

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3234 OF 2019

Abhinnav Education Society	.. Petitioner
Vs.	
Regional Provident Fund and anr.	.. Respondents

Mr.Aumkar V.Joshi, for the Petitioner.
Mr.Suresh Kumar, for Respondents.
Mr.Sanjeev Jagtap, Vice President of the Petitioner present.

CORAM : M.S.KARNIK, J.

DATE : 19th MARCH, 2019

P.C. :

. Rule. The respondents waive service. By consent,
Rule made returnable forthwith and heard finally.

2. The challenge in this Petition under Articles 226 &
227 of the Constitution of India is to an order dated 10/12/2018
passed by the Regional Provident Fund Commissioner – II, Pune
whereby in exercise of power under section 7A of the Employees
Provident Funds & Miscellaneous Provisions At, 1952 (for short

'Act'), the Commissioner determined a sum of Rs.3,06,49,894/- due from the establishment towards provident fund and allied dues payable under the provisions of the Act & the schemes framed thereunder for the period from March 2010 to March 2016. The petitioner is also challenging order dated 22/02/2019 passed under section 7B of the Act which is at page 63 of the paper-book.

3. Learned Counsel for the petitioner pointed out that during the course of hearing before the Commissioner in the enquiry, they prayed for an opportunity to file reply in connection with the report dated 12/10/2018. However, according to them, they are not liable to pay provident fund dues as per report submitted by the Assistant Enforcement Officer ('AEO' for short). Learned Counsel for the petitioner would submit that if they are given an opportunity, they undertaken to produce all relevant record and co-operate with the proceedings before the Commissioner. Learned Counsel for the petitioner submits that for want of such opportunity, their

rights are being defeated.

4. Learned Counsel for the respondent - Shri Suresh Kumar submitted that the order passed under section 7A is a reasoned order. According to him, despite giving an opportunity to the petitioner, they not only failed to file reply in connection with the report dated 12/10/2018, but did not co-operate at any stage of enquiry by producing the relevant record in its possession.

5. I have heard learned Counsel for the parties. Learned Counsel for the petitioner, on instructions, submitted that the petitioner is willing to deposit, without prejudice to their rights and contentions, a sum of Rs. 50 lacs with the Provident Fund Department within a period of 8 weeks from today.

6. Learned Counsel for the petitioner, on instructions from Mr.Sanjeev Jagtap - Vice President of the petitioner institute who is present in the Court, submits that they would

co-operate with the enquiry under section 7A of the Act and produce all the records required and which are in their possession for determination of the provident fund dues in the 7A enquiry. Though Shri Suresh Kumar has objection to this course of action, in the interest of justice, as the petitioner could not file reply in connection with the report dated 12/10/2018 which they are disputing, and as now the petitioner is willing to deposit a sum of Rs. 50 lacs with the Provident Fund Department without prejudice to their rights and contentions and also undertaking to co-operate with the enquiry under 7A of the Act, I feel interest of justice will be served if the petitioner is given one opportunity to contest the 7A proceedings.

7. In this view of the matter, the following order is passed.

ORDER

- 1) The impugned order dated 13/02/2018 passed under section 7A of the Act and the order dated 22/02/2019 under section 7B of the Act are quashed and set aside.

- II) Matter is remitted back to the Regional Provident Fund Commissioner - II, Regional Office, Pune - 1 for deciding the matter afresh on its own merits and in accordance with law.
- III) The petitioner to deposit a sum of Rs. 50 lacs with the Provident Fund Department within a period of 8 weeks from today.
- IV) The deposit of this amount is to be condition precedent for the rehearing of enquiry under section 7A of the Act. It is made clear that in the event such deposit is not made, orders passed under 7A & 7B to stand revived.
- V) The petitioner is granted an opportunity to file reply to the AEO report dated 12/10/2018 and a personal hearing before passing order under section 7A.
- VI) Considering the fact that the petitioner is an educational institution and the examinations are ongoing, the petitioner is permitted to operate bank accounts. However, it is made clear that the statement of the Vice President of the petitioner on

behalf of the petitioner who is personally present in the Court that petitioner would deposit amount of Rs. 50 lacs within a period of 8 weeks from today with the Provident Fund Department is treated as a undertaking to this Court.

8. Rule is partly made absolute and disposed of in the above terms with no order as to costs.

(M.S.KARNIK, J.)