

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

WRIT PETITION NO. 5609 OF 2016

The Municipal Council, Hadgaon,
Tq.Hadgaon, District Nanded (Maharashtra).
Through its Chief Officer,
Mr.Gangadhar Shankar Pente,
Age : 35 years, Occupation : Service,
R/o Hadgaon, District Nanded.

...PETITIONER

-VERSUS-

The Regional Provident Fund Commissioner (II),
Sub Regional Office, Town Centre, CIDCO,
New Aurangabad, Tq. & Dist.Aurangabad.

...RESPONDENT

...
Advocate for Petitioner : Shri Ghatol Patil Shahaji B.
Advocate for Respondent : Shri K.B.Chaudhari i/by Shri Chaudhari Nitin
K.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th September, 2016

Oral Judgment :

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

2 The Petitioner/ Municipal Council is aggrieved by the order
dated 19.04.2016 passed by the Presiding Officer, Employees' Provident

Fund Appellate Tribunal, New Delhi.

3 The grievance is that though the Appellate Tribunal has reduced the pre-deposit amount under Section 7-O of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 from 75% to 50%, the same is still burdensome. The Petitioner does not have money to deposit the said amount. It is stated that pursuant to the impugned order, the Petitioner would be required to deposit an amount of about Rs.10,61,000/-.

4 The learned Advocate for the Petitioner has drawn my attention to the grounds set out in the memo of the petition from clauses (I) till clause (X). He further draws my attention to the grounds raised in clause (A) to clause (M). It is further submitted that insofar as the employees of the Petitioner are concerned, the provisions of the 1952 Act have been complied with and there is no default in depositing statutory contributions towards provident fund.

5 He submits that the issue is with regard to the contract labourers. The proceedings under Section 7-A of the 1952 Act have been haphazardly conducted by the Respondent. The Petitioner did not get sufficient opportunity for producing relevant documents. The beneficiaries

of contributions have not been specifically identified. The Petitioner is unnecessarily burdened by the order under Section 7-A and as a consequence of the impugned order under Section 7-O, the Petitioner will have to deposit the amount which otherwise is the burden of the contractor. He further submits that the Petitioner Municipal Council is facing some elections in the next month.

6 Shri Chaudhari, learned Advocate for the Respondent/ Provident Fund Authorities, submits that the contention of the Petitioner that the order under Section 7-A was hurriedly passed, is grossly misconceived. Sufficient opportunity was given to the Petitioner. The Petitioner has failed to deposit the documents, which according to it, are in its custody. Proper enquiry was conducted under Section 7-A and the order dated 18.05.2012 was passed.

7 Shri Chaudhari further submits that the Appellate Tribunal at New Delhi can exercise its discretion for reducing the pre-deposit amount under Section 7-O. However, that does not invest the Tribunal with sweeping powers to waive the entire deposit amount. A discretion has to be judiciously exercised and the Appellate Tribunal has reduced the pre-deposit amount from 75%, which is statutorily mandated, to 50%. He, therefore, prays that this petition be dismissed.

8 Having considered the submissions of the learned Advocates, I have gone through the petition paper book with their assistance.

9 It is trite law that if the salaries of the contract labourer are not paid by the contractor, the Principal Employer has to pay the said amount and can recover the said amount from the contractor. Similarly, if statutory contributions are not deposited by the contractor, the Principal Employer is mandated to pay such statutory contributions and recover the said amounts from the contractor.

10 In my view, had the Petitioner Municipal Council been diligent and cautious, it would have maintained a strict supervision and control over the contractor when the monthly payment of wages was made thereby, ensuring that statutory contributions are also carried out and the said amounts are deposited with the statutory authorities. Since the Petitioner was negligent, the contractor probably felt that he could get away with not depositing statutory contributions. Prima facie, in this backdrop, the Petitioner, therefore, will have to be held responsible in accordance with the scheme of law.

11 There is no dispute that the Appellate Tribunal can exercise

it's discretion and reduce the pre-deposit which is a condition precedent to hearing the appeal. Nevertheless, such discretion has to be exercised cautiously and judiciously. It is only when the Appellate Tribunal is convinced that the pre-deposit needs to be reduced, it could pass the said order.

12 Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

13 All contentions of the litigating sides are kept open subject to the compliance of the impugned order.

kps

(RAVINDRA V. GHUGE, J.)