be dismissed.

7 The learned Advocate for the Petitioner submits, on instructions from the authorized representative present in the Court, that an amount of Rs.4,25,000/- has been deposited earlier in connection with the same Section 7-A proceedings. The Petitioner is prepared to deposit 50% of the assessed amount keeping in view the earlier amount deposited and is willing to be subjected to any condition including a time frame for a rehearing under Section 7-A and the other provisions of the 1952 Act.

8 It is apparent that the Respondent is making every effort to recover the amounts due. If 50% of the amount is deposited, the Respondent would succeed in recovering at least that much amount. Rather than remanding the matter, considering the prayer of the Petitioner that the Institution be given an opportunity of hearing, I, therefore, deem it proper to impose a condition on the Petitioner of depositing 50% of the assessed amount.

9 In the light of the peculiar facts as above, this Writ Petition is partly allowed and the proceedings are remitted to the Respondent

Authority at Aurangabad on the following conditions:-

- (a) The impugned order dated 22.01.2015 shall be kept in abeyance.
- (b) The Petitioner/ Institution shall deposit an amount of Rs.9,25,000/- (Rupees Nine Lac Twenty Five Thousand) with the Respondent at Aurangabad on or before 08.11.2016 and shall not seek an extension for any reason.
- (c) The amount of Rs.4,25,000/- (Rupees Four Lac Twenty Five Thousand) already deposited shall be taken into account while deciding the Section 7-A proceedings.
- (d) After the amount as directed above is deposited by the Petitioner, the order of attaching the bank account No.16745 of the Petitioner held with the Bombay Mercantile Bank, Main Branch, M.G. Road, Nanded, shall be recalled and the said bank account shall be released.
- (e) If the above amount is deposited, the Respondent shall commence the hearing under Section 7-A from 08.11.2016 and the Petitioner shall continue to appear before the Respondent Authority on such dates on which the matter may be posted by the said Authority.
- (f) The Petitioner shall produce such records as it may deem fit and proper.

- (g) The Respondent shall be at liberty to direct the Petitioner to produce such records as it finds necessary for deciding the Section 7-A proceedings.
- (h) Failure on the part of the Petitioner to produce the records as directed above, shall give the Respondent the right to draw an adverse inference.
- (i) The Petitioner shall not seek adjournment and shall cooperate with the Respondent for the expeditious disposal of the proceedings.
- (j) Considering the pendency of the proceedings, the Respondent shall conclude the hearing in the matter on or before 31.01.2017 and shall pass a reasoned order on or before 28.02.2017.
- (k) After the final order is passed under Section 7-A, the impugned order dated 22.01.2015 shall lose its efficacy. However, if the above conditions (b) to (i) are not complied with by the Petitioner, the Respondent shall restore the order dated 22.01.2015 and shall be at liberty to seek execution of the same.
- (l) Consequentially, the impugned order of the Appellate Tribunal dated 27.04.2016 is rendered redundant.
- (m) All contentions of the parties are kept open.

10 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)