IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.687 OF 2000
WITH
CIVIL APPLICATION NO.5107 OF 2019

M/s Laxmi Oil Mills
(A Propriety Concern)
Through it's Proprietor
Shri Brijlal R.Holani,
Age-Major, Occu-Business,
R/o Partur, Dist.Jalna -- PETITIONER

VERSUS

1. The Union of India

2. The Presiding Officer,
Employees Provident Fund,
Appellate Tribunal, 7th floor,
60 Skylark Building,
Neharu Place,
New Delhi - 110019.

3. The Asstt. Regional Provident
Fund Commissioner (S.R.O.),
Bhavishya Nidhi Bhavan,
Plot No.2, Town Centre,
Commercial Area, CIDCO,
Aurangabad - 431003 -- RESPONDENTS

Mr.R.M.Sharma, Advocate for the petitioner.
Mr.N.K.Choudhari h/f Mr.K.B.Choudhari, Advocate for respondent No.3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/04/2019

ORAL JUDGMENT :

1. I have heard the learned Advocates. None for respondent No.1. The sole proprietor of the petitioner has passed away. Delay is of 309 days. The petition has been admitted by this Court. The petitioner has deposited Rs.16,000/- in view of the order of this Court dated 03/03/2000.

2. Considering the above, this civil application is allowed. Delay of 309 days is condoned, on the condition that the petitioners shall deposit costs of Rs.2,500/- on or before 07/06/2019. By consent of the learned Advocate for the respondent, the said amount shall be donated for the treatment of poor patients and the petitioner shall deposit the said amount with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad,** either in cash or by Demand Draft (Demand Draft be drawn in the name of "**Dean, Government Medical College and Hospital, Aurangabad Dengi Samiti")** on or before 07/06/2019, failing which, this order shall stand recalled and the civil application shall stand rejected.

3. LR's shall be brought on record forthwith.

4. By the consent of the parties, I have considered their submissions on the writ petition which is pending final hearing for 19 years. Learned Advocate for the PF authorities submits that the total assessment was for an amount of Rs.36,733/-. Rs.20,383/- have already been deposited by the petitioner with the PF authorities under protest. An amount of Rs.16,000/- has been deposited in this Court which is invested in FDR by the Registry of this Court. The said amount has gathered interest from 2000.

5. The issue raised by the petitioner in this petition is as to whether the provisions of the EPF and MP Act, 1952 were applicable to the petitioner / Firm since it claimed to have engaged only 10 employees. It is further contended that all the records of the petitioner were not properly considered by the EPF authorities. Learned Advocate for the Department submits that whatever was produced before the concerned authority in the Section 7(A) enquiry, has been considered and the assessment was accordingly made. The issue of applicability of the Act was not raised in the 7(A) enquiry, though it was so raised for the first time in the review application.

6. In view of the above, I find that the ends of justice would be

met by permitting the petitioner to address the competent authority by remitting the proceedings to the Section 7(A) authority for a fresh decision.

7. As such, this petition is partly allowed and Rule is made partly absolute with the following directions :-

[a] The impugned order dated 29/07/1998 passed u/s 7(A) and 25/06/1998 passed u/s 7(B), shall stand quashed and the said proceedings shall be restored to the office of respondent No.3 at Aurangabad.

[b] The petitioner shall appear in person or through a legal representative before respondent No.3 on 07/6/2019 at 3.00 p.m.

[c] Respondent No.3 shall commence the hearing in the Section 7(A) proceedings as per the procedure and pass a reasoned order after the proceedings are concluded.

[d] The petitioner would be restricted from seeking adjournments on unreasonable or trivial grounds.

[e] Respondent No.5 shall withdraw the amount of Rs.16,000/- alongwith entire accrued interest and the said amount, alongwith 20,383/-, shall be adjusted against 7(A) assessment, if any, considering the interest leviable from 1998.

[f] In so far as the damages u/s 14(B) are concerned, the said issue is left open.

[g] The Registry / Nazar Section shall issue a demand draft for the amount to be withdrawn, in the name of respondent No.3.

8. Needless to state, the order of the Appellate Tribunal dated 27/09/1999, shall also stand set aside.

(Ravindra V.Ghuge, J.)