IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4685 / 2021

M/S. DEOGIRI NAGARI SAHAKARI PATSANSTHA LTD. THR ITS AUTHORIZED OFFICER KRISHNA KARBHARI AGRE

VERSUS

THE ASSISTANT PROVIDENT FUND COMMISSIONER AND ANOTHER

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Advocate for Petitioner : Mr. V.D. Hon, Senior Advocate
i/by Mr. Ashwin V. Hon.

Advocate for Respondent No.1 & 2 : Mr. N.K. Choudhary

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CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 15th JUNE, 2021.
PRONOUNCED ON : 19th JUNE, 2021.

JUDGMENT :-

1. This Petition under Article 226 and 227 of the Constitution of India seeks to challenge the order dated 15th January, 2021 passed under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act for short) and order dated 18th February, 2021 passed under Section 7B and order dated 23rd February, 2021 passed under Section 8F of the said Act.

2. Petitioner is an establishment within the meaning of Section 1(4) under Schedule Head "Financing Establishment" of the said Act. Enquiry under Section 7A of the Act was initiated against the establishment by issuing summons on 31st August, 2009 for the period from August-2002 to August-2009, to assess and recover the statutory EPF dues from the establishment.

3. Enforcement Officer's report dated 22nd May, 2013 was disputed by the Petitioners, contending that the Pigmy Agents being Commission Agents could not be considered as "Employees of the Petitioner - Establishment" and therefore commission being earned by them was not liable for provident fund deduction. To verify the Petitioner's contention Respondents called for particulars like appointment letters of the Pigmy Agents; nature of Pigmy Agents services from the Establishment; however these particulars were not submitted.

4. It appears from the affidavit-in-reply of the Respondents that the Petitioner remained absent in the subject proceedings on 54 occasions. Thus alleged, Petitioners deliberately avoided to furnish the particulars required by the Authority. It appears on 23rd December, 2019, the Petitioner opted to submit appointment letter of only one of the Pigmy

Agents Shri. Ambadas S. Bankar. Thus, upon consideration of the facts of the case, enquiry report and available documents **Rs. 1, 46, 15, 498/-** (Rupees One Crore forty six lakhs fifteen thousand four hundered and ninety eight only) were assessed as provident dues in respect of Pigmy Agents and of other un-enrolled employees. Assessed dues in respect of Pigmy Agents were **Rs. 1, 04, 94, 786/-** (Rupees One Crore four lakhs ninety four thousand seven hundred and eighty six only); whereas dues in respect of un-enrolled employees were assessed at **Rs. 41, 20, 712/-** (Rupees Forty one lakhs twenty thousand seven hundred and twelve only). Thus, enquiry was initiated and dues were assessed not only with respect to the Pigmy Agents, but also with respect to other employees engaged by the Petitioner – Establishment, vide order dated 15th January, 2021.

5. Prima-facie, the Petitioner's grievance, is in respect of the determination of dues vis-a-vis Pigmy Agents engaged by it in connection with one of the core activities of Petitioner - Establishment.

6. The Petitioner in support of their contention that there is/ was no relationship of Employer - Employee between the Pigmy Agents and thus, were/are, not its employees have relied on the judgment of the Division Bench of this Court, in the case of **Pachora Peoples Co-operative Bank**

Limited Vs. Employees Provident Fund Organization, 2017 (2) Mh.L.J. 946.

7. Be that as it may, the Petitioner - Establishment sought a review of order dated 15th January, 2021 under Section 7B of the said Act. The review application was rejected by the Respondents on 18th February, 2021, without affording an opportunity of hearing to the Petitioners. Whereafter, Assistant Provident Fund Commissioner (compliance) issued a prohibitory order in exercise of the powers conferred on him under Section 8F (3)(i) of the act, to Bank of Maharashtra (Bankers of Petitioners), whereby it prohibited and restrained the Petitioner from receiving any amount from its bank account with the said bank. These three orders i.e. one dated 15/01/2021 (under Section 10A); 18/02/2021 (under Section 10B) and Prohibition Order, are challenged in the instant petition.

8. Mr. Hon, learned Senior Counsel for the Petitioner would submit that the order dated 18th February, 2021 is not sustainable in law, inasmuch as the Petitioner's review application has been rejected without affording opportunity of hearing and in defiance of law settled by this Court in the following cases;

(i) Writ Petition No. 1002/2008;
Shri Gajanan Maharaj Sansthan Vs. Regional Provident Fund

Commissioner dated 27/08/2008;

(ii) Writ Petition No. 3389 / 2011
Lokvikas Sahakari Bank Ltd. Vs. Assistant Provident Fund Commissioner, dated 02/05/2011;

(iii) Ashmit Motors Pvt. Ltd. Vs. Assistant Provident Fund Commissioner, 2017(1) Mah.L.J. 885.

. In the case of Shri Gajanan Maharaj Sansthan (Supra), it was held thus :

> " It is not in dispute that the petitioner filed review petition under section 7-B of the Employees' Provident Fund Act. The review petition was required to be decided by Assistant Provident Fund Commissioner, Sub-Division Office, Akola. There is no dispute before me that the said review petition was decided without hearing the petitioner or without issuing notice of hearing to the petitioner and the learned Counsel for the respondent – organization states that the same was decided with a well reasoned order, and therefore, there is no need to remand the proceedings. <u>It is not possible to accept the contention raised by learned Counsel for the organization because the provisions of section 7-B of the Act specifically provides for review and the same will have to be decided after issuing notice to review petitioner and all concerned parties, and obviously after hearing them</u>. There has to be adjudication of the review petition. Therefore, whether the authority gave a reasoned order or not will not make any difference. In view of the above discussion, I make the following order. " (Emphasis Supplied)

9. I have perused order dated 18th February, 2021, wherefrom it is evident that the Respondents have completely ignored the law on the subject, laid down by this Court in the aforesaid terms. In view thereof, the order dated 18th February, 2021 being not sustainable-in-law, is required to be set aside and accordingly quashed and set aside.

10. As a consequence, the review application of the Petitioners dated 4th February, 2021 is restored to file of the Assistant Provident Fund Commissioner, Regional Office, Aurangabad.

11. In the consideration of the facts, the Assistant Provident Fund Commissioner, Regional Office, Aurangabad, shall decide the review application in accordance with law, preferably within nine months.

12. As noted above, the Respondents – Authorities, had assessed provident fund and allied dues not only in respect of Pigmy Agents, but also with respect to other employees in the sum of Rs. 41,20,712/- and since the Petitioner have deposited Rs. 40,000,00/- (Rupees Forty Lakhs) in this Court, in my view, it would be expedited to permit the Respondents to withdraw the said amount from the Registry of the Court, a subject to

undertaking that Respondents shall bring back and or pay the said amount to Petitioners, in case the Petitioner - Establishment succeeds. Undertaking shall be filed in the Registry of this Court.

13. It is made clear that the Respondents-Authorities shall decide the review application on its own merits without being influenced by observations made in this order.

14. The Petition is allowed and disposed of in the aforesaid terms.

(**SANDEEP K. SHINDE J.**)

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