

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

WRIT PETITION NO.3512 OF 2016

Shivaji Education Society, Amravai, Thr. Its Secretary and anr.

-VS-

Assistant Provident Fund Commissioner, Sub Regional Office Akola and anr.

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

Court's or Judge's Orders.

Ms P. Choudhari, Advocate for petitioners.
Shri H. N. Verma, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.
DATE : September 03, 2019

Rule. Heard finally considering the short issue involved.

The challenge raised in this writ petition is to the order passed under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, the said Act). One of the grounds of challenge as raised is that without granting any due opportunity of hearing to the petitioners, the impugned order has been passed.

2. The learned counsel for the respondent No.1 has raised a preliminary objection on the ground that a statutory remedy under Section 7-I of the said Act is available for challenging the order passed under Section 7-A of the said Act. Since sufficient opportunity was granted to the petitioners and the adjudication

would involve going into the disputed question of fact, it is submitted that the remedy in question could be directed to be availed of.

3. Considering the fact that the order passed under Section 7-A of the said Act is dated 11/05/2016 which records grant of sufficient opportunity to the petitioners coupled with the fact that the present writ petition has been filed on 21/06/2016, I am inclined to grant an opportunity to the petitioners to challenge the said order by filing an appeal under Section 7-I of the said Act. This would enable adjudication of factual aspects arising in the dispute.

4. Accordingly the following order is passed :

- (i) The petitioners are granted liberty to file an appeal under Section 7-I of the said Act within period of four weeks from today. If the appeal is filed within the aforesaid period it shall be entertained on merits without going into the question of delay.
- (ii) The petitioners are at liberty to move an application under Section 7-O of the said Act to seek waiver of the mandatory deposit of amount.
- (iii) Till the application under Section 7-O of the said Act is

decided, the ad-interim order granted on 27/06/2016 shall continue to operate but without prejudice to the rights of the parties.

(iv) If the appeal is so filed same shall be decided expeditiously on its own merits and in accordance with law. All points are kept open.

The Writ Petition is allowed in aforesaid terms with no order to costs.

JUDGE