

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Misc. Civil Application No.101 of 2019 (For Review)
in

Writ Petition No.248 of 2017(D)

**(M/s Vardhaman Construction through its Proprietor Shri Uday
Chandrashekhar Balapure, R/o Ramdaspath, Akola .vs. Regional Provident
Fund Commissioner, II, SRO, Akola, Employees Provident Fund
Organisation, Akola)**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. A.R. Deshpande, Advocate for Applicant.

CORAM : Manish Pitale, J.

DATED : September 11, 2019.

By this review application, the applicant is seeking review of judgment and order dated 11.12.2018 passed by this Court whereby Writ Petition No. 248 of 2017 was dismissed and order passed by the Employees Provident Fund Appellate Tribunal was confirmed. By the said order, the Appellate Tribunal had dismissed the appeal filed by the applicant and the liability assessed by the Regional Provident Fund Commissioner against the applicant was confirmed.

2. While dismissing the writ petition, this Court found that the applicant establishment had deliberately not produced material before the Regional Provident Fund Commissioner and in the absence of such material assessment was carried out and the liability was fixed. It was found by this Court that despite repeated adjournments granted by the Commissioner for the relevant period, the applicant failed to produce any

material and then it sought to take benefit by contending that there was absence of evidence and material for the extent of liability foisted on the applicant. By referring to relevant judgments of the Supreme Court, this Court found that no error could be attributed to the orders passed by the Commissioner and the Appellate Tribunal and, therefore, the writ petition was dismissed.

3. The learned counsel appearing for the applicant contended that certain developments subsequent to the passing of the order by this Court dismissing the writ petition, were relevant for pressing the grounds raised in the review application. It was submitted that pursuant to a specific order passed by the learned Single Judge of this Court in Writ Petition No. 1674 of 2016, public interest litigation had been registered on certain issues that were directly relevant for the present lis. By inviting attention of this Court to the order of the learned Single Judge dated 23.03.2018 passed in Writ Petition No. 1674 of 2016, it was contended that the emphasis placed by this Court, while dismissing the writ petition of the applicant, on the need for the applicant to produce material and evidence, was misplaced and that on a proper reading of the powers to be exercised by the Commissioner under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short "the Act"), it was for the Commissioner to collect evidence and to pass a proper order concerning the liability of the establishment in question. Thereafter, the learned

counsel for the applicant submitted that in the present case it was the specific submission of the applicant before the authorities below that the establishment in question had been disposed of by the applicant in the year 2012 and that the plant and machinery had been sold. In this situation, it was for the Commissioner to have called upon subsequent owner of the establishment to produce relevant material for passing order of liability under the provisions of the said Act.

4. A perusal of the material on record shows that in the present case summons under Section 7-A of the Act were issued to the applicant as far back as on 30.12.2008 to appear before the Authorized Officer on 07.01.2009 with supporting documents and record for supporting its case. The material on record, particularly the orders passed by the Commissioner, show that the applicant sought adjournment from 16.01.2009 to 02.11.2012 on numerous occasions only for the purpose of producing documents and record. It is a matter of record that no such material was produced by the applicant. In this situation, the applicant is not justified in contending that since the establishment including plant and machinery were sold in the year 2012, the Commissioner could not have called upon the applicant to produce the relevant record. It is in the backdrop of the peculiar facts of the present case that the Commissioner passed the order fixing liability on the applicant, which was confirmed by the dismissal of the appeal by the Appellate Tribunal.

5. These facts were taken note of by this Court while dismissing the writ petition by order dated 11.12.2018 and it was on the basis of appreciation of the said facts that relevant judgments of the Hon'ble Supreme Court were applied to hold that the orders passed by the authorities below deserve to be confirmed.

6. Viewed from this angle, it becomes clear that the grounds raised in the review application based on certain public interest litigation registered pursuant to judgment and order dated 23.03.2018 passed by the learned Single Judge of this Court in Writ Petition No. 1674 of 2016, do not demonstrate any error apparent on the face of the record of the said order dated 11.12.2018 passed by this Court, dismissing the writ petition of the applicant.

7. Hence, this Court finds no merit in the review application and it is accordingly dismissed.

JUDGE