IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3527 OF 2022

AURANGABAD MUNICIPAL CORPORATION AURANGABAD THROUGH ITS AUTHORISED SIGNATORY
VERSUS
THE REGIONAL PROVIDENT FUND COMMISSIONER II

...

Advocate for the Petitioner : Shri Vidwauns Sagar S.
Advocate for the Respondent : Shri Nitin K. Chaudhari

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd March, 2022

<u>Per Court</u>:

1. By this petition, the petitioner/ Aurangabad Municipal Corporation has putforth prayer clauses (b), (c), (d), (e) and (f) as under:-

> *"(b) Kindly quash and set aside the impugned order dated 03.11.2021 in 7-A proceedings.*
>
> *(c) Kindly quash and set aside the impugned order of prohibition dated 25.11.2021.*
>
> *(d) Kindly grant an interim relief by directing the respondent to return/ refund the entire amount, so recovered from the petitioner by virtue of the respondent's prohibition order dated 25.11.2021.*
>
> *(e) Kindly grant an interim relief of staying the impugned order dated 03.11.2021 passed U/s 7-A of the Act, and impugned order of prohibition dated 25.11.2021.*
>
> *(f) Kindly declare that there is no Employer- Employee relationship between the petitioner and the contractual workers."*

2. I have considered the extensive submissions of the learned

Advocates for the petitioner as well as on behalf of the respondent PF Authorities. With their assistance, I have gone through the petition paper book.

3. The petitioner is primarily aggrieved by the action initiated by the respondent under section 8-F of the the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the PF Act"). The grievance is that after the order dated 03.11.2021 was passed under section 7-A assessing the unpaid PF contributions on behalf of the 212 contract labourers who were deployed through contractors, whose details are not available with the PF authorities, the respondent has hurriedly resorted to section 8-F remedy and recovered the entire amount of Rs.9,99,12,491/- straightaway from the Bank account of the Corporation, without enabling the petitioner to avail of the statutory remedy of preferring a review under section 7-B within 45 days or preferring an appeal before the Appellate PF Tribunal i.e. Central Government Industrial Tribunal (CGIT) at Nagpur.

4. The learned Advocate for the Corporation placed reliance upon Section 8 of the PF Act and contends that the procedure is prescribed for recovery of the amount under Sections 8-B to 8-G. However, without taking recourse to the said procedure, as is prescribed, the respondent PF Authority has straightaway recovered the amount forcibly by taking recourse to coercive steps under section 8-F.

5. The learned Advocate for the P.F. authorities submits that though no steps were taken under Sections 8-B to 8-G, insofar as recovery of the amount from the petitioner, he concedes on instructions, that the remedy resorted to was the one prescribed under Section 8-F of the PF Act.

6. In Writ Petition No.4973/2021 with Writ Petition Nos.7814/2021 and 7815/2021 (Kulgaon Badlapur Nagar Parishad vs. The Regional Provident Fund Commissioner-II, Thane), this Court, at the Principal Seat, has passed an order holding that the employer/establishment has a statutory remedy of Section 7-B in preferring a review within 45 days and a period of 60 days for preferring an appeal before the Appellate authority under Section 7-I of the Act. These being statutory remedies available, the respondent PF authorities cannot prejudice the employer by taking recourse to coercive steps for recovering section 7-A assessed amount within the appeal period, thereby rendering the appeal period as well as the right to prefer an appeal, negated. Section 7-O accords discretionary power to the Appellate Tribunal to direct the Management to deposit a maximum 75% of the assessed amount or any amount lesser than 75% or even grant a waiver, provided a plea for waiver is supported with strong reasons. This Court, therefore, concluded that the PF authorities cannot resort to recovery under section 8-F within the appeal period.

7. The learned Advocate for the petitioner submits that as the CGIT at Nagpur as well as CGIT-1 and CGIT-2 at Mumbai are vacant, there is no Tribunal available to the petitioner in the State of Maharashtra. Preferring an Appeal under section 7-I would be of no consequence as the appeal would just be lying in the office of the Appellate Tribunal gathering dust since there is no Presiding Officer available. In this peculiar circumstance, the petitioner has preferred this Writ petition since the remedy of appeal was not available at this moment.

8. In my view, the petitioner could not approach the appellate authority on account of the non availability of the appellate forum and, therefore, cannot be rendered remedy-less. Preferring a writ petition in this peculiar circumstance is the only option available. From this point of view, I have perused the impugned order passed under section 7A of the PF Act.

9. It is not disputed that the Section 7A proceedings were for the period 08.01.2011 till 31.05.2021. Provisions of the PF Act were made applicable to the petitioner with effect from 08.01.2011. More than 50 dates were granted when the hearing in the matter commenced in 2016. Despite these opportunities, the petitioner Corporation did not give the updated list of the contractors, their contact numbers, names of their authorized representatives and exact names of those contractual labourers, who were deployed by these contractors with the Corporation.

The P.F. authorities, therefore, resorted to an enquiry as is permissible under law and after gathering details which are found from page 17 till 146 of the petition paper book, the impugned order was passed on 03.11.2021. The Corporation had not rendered any cooperation to the concerned authority.

10. Be that as it may, though Section 7-A recovery may be justified, the respondent authorities are not justified in following the procedure laid down under Section 8F without taking recourse to the mechanism as prescribed under Section 8 and specifically Sections 8B to 8E.

11. The learned advocate for the PF authorities places on record the compilation of documents (09 pages), which are marked as X-1 collectively for identification. He contends that in recoveries which are closer to the financial year ending, the PF authorities make an effort to recover the amounts by resorting to Section 8-F and in most of the cases, where recovery does not have a pressing urgency, the procedures prescribed under Sections 8-B to 8-G and the second schedule of the Income Tax Act, 1961, are followed.

12. Considering the order passed by this Court on 22.02.2022 in ***Kulgaon Badlapur Nagar Parishad (supra)***, the PF authorities are restrained from resorting to coercive steps within the appeal period. This has also been the view in the order dated 13.06.2019 delivered by the

learned Division Bench of this court at the Principal Seat in Writ Petition No.992/2018 filed by ***Mangal Keshav Securities Ltd. vs. Assistant PF Commissioner, Mumbai***.

13. Keeping in view that the petitioner has approached this Court instead of preferring an appeal under Section 7-I on account of non availability of any CGI Tribunal in Maharashtra and keeping in view the effect of Section 7-O, had such an appeal been filed, the learned advocate for the petitioner Corporation has taken instructions and it is submitted that 50% of the amount recovered by the PF authorities under Section 8-F, may be retained provided Section 7-A proceeding is to be reconsidered in the backdrop of none of the labour contractors having been summoned for assessment of provident fund dues towards the contractual employees.

14. It is undisputed that the impugned order is in respect of all contractual employees and none of their contractors having been summoned. It would be appropriate for the PF authorities to conduct the Section 7-A proceedings afresh in order to ensure that these labour contractors are before the authorities.

15. In view of the above, this Writ Petition is partly allowed. The order under Section 7-A dated 03.11.2021 is kept in abeyance on the following conditions :-

(a) The respondent PF authorities shall retain the amount of Rs.5 crores in a separate account and no withdrawals from the said amount or apportionment of the said amount, would be permissible until Section 7-A proceedings are concluded.

(b) The amount of Rs.4,99,12,491/- shall be returned to the petitioner Corporation, on or before 05.04.2022.

(c) The petitioner shall appear before the respondent authority on 05.05.2022 along with entire list of contract labourers, their email account addresses, their telephone numbers, names of their supervisors/ contact persons and their mobile numbers and their complete addresses, etc.. This list shall also contain the exact names of the contract labourers, who have been deployed by the respective labour contractors.

(d) There shall be no request for extension of time by the Aurangabad Municipal Corporation. If an extension is sought, the order dated 03.11.2021 shall stand restored and the PF authorities would then be at liberty to take recourse to Section 8-F proceedings.

(e) If the above directions are complied with, the PF authorities shall issue a public notice so as to serve all contractors, by paper publication in largely circulated regional newspaper like Lokmat/ Sakal/ Divya Marathi/ Maharashtra Times. Such notice would be in due compliance of service of notice on these contractors who shall cause an appearance before the authority on the date mentioned in the notice.

(f) Pursuant to the appearance of the contractors and the scrupulous participation by the Municipal Corporation as well as the contractors in the Section 7-A enquiry, the authority would conclude the said process and deliver an order under Section 7-A, on or before 30.12.2022 and the earlier order dated 03.11.2021 shall stand merged.

(g) Those contractors, who would not cooperate, would be deemed to be defaulters and the provident fund contributions to the extent of such labour contractors shall then be recovered from the principal employer i.e. Aurangabad Municipal Corporation.

kps **(RAVINDRA V. GHUGE, J.)**