IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APELLATE SIDE

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 13368 of 2021

Mayur Veneer & Plywood Industries & Anr.
Vs.
Union of India & Ors

For the Petitioner:	Mr. Soumya Majumder, Adv. Mr. Siddhartha Sharma, Adv. Ms. Ujjaini Chatterjee, Adv, Ms. Sukanya Dutta, Adv, Ms. Shalini Basu, Adv.,
For the Union of India.	Mr. Shiv Chandra Prasad, Adv.,
For the Respondent Nos. 2-4:	Mr. Anil Kr. Gupta, Adv.,

Heard on: 22.09.2021

Date: 29.09.2021

SUVRA GHOSH, J. :-

1. The petitioners' grievance is violation of natural justice. The petitioners' establishment runs business in the name and style of Mayur Veneer and Plywood Industries. A proceeding under section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was initiated against the petitioners and respondent no. 3 passed a final order in the said proceedings on 30-01-2020 determining an amount of Rs. 27,41,943/- as dues to be paid by the petitioners. The petitioners, being aggrieved by the

order, filed a review petition under section 7B of the Act of 1952 and by an order dated 30th June, 2021 the review petition was disposed of and inquiry under section 7B concluded. The petitioners were directed to pay the outstanding dues immediately. Being aggrieved by the said order, the petitioners have filed the present writ petition. The prayer of the petitioners in the writ petition is set out:-

> a) *"A writ of or in the nature of Certiorari commanding the respondents and each one of them, their men, agents, assignees and subordinates to certify and transmit to this Hon'ble Court the records of the case including the impugned order dated 30.06.2021 issued by the respondent No. 3 being Annexure C and the certificate issued by the recovery officer by respondent no. 4 being Annexure H herein, so that conscionable justice may be administered by quashing the same;*
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> b) *A writ of or in the nature of Mandamus commanding the respondents and each one of them, their men, agents, assignees and subordinates to rescind, recall, revoke and/or withdraw the impugned order dated 30.06.2021 and the Recovery certificate dated 09.07.2021 issued by the respondent No. 3 being Annexure C*

and by respondent no.4 being Annexure H, forthwith;

2. It is submitted on behalf of the petitioners that though the petitioners initially participated in the review proceedings, they went unrepresented on successive dates of hearing due to demise of the daughter of the learned advocate representing the petitioners before the authority. There was also a direction upon the department to supply copy of certain documents to the petitioners but such direction was not complied with. The petitioners not being represented on a few occasions before the authority, the authority concluded the proceedings under section 7B of the Act. The proceeding was not disposed of on merits and the petitioners were deprived of placing their case before the authority due to reasons beyond their control. It is further submitted that in terms of the order impugned, respondent no. 4 has initiated recovery proceedings vide Memo No. RO /HWR /Recovery /WB /36716 /8F /472 dated 3rd August, 2021 and has taken steps by attaching the bank accounts of petitioner no. 1. The petitioners submit that there has been violation of natural justice and the petitioners ought to have been heard before the proceeding under section 7B was disposed of.

3. Learned counsel has placed reliance on a judgment in Regional Provident Fund Commissioner (II) West Bengal v. Vivekananda Vidyamandir and Others reported in 2019 SCC Online SC 291

4. Learned advocate appearing for the provident fund authority (respondent nos. 2, 3 and 4) has drawn the attention of the court to section 7- I of the

1952 Act and has submitted that as the petitioners have not preferred any appeal against the order impugned, the writ petition is not maintainable. Learned advocate further submits that in view of the provisions under section 7(O) of the Act, the petitioners were required to deposit 75% of the amount due as determined under section 7A of the Act on filing the appeal which has prompted the petitioners to take recourse to extraordinary jurisdiction of this court under article 226 of the Constitution of India, which is not enjoined in law. Learned advocate has also taken this court to paragraph 26 of the Employees Provident Funds Scheme, 1952 which deals with classes of employees entitled and required to join the fund.

5. The Union of India is represented and submits that in view of section 7B (5) of the Act, an appeal lies against the order impugned.

6. The respondents placed reliance on a judgment of a coordinate bench of this court in M/s. SKG Pulp and Paper Mills Private Limited & Anr. v/s. Assistant Provident Fund Commissioner (Compliance) & Ors. in WPA No. 33775 of 2013 wherein a co-ordinate bench of this court did not entertain the prayer of the petitioners for setting aside the order passed under section 7B of the 1952 Act. The judgment of the Hon'ble Appellate Court indicates that the Hon'ble single bench judgment was affirmed.

7. I have considered the submissions made on behalf of both the parties.

8. At the outset the issue regarding maintainability of the writ petition should be dealt with. 7- I of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is set out:-

> ***"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 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order."*

9. In other words, an appeal lies against an order under section 7B of the Act except an order rejecting an application for review referred to in sub-section (5). Sub-section (5) debars an appeal against an order rejecting an application for review. As the application under section 7B of the Act, 1952 was rejected, the forum of appeal was not available to the petitioners. Learned advocate for the respondents have referred to section 7(O) of the 1952 Act and has submitted that in order to avoid deposit of 75% of the due amount on filing an appeal, the petitioners have taken recourse to the present petition. Such submission made on behalf of the respondents does not hold water as there is no provision for appeal against an order of rejection passed under section 7B of the 1952 Act. As such, the writ petition is maintainable.

10. The petitioners filed a review application under section 7B of the 1952 Act against the order passed by respondent no. 3 under section 7A of the Act determining an amount of Rs. 27,41,943/- as dues to be paid by the petitioners. The order impugned passed under section 7B of the Act on 30th June, 2021 demonstrates that though the petitioners were represented before the authority on some dates of hearing, there was no representation on behalf of the petitioners on several dates from 16-06-2021 and the hearing was concluded on 30-06-2021. The reason for such non representation has been attributed to the death of a daughter of learned advocate representing the petitioners, on 01-06-2021. It is evident from the order impugned that the proceeding was concluded only on the ground that the petitioners were not represented on three consecutive dates of hearing and not on merits. Sufficient cause being made out by the petitioners for not being able to be represented in the proceeding, the review petition under section 7B of the Act is required to be disposed of on merit after affording reasonable opportunity of hearing to the interested parties including the petitioners. The ratio decidendi of the judgment of the coordinate bench of this court relied upon by the respondent nos. 2, 3, and 4 can be distinguished from the present case. The said judgment deals with a fact situation where the review petition under section 7B of the 1952 Act was disposed of on merits after considering the cases made out by the parties. The present case is otherwise. Here the review proceeding was closed only due to non appearance of the petitioners and no finding was

recorded with regard to the issue in dispute. The assessment made under section 7A of the Act was only upheld.

11. The judgment of the Hon'ble Supreme Court in Regional Provident Fund Commissioner (II) West Bengal v. Vivekananda Vidyamandir and Others reported in 2019 SCC Online SC 291 deals with the issue involved in the petition under section 7A and 7B of the Act on merits. Without commenting on the merits of the issues involved, the authority should be directed to consider the review petition upon hearing the parties and dispose of the same on merits by a reasoned order. It is also reported that in terms of the order impugned, respondent no. 4 has initiated recovery proceeding and the bank accounts of petitioner no. 1 has been attached.

12. Having considered the submissions made on behalf of the parties and the sole objection raised by the respondents that the writ petition is not maintainable as no appeal has been preferred by the petitioners against the order impugned, this court is of the view that as discussed earlier, there being no scope for appeal against an order of rejection of a review petition under section 7B of the Act, no alternative efficacious remedy was available to the writ petitioners and as such, the writ petition is maintainable.

13. Regard being had to the material on record, particularly the order impugned, this court holds that the order impugned dated 30th June, 2021 is required to be set aside and the review petition be heard afresh upon

granting an opportunity of hearing to all the parties including the petitioners.

14. Accordingly the order impugned dated 30th June, 2021 is set aside/cancelled. The respondent nos. 2, 3, and 4 are requested to consider the review petition under section 7B of the Act on merits after giving reasonable opportunity of hearing to all the parties including the petitioners, in accordance with law.

15. The recovery proceedings being Memo No. RO /HWR /Recovery /WB /36716 /8F /472 dated 3rd August 2021 be stayed till disposal of the proceeding under section 7B of the Act. The attachment of bank accounts of petitioner no. 1 be withdrawn and the petitioners be at liberty to operate the said accounts.

16. It is made clear that this court has not gone into the merits of the case and the respondent authorities are at liberty to deal with the merits independently and dispose of the proceeding by a speaking order.

17. W.P.A. 13368 of 2021 is disposed of accordingly.

18. There shall however be no order as to costs.

19. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)