

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: December 07, 2018

+ **W.P.(C) 13240/2018 & CMs 51523-24/2018**

HONGKONG AND SHANGHAI BANKING CORPORATION
LTD. Petitioner

Through: Mr. Dhruv Mehta, Senior
Advocate with Mr. Sanjay Gupta,
Mr. Ateev Mathur, Ms. Varsha
Kirpalani and Mr. Kiran Bapat,
Advocates

versus

UNION OF INDIA AND ORSRespondents

Through: Mr. Akshay Makhija, CGSC with
Mr. Ankit Tyagi, Advocate for
respondent No.1
Mr. Keshav Mohan, Standing
Counsel with Mr. Piyush
Choudhary, Advocate for
respondents No.2 to 4

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. A mandamus is sought to second respondent to determine the applicability of *the Employees' Provident Funds and Miscellaneous Provisions Act, 1952* (hereinafter referred to as '*the EPFMP Act, 1952*')

after following the procedure as prescribed in Section 7-A(1)(a) of the said *EPFMP Act, 1952*. Quashing of summons dated 5th November, 2018 (*Annexure P-23*) and respondents' letter of 5th November, 2018 (*Annexure P-25*) issued by third respondent to the Director of Income Tax is also sought in this petition while seeking quashing of Central Government's Notification of 10th February, 2016 (*Annexure P-2*) and letter of 30th March, 2016 (*Annexure P-10*) on the subject of coverage of banks.

2. Upon notice, learned standing counsel for respondents No.2 to 4 submits that petitioner has not effectively responded to the summons (*Annexure P-23*).

3. At this stage, learned senior counsel for petitioner points out that vide Communication of 22nd November, 2018 (*Annexure P-24*), petitioner had sought eight weeks' time to produce the record, provided it is clarified that the records of which relevant years are sought. In this Communication, petitioner has reiterated that *the EPFMP Act, 1952* is not applicable to petitioner-Bank.

4. Learned senior counsel for petitioner submits that a detailed Representation highlighting inapplicability of *the EPFMP Act, 1952*, was made to respondent No.3 on 27th September, 2018. It is submitted that there is no response by respondents No.2 or 3 to the said detailed Representation of 27th September, 2018.

5. At this stage, learned standing counsel for respondents No.2 to 4 submits that respondent No.3 has already given a response to petitioner's earlier Representations of 22nd January, 2018 (*Annexure P-15*) and 6th

February, 2018 (*Annexure P-17*). It is clarified by learned standing counsel for respondents No.2 to 4 that petitioner has been called upon to produce the documents for a period post the Notification of 10th February, 2016 (*Annexure P-2*).

6. Learned senior counsel for petitioner submits that the documents sought vide summons (*Annexure P-23*) would be produced before respondent No.3 during the course of personal hearing which be provided by third respondent. Such a course is being adopted because there is no response to the said detailed Representation of 27th September, 2018 (*P-22*).

7. Upon having heard at length, I find that petitioner certainly has a arguable case which requires examination but the challenge to impugned Notification is not required to be gone into in these proceedings as examination of documents ought to be undertaken by third respondent. In the peculiar facts and circumstances of this case, this petition and the applications are disposed of with direction to third respondent to give a effective speaking response to petitioner's Representation of 27th September, 2018 (*Annexure P-22*) within a period of six weeks and in any case, within twelve weeks, after providing an opportunity of hearing to petitioner, to produce the requisite documents in terms of Section 7-A(1)(a) of *the EPFMP Act, 1952*. The fate of the said Representation be made known to petitioner within two weeks thereafter, so that petitioner can avail of the remedies as available in law, if need be. Till it is so done, the proceedings initiated in pursuance of the impugned summons of 5th November, 2018 (*Annexure P-23*) be kept in abeyance.

8. With aforesaid directions, this petition and the applications are accordingly disposed of while not commenting upon the merits.

Copy of this order be given *Dasti* to counsel for the parties.

(SUNIL GAUR)
JUDGE

DECEMBER 07, 2018

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