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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 21st December, 2020

+ **W.P.(C) 3243/2020**

M/S HIMGIRI AUTOMOBILES PVT. LTD. Petitioner

Through: Mr. S.P. Arora & Mr. Rajiv Arora,
Advocates. (M: 899233114)

versus

REGIONAL P.F. COMMISSIONER-II, DELHI (EAST).. Respondent

Through: Mr. Rajesh Kumar, Panel Counsel,
EPFO (M: 9891235156)

AND

+ **W.P.(C) 8371/2020**

M/S HIMGIRI AUTOMOBILES PVT LTD Petitioner

Through: Mr. S.P. Arora & Mr. Rajiv Arora,
Advocates.

versus

REGIONAL P F COMMISSIONER-II DELHI (EAST).... Respondent

Through: Mr. Balraj Dewan, Adv. (M:
9582098620)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.

CM APPL. 11298/2020 in W.P.(C) 3243/2020

2. This application seeks exemption from filing court fee and duly attested affidavits. Binding the deponent of the affidavit to the contents of the application, the exemption is granted. Insofar as the court fee is concerned, as per the office noting, the Court fee has already been deposited. Application is disposed of.

CM APPL. 30478/2020 in W.P.(C) 8371/2020

3. This application has been filed by the Respondent for condonation of 7 days' delay in filing the counter affidavit. For the reasons mentioned in the

application, the application is allowed.

W.P.(C) 3243/2020 & CM APPLs. 11296/2020, 11297/2020
W.P.(C) 8371/2020 & CM APPLs. 27185/2020, 27186/2020

4. These are two writ petitions filed before this Court challenging the following orders:

i) In W.P.(C) 8371/2020, order dated 13th March, 2020 passed by the Central Government Industrial Tribunal (*hereinafter 'CGIT'*) by which pre-deposit of Rs.4,83,267/- has been directed for granting a stay on the impugned order and for de-freezing the bank account of the Establishment.

ii) In W.P.(C) 3243/2020, order dated 5th February, 2020 passed by the Regional Provident Fund Commissioner (*hereinafter 'RPFC'*) under Section 7Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (*hereinafter 'EPF Act'*) by which interest liability of Rs.16,80,452/- has been imposed on the Petitioner/Establishment (*hereinafter, 'Establishment'*) for the period 1st June, 2019 to 30th November, 2019.

5. Both these writ petitions arise from the order under Section 7A of the EPF Act dated 28th August, 2019. As per the said order, the RPFC had determined that there was non-payment of provident fund and a total of Rs.24,14,959/- was held to be payable for the period from April, 2012 to March, 2015. The appeal against the said order under Section 7A, bearing No. D-1/118/2019, is stated to be pending before the CGIT.

6. During the pendency of the appeal challenging the order under S. 7A, the RPFC proceeded to pass orders under Sections 7Q and 14B which are under challenge in the present writ petitions.

7. Insofar as the order under Section 14B dated 5th February, 2020 is concerned, the liability of the Establishment was determined at Rs.24,16,339/-. Due to non-payment of the said amount, notice under Section 8F was issued by the RPFC to the Bank of the Establishment on 26th February/4th March, 2020, effecting attachment of the Bank account of the Establishment. An appeal, bearing No. D-1/16/2020, was filed by the Establishment against the order under Section 14B dated 5th February, 2020. Vide order dated 13th March, 2020, pre-deposit of Rs.4,83,267/- has been ordered for granting a stay on the impugned order and for de-freezing the bank account of the Establishment.

8. Insofar as the order under Section 7Q is concerned, the liability has been determined as Rs.16,80,452/-, which order has been challenged in W.P. (C) 3243/2020.

9. The gravamen of the challenge in both these writ petitions is that prior to the passing of the orders under Sections 14B and 7Q, the RPFC had not given sufficient and proper notice to the Establishment. It is submitted that four hearings were held by the RPFC i.e., on 27th December, 2019, 3rd January, 2020, 13th January, 2020 and 20th January, 2020. In respect of only two hearings i.e. 27th December, 2019 and 13th January, 2020, were notices issued by the RPFC.

10. Mr. Arora, Id. counsel submits that insofar as notice for hearing on 27th December, 2019 is concerned, the notice was admittedly dispatched only on 26th December, 2019 and was received by the Establishment on 27th December, 2019 at 5:38pm. For the hearing on 13th January, 2020, the notice was dispatched on 10th January, 2020 and was received on 11th January, 2020 at 5:10 p.m. It is submitted that 11th January, 2020, was a second Saturday,

12th January, 2020 was a Sunday and 13th January, 2020, on which date the hearing was held was a Monday. Thus, this does not constitute sufficient notice. Accordingly, in respect of these two hearings, the argument of the Petitioner is that there was no sufficient notice to the Petitioner. In respect of the other two hearings, admittedly, the RPFC did not issue any notice.

11. On the other hand, Mr. Balraj Dewan, Id. counsel appearing for the Respondent in W.P.(C) 8371/2020 submits that the Petitioner has made a false statement in the said writ petition by alleging that the notice for hearing on 13th January, 2020 was received only on 13th January, 2020. It was actually received by the Establishment on 11th January, 2020 itself, which constitutes sufficient notice. He thus submits that the Establishment has been making false statements. In any event, it is his submission that the CGIT has passed a reasonable order by directing pre-deposit of Rs.4,83,267/- and no interference is called for.

12. Mr. Arora, Id. counsel submits that the affidavit of the Officer concerned – Ms. Rakhi Chakravarty has been placed on record. The same would show that for the hearing on 13th January, 2020, the notice was served only on 11th January, 2020.

13. This Court has perused the records, as also the affidavits filed by the Officer – Ms. Rakhi Chakravarty. Insofar as W.P.(C) 3243/2020 is concerned, the matter was being heard from time to time and vide order dated 23rd October, 2020, a detailed order was passed recording that there is a discrepancy in the order sheet of the hearing officer as also the notices which were sent. A perusal of the order sheet of the Officer shows that on 20th January, 2020, the concerned Officer notes as under:

“None appeared. Sufficient opportunity was given to the establishment. The employer has nothing to say. Case Closed. Final order issued.”

14. On 5th February, 2020, the order under Section 14B was dictated and damages/interest were levied from 1st June, 2019 to 30th November, 2019.

15. Insofar as the appeal against the order under Section 14B is concerned, the CGIT had asked the concerned Officer to put up a report. The report of the concerned officer reads as under:

“OFFICE NOTE

Sub:- New matter of Himgiri Automobiles Pvt. Ltd. Vs. RPFC-II-reg

Please refer to the Office Note dated-02.03.2020 along with a copy of order dated 28.02.2020 received through Email from Sh. Puneet Garg, Penal Advocate in the matter of M/s Himgiri Automobiles Pvt. Ltd. V/s RPFC-II challenging order passed u/s 14B & 7Q vide which Legal cell has requested to go through the email of panel Adv. and order dated 28.02.2020 passed by the Hon’ble PO, CGIT and issue appropriate direction in the matter for onward submission to the Penal Advocate.

On going through the email of the Penal Advocate, it is observed that the Petitioner establishment has submitted the false information before the Hon’ble PO, CGIT. The Penal Damages and Interest involved in Summon u/s 14B & 7Q dated-20.12.2019 against 7A order dtd-28.08.2019 of the Act is not set aside by the Tribunal.

Further it is informed that the notice was issued to the establishment and delivered on 27.12.2019 and none appeared on behalf of the establishment. Thereafter an adjournment dated-09.01.2020 was sent to the establishment adjourning the case to 13.01.2020 which also got

delivered on 11.01.2020 to the estt. But none was appeared for the establishment. Therefore it is inappropriate to say that opportunities were not provided to the establishment.”

16. The report incorrectly records that the Establishment was duly served. In view of these contradictions, the affidavit of the Officer was called for. In the affidavit, again the Officer merely claims that two notices were issued. She, however, concedes that there was a typographical error in the impugned order which was passed on 5th February, 2020. Instead of 2nd January, 2020, the order should have read as 20th January, 2020. The relevant portions of the affidavit are reproduced herein below:

*“7. It is relevant to mention here that the proceeding of the case were held on following dates: 27.12.2019, 03.01.2020, 13.01.2020 and 20.01.2020. The copy of proceedings is annexed here with **R-1 (Colly)**.*

*8. The number of hearing for which notices were issued are as follows:- Summon were send to the petitioner twice on 20.12.2020 and 09.01.2020 and the dispatch register was prepared. The copy of the dispatch register/speed post tracking is annexed herewith as **Annexure R-2**.*

9. It is submitted that during the enquiry, the petitioner did not furnish proof of timely remittance of PF dues for the period 04/2012 to 08/2019.

10. It is submitted that while enquiry u/s 14(B) and 7(Q) of EPF&MP Act, 1952, endeavor was made for fair and speedy enquiry with bonafide intentions considering mandate of aforesaid social welfare legislation.

11. It is further submitted that in the impugned order there is a typographical mistake regarding date or closing of the hearing i.e. 02.01.2020 instead of 20.01.2020.

12. That the deponent regret for any unintentional procedural error occurred while performing her quasi judicial function and praying to condone the same.”

17. Along with the affidavit filed by the Officer concerned, the dispatch register/ speed post receipts have also been filed. These also show that insofar as the hearings dated 3rd January, 2020 and 20th January, 2020 are concerned, no notice was ever served upon the Establishment. Insofar as hearings dated 27th December, 2019 and 13th January, 2020 are concerned, for hearing dated 27th December, 2019, service was effected on 27th December, 2019 itself after the hearing was held and for the hearing on 13th January, 2020, notice was served on 11th January, 2020 at 5:10 p.m. The Officer, however, does not concede the same and still continues to claim that the notices were adequately served.

18. Ld. counsel for the Authority submits that the Establishment had knowledge of the matter and could have appeared. This is the line which has been adopted even by the CGIT in its order.

19. In ***Arcot Textile Mills Limited v. Regional Provident Fund Commissioner and Ors., (2013) 16 SCC 1***, the Supreme Court considered the various dimensions of orders passed under Sections 14B and 7Q of the Act. In the said case, the order under Section 7Q was passed by the APFC under the EPF Act, levying a sum of Rs.94,27,334/- towards interest. When the computation was sought by the employer, the same was not given. The order under Section 7Q came to be challenged before the High Court of Madras. In view of an alternative remedy being available to the company to approach the Appellate Tribunal, the writ was dismissed by the Id. Single Judge. This view was upheld by the Id. Division Bench. The Supreme Court then considered

the scheme of the EPF Act, as also the nature of orders passed under Sections 14B and 7Q, and observed as under:

“16. At this juncture, it is relevant to state that the Tribunal was constituted at a later stage. Section 7-I provides for appeals to the Tribunal. The said provision reads as follows:

“7-I. Appeals to Tribunal.—(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of Section 1, or Section 3, or sub-section (1) of Section 7-A, or Section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof], or Section 7-C, or Section 14-B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

17. On a perusal of the aforesaid provision it is evident that an appeal to the Tribunal lies in respect of certain action of the Central Government or order passed by the Central Government or any authority on certain provisions of the Act. We have scanned the anatomy of the said provisions before. On a studied scrutiny, it is quite vivid that though an appeal lies against recovery of damages under Section 14-B of the Act, no appeal is provided for against imposition of interest as stipulated under Section 7-Q. It is seemly to note here that Section 14-B has been enacted to penalise the defaulting employers as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to the employers in general not to

commit a breach of the statutory requirements but at the same time it is meant to provide compensation or redress to the beneficiaries i.e. to recompense the employees for the loss sustained by them. The entire amount of damages awarded under Section 14-B except for the amount relatable to administrative charges is to be transferred to the Employees' Provident Fund. (See Organo Chemical Industries v. Union of India.)

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21. At this stage, it is necessary to clarify the position of law which does arise in certain situations. The competent authority under the Act while determining the monies due from the employee shall be required to conduct an inquiry and pass an order. An order under Section 7-A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability the competent authority offers an opportunity of hearing to the establishment concerned. At that stage, the delay in payment of the dues and component of interest are determined. It is a composite order. To elaborate, it is an order passed under Sections 7-A and 7-Q together. Such an order shall be amenable to appeal under Section 7-I. The same is true of any composite order a facet of which is amenable to appeal and Section 7-I of the Act. But, if for some reason when the authority chooses to pass an independent order under Section 7-Q the same is not appealable.

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24.... Section 14-B which provides for recovery of damages stipulates that before levying and recovery of such damages, the employer shall be given a reasonable opportunity of being heard. The learned counsel for Respondents 1 to 3 would submit that the first one is the initial determination

and, therefore, an opportunity of hearing is given and the second one which relates to imposition of damages there is discretion on the part of the authorities but as far as the levy of interest is component is concerned, it being only an arithmetical calculation the question of affording an opportunity to the employer does not arise. The learned counsel for the respondent has stressed upon the fact that when interest payable by the employer is automatic and the competent authority has no discretion to waive the interest or reduce the interest or limit the interest otherwise, the question of affording of an opportunity of hearing to the employer is not warranted.

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28. The issue that falls for consideration in this case is when the employer volunteers may be after long delay to pay the dues, can he claim any right to object pertaining to the interest component. On certain occasions the authority on its own may issue a demand notice under Section 7-Q after a long lapse of time by computing the delay committed by the employer in payment of the dues. We repeat at the cost of repetition that it is a matter of computation but sometimes computation is done when the main order is passed and at times an interest component is demanded separately by the competent authority. To say that there cannot be any error at any point of time will be an absolute proposition. There can be errors in computation. It is difficult to hold that when a demand of this nature is made in a unilateral manner and the affected person is visited with some adverse consequences no prejudice is caused.

29. The learned counsel for the respondent would contend that the natural justice has been impliedly excluded and for the said purpose she would emphasise upon the scheme and the purpose of the

Act. There is no cavil for the fact that it is a social welfare legislation to meet the constitutional requirement to protect the employees. That is why the legislature has provided for imposition of damages, levy of interest and penalty. It is contended that it is luminous that the legislature always intended that when hearing takes place for determination of the money due, the component of interest would be computed and in that backdrop the affected person will have opportunity of hearing. But in reality when an independent order is passed under Section 7-Q which can also be done as has been done in the present case the affected person, we are inclined to think, should have the right to file an objection if he intends to do. We are disposed to think so, when a demand of this nature is made, it cannot be said that no prejudice is caused.

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20. The Supreme Court, therefore, observed that before passing orders under Section 14B of the EPF Act, a reasonable opportunity of being heard ought to be given to the employer. It then considered the question as to whether while levying interest under Section 7Q, opportunity of hearing ought to be given or not. It was contended by Id. counsel for RPFC that since the interest is statutorily prescribed, no opportunity needs to be provided to the employer. In the said context, the Supreme Court observed as under:

“31. We may state with profit that principles of natural justice should neither be treated with absolute rigidity nor should they be imprisoned in a straitjacket. It has been held in Ajit Kumar Nag v. Indian Oil Corpn. Ltd. [(2005) 7 SCC 764 : 2005 SCC (L&S) 1020] that: (SCC p. 781, para 30)

“30. ... The maxim audi alteram partem cannot be invoked if [the] import of such maxim would have the effect of paralysing the administrative process or where the need for promptitude or the urgency so demands.”

It has been stated therein that the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than precedential. The concept of natural justice sometimes requires flexibility in the application of the rule. What is required to be seen is the ultimate weighing on the balance of fairness. The requirements of natural justice depend upon the circumstances of the case.

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34. Regard being had to the discussions made and the law stated in the field, we are of the considered opinion that natural justice has many facets. Sometimes, the said doctrine applied in a broad way, sometimes in a limited or narrow manner. Therefore, there has to be a limited enquiry only to the realm of computation which is statutorily provided regard being had to the range of delay. Beyond that nothing is permissible. We are disposed to think so, for when an independent order is passed making a demand, the employer cannot be totally remediless and would have no right even to file an objection pertaining to computation. Hence, we hold that an objection can be filed challenging the computation in a limited spectrum which shall be dealt with in a summary manner by the competent authority

35. In the present case, it is manifest from the record that the appellant had already deposited a sum of Rs 34,00,000 before the competent authority and sought for supply of the calculation sheet, the

basis on which the computation had been made so that it could reconcile the accounts. We think it appropriate to direct that the computation sheets shall be provided to the appellant within three weeks and it shall file its objection within two weeks therefrom and thereafter the competent authority shall fix a date for reconciliation of the accounts. However, regard being had to the fact that the Act is a piece of social welfare legislation, we direct the appellant to deposit a further sum of Rs 16,00,000 within a period of four weeks from today. If the amount is not deposited within the time stipulated hereinabove, the entire amount would be leviable and the right to file objection shall stand extinguished.

21. Thus, the Supreme Court held that though the enquiry under Section 7Q is limited in nature, the employer would have the right to file objections pertaining to computation. Accordingly, it was directed that the computation statement be supplied to the Petitioner and the Petitioner was also permitted to file objections before the competent authority and the Supreme Court directed fixing of a date for reconciliation of accounts.

22. A perusal of the provisions of the EPF Act shows that there is no doubt whatsoever that powers to recover damages and to levy interest exist in the authority. However, the first proviso to Section 14B makes it clear that reasonable opportunity of being heard has to be given before passing an order under Section 14B. Though interest under Section 7Q is fixed in the EPF Act at 12% per annum, there could be various scenarios wherein such interest would not be leviable. For example, if the original order under Section 7A has been set-aside or stayed. Moreover, there could also be errors in the manner of computation. Thus, even in respect of S. 7Q orders, the employer has a right

to object to the computation and seek a hearing. In any event, reasonable opportunity ought to be given for the employer to be heard before the authority. It is not even the case of the Respondents that no opportunity needs to be given. Moreover, under the scheme of the EPF Act, if there is default in deposit of damages/interest, various coercive measures can also be taken by the authority for recovery of money, such as attachment of bank accounts, recovery of the amount as arrears of land revenue. Even arrest can be resorted to.

23. It is in this background that this Court has to examine whether the Petitioner has been given a fair and reasonable opportunity of being heard. A perusal of the record shows that the crux of the entire dispute is that insofar as the hearings held by the RPFC for proceedings under Sections 14B and 7Q are concerned, the entire order is, in effect, *ex-parte*. The finding of *mens rea*, which is required for levying of damages/penalty under Section 14B, and has not been arrived at by the Authority concerned. This Court has, recently, in ***M/s Civicon Engineering Contracting India Pvt. Ltd. & Anr. v. The Central Board of Trustees & Ors. [W.P.(C) 9530/2020, decided on 4th December, 2020]*** observed that it is an incessant practice in the RPFC that notices are not dispatched in time and hence, not served in time. In view of this, this Court has passed directions in ***M/s Civicon Engineering Contracting India Pvt. Ltd. (supra)*** directing that orders of the RPFC and other authorities should be uploaded in time and notices also ought to be issued in time for the hearing.

24. It cannot be expected that a notice is served on a holiday or on a second Saturday in the evening and the Establishment appears before the Officer concerned on a Monday morning. It is clear that there is some gap in the manner in which the notices are being dispatched and are being received by

the Establishments. Moreover, the officer concerned clearly appears to justify the procedure adopted. The consequence of this procedure is that orders have been passed against the Management, *ex-parte*. The same have resulted in one appeal before the CGIT and two writ petitions before this Court. If only notices are properly served sufficiently in advance, to the hearing dates, adequate arrangements can be made by litigants to put forth their case. The Supreme Court has repeatedly observed and held that the endeavour of all courts, tribunals and quasi-judicial tribunals ought to be to hear and adjudicate disputes on merits and not by default. In ***Robin Thapa v. Rohit Dora, (2019) 7 SCC 359***, the Supreme Court has observed as under:

“7. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

25. Clearly, in the present case both the orders are not on merits as the Management has not had the opportunity to present its case. Accordingly, the impugned orders under Sections 14B and 7Q stand set aside. The matter shall be adjudicated afresh under Sections 14B and 7Q and orders shall be passed within three months. The Establishment deserves a fair hearing in this matter. Considering the history of this case, it is directed that the matter shall be listed before a different Officer. The appeal before the CGIT shall be disposed off as the same is infructuous in view of the above order.

26. In future, the PF Commissioner shall ensure that the following guidelines are followed in respect of notices of hearing being issued and orders being uploaded by the RPFCs/EPFCs or any other officers

adjudicating disputes:

- i) Notices shall be dispatched well within time so that they are delivered at least one week prior to the date of hearing;
- ii) Notices for hearing shall also be sent by e-mail in order to ensure that notices are instantaneously served upon the Establishment so that arrangements can be made for participating in the hearing.

27. The amount of Rs.2 lakhs lying deposited with the Id. Registrar General of this Court shall be refunded to the Petitioner, along with any interest accrued thereon.

28. The petitions are allowed in the above terms. All pending applications are also disposed of.

29. Copy of this order be communicated by the Registrar (Appellate) to the Central Provident Fund Commissioner (CPFC), EPFO Head Office, Bhavishya Nidhi Bhawan, 14-Bhikaji Cama Place, New Delhi – 110066. The order shall also be communicated by email to the CPFC on cpfc@epfindia.gov.in. Ld. Counsels appearing for the Respondents shall also bring this order to the notice of the concerned authorities.

PRATHIBA M. SINGH
JUDGE

DECEMBER 21, 2020

Rahul/C

Corrected & released on 24th December, 2020