

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

WRIT PETITION NO. 1993 OF 2016

Purnavadi Nagri Sahakari Patsanstha
Maryadit Shirsoli, Jalgaon
Shop No. 69 to 71,
Unity Chambers, Ganesh Colony Road,
Jalgaon, Tq. & Dist. Jalgaon
through :- Chairman
Shri Satyashil Avinash Akole,
Age: 60 years, Occ: Agril.,
R/o Ring Road, Jalgaon,
Tq. & Dist. Jalgaon

...PETITIONER

versus

Assistant Provident Fund Commissioner,
Sub-Regional Office,
Bhavishya Nidhi Bhavan,
Plot No. P-11, MIDC, Near
Nima House, Satpur,
Nashik-422 007.

...RESPONDENT

.....

Mr. Mahesh S. Deshmukh, Advocate for petitioner
Mr. K.B. Chaudhari, Advocate for respondent

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**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 5th APRIL, 2016.

Order :-

1. Heard Mr. Mahesh Deshmukh, learned counsel for the petitioner.
2. Learned counsel for petitioner submits that in the year 2005 the petitioner - Patsanstha/society had been raised dispute regarding inapplicability of provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "PF Act, 1952"). Learned

counsel for the petitioner submits that at present there are less than 23 employees working with the petitioner. The petitioner is not using aid of power as contemplated under section 16(1)(a) of the PF Act 1952. Learned counsel further submits that only code number is allotted it does not mean that petitioner has accepted applicability of the Act of 1952. Even letter dated 14-12-2005 states that coverage is provisional. No hearing has taken place. Only because the petitioner has deposited the amount of provident fund that would not mean that the petitioner has accepted coverage under said Code.

3. Mr. Chaudhari, learned counsel for respondent submits that in the year 2005, petitioner – Patsanstha has communicated to the respondent - department that it is computerized with effect from 01-04-2004 and the same cannot be without aid of power. The petitioner had not raised any dispute in that regard. The petitioner was functioning with 23 members, as such, the P.F. Act of 1952 was applicable and petitioner is thus rightly directed to pay provident fund. The petitioner is paying provident fund amount regularly after allotment of the Code. In view of provisions of 1(5) of the PF Act, 1952 it cannot be decoded.

4. We have considered the submissions. Sub-section (5) of section 1 of the PF Act, 1952 provides that an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed in such establishment at any time fall below twenty.

5. We have gone through order dated 14-12-2005, more particularly, clause No. 2 (1-A) of it, which specifically speaks that coverage is provisional on the basis of enquiries made/information available and is subject to further verification of records prior periods. It does not appear that any hearing had taken place. Initially if it is found that petitioner is covered under the P.F. Act, 1952 then the same is continued even after number of the employees fall below the statutory limits. The respondent will have to give finding as to whether the provisions of section 16(1) of the PF Act, 1952 have retrospectivity in-application and it is for the respondent to consider the same.

6. We also do not find any comprehensive application being filed by the petitioner in this regard. In his application which is pursuant to letter issued by department the petitioner on 07-02-2005 has raised a plea that society is beyond the scope of provisions of section 18-A of the PF Act, 1952. The petitioner will have to substantiate its stand so as to be enable the authority to pass appropriate order. The petitioner may file comprehensive application to that effect and respondent-authority on receipt of such application, to consider the same on its merits and in accordance with law as expeditiously as possible, preferably within a period of six months from the date of receipt of such application.

7. Writ petition stands disposed of. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]