

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

Writ Petition No.5226 of 2016

Hanuman Vyayam Prasarak Mandal & Anr. Vs. The Asstt. Commissioner & Ors.

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

Court's or Judge's orders

Mr. Rajeev Deshpande, Advocate for petitioners
Mr. H.N. Verma, Advocate for respondent No.1.

CORAM : MANISH PITALE, J.

DATED : DECEMBER 10, 2019

The petitioner establishment has approached to this Court challenging order dated 16/06/2015, passed by respondent No.1 - Assistant Commissioner of Provident Fund under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

2. The respondent No.1 has passed the impugned order directing the petitioner establishment to deposit the amount towards interest for delayed payment of dues under the provisions of the said Act and an order has also been passed towards recovery of damages under Section 14(B) of the said Act, due to default on the part of the petitioner establishment in payment of contribution towards provident fund.

3. A preliminary objection was raised on

behalf of the respondent that the writ petition was not maintainable in so far as the challenge to the order passed under Section 14B of the aforesaid Act. It was further pointed out that no challenge could be raised to the order passed under section 7(Q) for payment of interest because the admitted facts in the present case demonstrate that there had been indeed delay in deposit of the amount under the provisions of the said Act on the part of the petitioner establishment.

4. The learned counsel for the petitioner establishment invited attention of this Court to the fact that the amount towards interest was already deposited. Considering the fact that there is no dispute about delay in deposit of such amounts, no interference is warranted in so far as the order passed by respondent No.1 is concerned relating to direction to pay interest under Section 7(Q) of the aforesaid Act.

5. Therefore, the only question that survives pertains to liability of the petitioner to pay amount towards damages under Section 14(B) of the aforesaid Act. A perusal of Section 7(I) of the aforesaid Act indeed shows that a remedy of appeal was available to the petitioner establishment to challenge order dated 16/6/2015, passed by the respondent No.1 under Section 14 of the said Act. But, the learned counsel for the petitioner submitted that specific communications and representations made by the petitioner

establishment on 15/1/2014, 06/02/2014, 16/09/2014, before the respondent No.1 were not even considered when the impugned order dated 16/06/2015, was passed imposing damages under Section 14(B) of the said Act. It was submitted that by these documents that cogent explanation was placed on record to demonstrate that delay in deposit of the amount under the provisions of the said Act was not deliberate and there was no intention on the part of the petitioner establishment to violate the requirements of the said Act. It was submitted that since such vital documents were not adverted to by respondent No.1 while passing the impugned order, the present writ petition was clearly maintainable despite availability of alternative remedy under Section 7(I) of the aforesaid Act.

6. The learned counsel for the respondent was unable to demonstrate from the impugned order dated 16/06/2015, pertaining to imposing damages under Section 14(B) of the said Act, that the aforesaid communications submitted by the petitioner along with documents were indeed considered before passing impugned order.

7. While considering peculiar circumstances of the present case on the aspect of maintainability of the writ petition, the judgment of this Court in the case of **M/s Balaji Ginning Factory Vs. Assistant Provident**

Fund Commissioner in Writ Petition No.2190/2016, assumes significance. In the said judgment, although it has been categorically held that a writ petition challenging the orders appealable under section 7(I) of the said Act, would not be maintainable, but, if the petitioner was able to demonstrate that the case fell within some of the recognized exceptions to the Rule of alternative remedy, the writ petition could be entertained by this Court. In this context, paragraph 8 of the said judgment is relevant, which reads as follows :

“While it is well settled that there are exceptions to the rule of availability of alternate remedy, the situation that requires consideration in the present proceedings is in the context of such alternate remedy through available for a period of 120 days from the passing of the order under Section 7-A of the said Act not being availed of. In **Chhabil Dass Agrawal** (supra) it has been held by the Hon’ble Supreme Court that some of the exceptions to the rule of alternate remedy are where the statutory Authority has not acted in accordance with the provisions of the enactment in question or in defiance of the fundamental principles of judicial procedure or when an order is passed in violation of the principles of natural justice or when the Authority has refused to invoke the provisions of the statute that have been repealed. It is in these exceptions that the rule of alternate remedy is not insisted upon.”

8. In the present case, there is no dispute about the fact that the respondent No.1 failed to advert

to the aforesaid specific communications submitted by the petitioner establishment before passing the impugned order. In fact, the said communications and the documents filed therewith do not found mention in the impugned order at all. This Court is of the opinion that the said documents were relevant and they ought to have been taken into consideration by the respondent No.1 before passing the impugned order, concerning exercise of power under Section 14(B) of the said Act. The failure on the part of the respondent to do so in the peculiar facts and circumstances shows that the case of the petitioner establishment falls within the exception that the impugned order was passed in defiance of fundamental principles of judicial procedure under the provisions of the aforesaid Act.

8. In view of above, the present writ petition deserves to be partly allowed. Accordingly, impugned order dated 16/6/2015, passed by respondent No.1, directing recovery of amounts towards damages from the petitioner establishment under section 14(B) of the said Act is quashed and set aside. The matter is remitted to the respondent No.1 for fresh consideration. The respondent No.1 shall give sufficient opportunity to the petitioner establishment to place on record the aforesaid documents and such other material that may be relevant before taking the decision under Section 14(B) of the said Act. The petitioner establishment through its representative

shall appear before the respondent No.1 on **06/01/2020**. No separate notice will be issued to the respondent No.1 for the said purpose.

9. The respondent No.1 shall take into consideration the material produced by the petitioner establishment before passing order under the said provisions, without being influenced by any observations made by this Court in this order.

JUDGE

MP Deshpande