Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5496 OF 2021

Jaysingpur Municipal Council, through
its Chief Officer **... Petitioner**
V/s.
Ld. Assistant Provident Fund Commissioner,
Kolhapur **... Respondent**

Mr. Kiran Bapat i/b. Mr. Manoj Apagonda Patil for the petitioner.
Mr. Suresh Kumar for the respondent.

CORAM : G.S.KULKARNI, J.
DATE : 6 October, 2021

P.C.:

1. An order under section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act") was passed against the petitioner on 28 February, 2020, whereby, the Assistant Provident Fund Commissioner, Regional Office, Kolhapur assessed the dues payable by the petitioner for the period 01/2011 to 06/2012 at Rs.1,02,92,439/- with a further direction that the said amount be deposited within 15 days to obviate the possibility of a coercive action under sections 8F and 8G of the Act. Being aggrieved by the said order and primarily on the quantum of dues, the petitioner preferred a Review Application under section 7B of the Act. Such Application was filed on 18 March, 2020. By the impugned order, the Competent Officer has

rejected the said application thereby not accepting the case of the petitioner on the reasons for review as set out on the non-furnishing of certain records and more particularly record in regard to the contractors appointed by the petitioner.

2. I have heard Mr. Bapat, learned counsel for the petitioner and Mr. Suresh Kumar, learned counsel for the respondent. At the outset, Mr. Bapat states that he has written instructions by letter of the Chief Officer of the petitioner addressed to the Mr. Manoj Patil, advocate for the petitioner that the petitioner is willing to deposit with the respondent an amount of Rs.25,00,000/- within two weeks from today. He submits that if such an amount is deposited, an indulgence be granted by this Court to direct the Competent officer to hear the Review Application by setting aside the impugned order passed by the Competent Authority. In support of his submission, he has drawn my attention to the averments in the petition and also the case made in the review petition. He submits that the contractors were appointed by the petitioner and the enquiry, being for a old period at the relevant time, it was not immediately possible for the petitioner to produce such records relating to the payments made to the contractor. Hence, he submits that an opportunity ought to be granted to the

petitioner of enquiry under section 7B of the Act.

3. Mr. Bapat submits that the petitioner has not disputed the applicability of the provisions of the Act but the only dispute is in regard to the quantum which too is of a short period. It is thus his submission that considering the reasons which are set out in the impugned order rejecting the review application, it is in the interest of justice that the reliefs as prayed for be granted.

4. On the other hand, Mr. Suresh Kumar has vehemently opposed this petition in supporting the impugned order. He submits that ample opportunity was available to the petitioner to produce such material, however, such opportunity was not availed. He submits that the reasons as urged on behalf of the petitioner for not producing the documents ought not to be accepted. He has, accordingly, prayed for dismissal of this petition.

5. Having heard the learned counsel for the parties and having perused the record, in my opinion, the Competent Officer ought to have considered that the petitioner was a public body and the reasons which were furnished were sufficient reasons to immediately not place the records in the enquiry held under

section 7A of the Act. Some indulgence in this regard ought to have been shown. Be that as it may, the petitioner has now shown its inclination to deposit an amount of Rs.25,00,000/-, which is almost 25% of the quantum as assessed under section 7A. In these circumstances, in my opinion, the Competent Officer needs to hear the petitioner afresh by granting a further opportunity to the petitioner to place all such relevant material on record in regard to the quantum of the assessment. However, such an opportunity ought to be a final opportunity and it should not be construed by the petitioner that even hereafter, it would be entitled to a further opportunity of producing the documents or taking a plea that it cannot produce the documents.

6. In the above circumstances, the petition is disposed of by the following order:

(i) The impugned order dated 28 February, 2020 is set aside. The review application as filed by the petitioner is restored to the file of the Competent Officer. The Competent Officer shall take into consideration the relevant documents sought to be relied upon by the petitioner and after considering the same, pass appropriate order in accordance with law, this shall, however, be subject to the petitioner depositing an amount of Rs.25,00,000/- within a period of two weeks from today, which shall be a condition precedent;

(ii) The petitioner shall submit all relevant documents in support of its case on quantum within a period of four weeks from today. There shall be no further extension of time in this regard;

(iii) All contentions on the further scrutiny are expressly kept open.

(iv) Needless to observe that the amount of Rs.25,00,000/- so deposited shall be adjusted by the competent officer in the final assessment, if any, to be made.

7. In view of the above orders, till a decision is accordingly taken, there is no question of assessment order passed under section 7A of the Act to be executed.

8. Disposed of in the above terms. No costs.

(G.S.KULKARNI, J.)