

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 9975 OF 2021

Jijamata Public School
Dnyaneshwarnagar, Bhenda (Bk),
Tq. Newasa, Dist. Ahmednagar,
Through Authorized Signatory

...Petitioner

Versus

Employees Provident Funds Organization,
through the Regional Provident Funds
Commissioner, SRO Plot No. 11,
Bhavishya Nidhi Bhavan,
MIDC Satpur, Nashik.

...Respondent

.....
Mr. V. N. Upadhye, Advocate for the petitioner
Mr. N. K. Chaudhari, Advocate for respondent-sole
.....

AND

WRIT PETITION NO.9988 OF 2021

Jijamata Krushi Tantra Vidyalaya,
Dnyaneshwarnagar, Bhenda (Bk),
Tq. Newasa, Dist. Ahmednagar,
Through Authorized Signatory

...Petitioner

Versus

Employees Provident Funds Organization,
through the Regional Provident Funds
Commissioner, SRO Plot No. 11,
Bhavishya Nidhi Bhavan, MIDC Satpur, Nashik.

...Respondent

.....
Mr. V. N. Upadhye, Advocate for the petitioner
Mr. N. K. Chaudhari, Advocate for respondent-sole

.....

CORAM : BHARATI H. DANGRE, J.
DATE : JANUARY 20TH, 2022

ORAL JUDGMENT : -

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The two petitioners are the public schools run by a public trust established in the year 2003 and has engaged itself into the activity of imparting education. The petitioners initially did not succumb themselves to the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the Act, 1952”), however, pursuant to the Ministry of Labour and Employment issuing a scheme in the form of a special provision in respect of employees’ Enrollment Campaign, 2017 in exercise of the powers conferred by Section 5 read with sub-section 1 of Section 7 of the Act, 1952 by which the existing Employees’ Provident Funds Scheme, 1952 came to be amended, the petitioners offered voluntarily to cover it’s employees under the provisions of the Act through ORLE portal of the Department under Section 2-A of the Act, 1952. The petitioners on their own submitted their willingness to

fulfill the requirements of the scheme and accordingly remitted the contributions in terms of the scheme, somewhere in July-2018 and they were allotted separate code for remittances and other purposes. The date of coverage was declared as 16.06.2003 and the petitioners remitted the contribution/EPF dues including employees and employer's share for the period from June-2003 to August-2018 in the month of July-2018.

3. The case of the petitioners is, while they subjected themselves to the provisions of the Act, 1952 in the wake of the special scheme, the assurance was given that there would be no levy of any penalty, interest and/or damages etc., against them but surprisingly, according to the petitioners, on 26.11.2019, the respondent initiated inquiry under Section 14-B read with Section 7Q of the Act, 1952 and the notice asked them to show cause as to why damages and interest for the late remittance should not be fastened upon them.

4. The notice issued by the Provident Fund Commissioner, Ahmednagar addressed to the petitioners state that the petitioners - establishment is covered under the Act, 1952 and in terms of the

provisions of the Act, 1952 r/w the Employees Provident Funds Scheme, 1952 [for the sake of brevity “Scheme of 1952”], the employer-establishment is required to remit the contributions along with the administrative charges within 15 days of the close of every month and under Section 14-B of the Act, 1952 where an employer commits a default in payment of contribution or any charges, the Commissioner is empowered to recovery by way of penalty such damages not exceeding the amount of arrears and the rates of damages as specified and in the Scheme of 1952 and as per it's amendment. On scrutiny of the record, it was noticed that the petitioners had remitted the amount after the respective due dates and therefore, penalty and the amount of interest of the belated period set out in the notice was liable to be paid by them. The notice afforded an opportunity to remit the amount within the period stipulated and also assigned a date of hearing in person in an inquiry to decide the levy of damages on the basis of records available.

. Apart from this, the notice also indicated that the petitioners are liable to pay interest @12% p.a. and the same shall be paid within a period of 15 days from the date of issuance of the notice.

. The notices were accompanied with the detailed chart in the form of Annexure 'A' indicating damages calculation and the chart of the bifurcation of the amount to be remitted under Section 7A and 7B.

5. The petitioners responded to the said notices by submitting their reply and contested the claim raised in the notices. It was pleaded that the petitioners are not governed by the provisions of the Act, 1952 but they offered voluntarily to cover their employees under the provisions of the Act, 1952 and on assurance from the department, that except contributions, no other things like damages, penalty, interest will be attracted if the Act is made applicable and subject to this, they had shown their willingness to adhere to the scheme. The reply also state that the establishment has not earned any profits and the authority has failed to consider the factual position, which was reflected from the documents and for certain period in question, there is absolutely no delay and even if there is some delay, it is not intentional and the petitioners had deposited the amount immediately on disbursement of the amount of salary / wages to its employees. Another grievance is raised that the authority did not furnish any amount kind of break up as to how the

loss has been sustained by the organization, without indicating the basis of calculation on which the quantum of damages paid has been determined.

6. On consideration of the response submitted by the petitioners, two distinct orders came to be passed by the Assistant Provident Fund Commissioner and the order dated 19.07.2021 is passed in the matter of proceedings under Section 7-Q of the Act of 1952. As far as order passed in proceedings under Section 14-B is concerned, the petitioners have already preferred an appeal and the present petitions are therefore restricted to the order passed under Section 7-Q of the Act, 1952 against which no appeal is maintainable in terms of Section 7I of the Act, 1952 .

7. The learned Counsel for the petitioner – Mr. Upadhye in support of the petitioners would submit that the impugned order refuses to exercise the jurisdiction vested in the authority under the Act, 1952 and without considering the *bona fide* and merits of the documents submitted by the petitioners-establishment, it has completely ignored the fact that the petitioners sought coverage voluntarily as per the scheme and therefore the liability to pay

interest as contemplated u/s 7Q of the Act, 1952, cannot be fastened. The learned Counsel would also submit that he may be permitted to withdraw the writ petitions and take the challenge to the appellate authority, since he has already filed proceedings before the authority being aggrieved by the order passed under Section 14-B and since the proceedings initiated under Section 14-B and 7-Q were conducted simultaneously, the appellate authority is duty bound to entertain even an appeal against an order passed under Section 7-Q.

8. The learned Counsel for the respondent / Employees Provident Fund Organization Shri. N. K. Chaudhari, apart from contesting the merits of the petition would place reliance on the decision of the Hon'ble Apex Court in the case of Arcot Textile Mills Ltd. v. Regional Provident Fund Commissioner and another reported in (2013) 16 SCC 1, to submit that as far as appeal prescribed under Section 7-I of the Act, 1952 is concerned, the appeal is only maintainable against an order passed under Section 14-B and not against imposition of interest as stipulated under Section 7-Q. Apart from the preliminary objection, on merits the learned Counsel for the authority submits that the adequate opportunity was afforded to the petitioners to respond to the notices.

9. The Employees Provident Funds and Miscellaneous Provisions Act, 1952 is an enactment to provide a kind of social security to the industrial workers and it is applicable to every factory engaged in any industry specified in Schedule 1 that is employing 20 or more persons. The two petitioners are the educational institutes run over by a trust, namely, Shri. Marotrao Ghule Patil Shikshan Sanstha. The petitioners-establishment is a branch (Shri. Marotrao Ghule Patil Shikshan Sanstha) which is registered under the Act, 1952 bearing EPF Code KDMSK0050575 under the name and style of M/s. Jijamata Industrial Training Institute w.e.f. 01.09.1993.

10. In the wake of the above registration, the provisions of the Act were applicable to any subsequent branch of the establishment w.e.f. its establishment/set up. The petitioners originally failed to extend the EPF scheme membership to the employees of the branch either under the primary code of the trust or through a separate EPF code with effect from the date of set up of the branch. However, the establishment got registered under Section 2A of the Act, 1952 in July-2018 OLRE Portal and declared its date of coverage as 16.06.2003 and belatedly remitted the EPF dues including the

employees and employer's share for the period from June-2003 onwards through monthly electronic challan-cum-returns.

11. The employees provident fund scheme, 1952 and para 8 of the Employees Deposit Link Insurance Scheme, 1976 make it imperative for the employer of the establishment to remit the contributions payable by a separate bank draft / pay order within 15 days from the close of every month. The employer-establishment failed to pay the above dues within the stipulated time as provided for under para 38 of the Scheme of 1952 and para 8 of the scheme of 1976 for the period from 16.06.2003 to 23.10.2019 and this constrained the authorities to issue notice by invoking the section 14-B of the Act, 1952, where an employer makes default in payment of contributions or any charges, the Commissioner is competent to recover by way of penalty such damages, not exceeding amount of arrears and rates of damages as specified in para 32A of the Scheme, 1952. The show-cause notice issued to the petitioners setting out the figures due under Section 7Q and 14-B of the Act, 1952 was adjudicated upon and the impugned order came to be passed.

12. Perusal of the impugned order would reveal that Section 7Q of the Act, 1952 provides that an employer shall be liable to pay

simple interest @12% p.a. or at such higher rate as may be specified in the scheme on any amount due from him under the Act from the date of on which the amount has become due till it's actual payment. Since the notice was issued to the petitioners under Section 7Q of the Act, 1952 an opportunity was afforded to show-cause as to why the action should not be initiated, the employer has failed to abide by the same. Noting that the branch of an establishment already registered under the Act right from the date of set up of the branch is duty bound to abide by the statutory provisions by remitting the arrears of the employer and employees' contribution through month wise electronic challan-cum-returns but on failure to do so, it has made itself liable to pay interest. The impugned order records that when the establishment remitted the workers' dues through online ECRs, it was automatically informed about the interest u/s 7Q that was payable on the online employer portal but the petitioner-establishment had chosen not to remit the interest on it's own. In the wake of the aforesaid, the Asst. Provident Fund Commissioner, in exercise of powers conferred u/s 7Q ordered levy of interest for the belated remittance period mentioned in the impugned order.

. The submission of the learned Counsel for the petitioner that the petitioners had voluntarily registered themselves under the

Scheme though the PF Scheme is not liable to be extended to the said establishment deserves no consideration, since the facts in hand clearly reveal that the petitioners-establishment is one of the branches of Shri. Marotrao Ghule Patil Shikshan Sanstha which is already covered under the provisions of the Act, 1952 from the date of its set up w.e.f. 16.06.2003 and it is already allotted code under the Act, 1952.

. By referring Section 2A of the Act, 1952, all the branches of the management are also covered under the provisions of the Act, w.e.f. the date of set up of each of the said branches.

13. Another contention of the petitioners by relying upon the notification issued by the Ministry of Labour and Employment on 30.12.2016 and the submission that since it was a special provision in respect of the employees' enrollment campaign, and they had applied under the said scheme, the levy of interest, penalty cannot be imposed is another submission which deserve rejection since the validity of para 82A of the Scheme of 1952 as declared by the notification dt. 30.12.2016 was initially for the period commencing from 01.01.2017 upto 31.03.2017 and was subsequently extended upto 30.06.2017 and the employer was supposed to take necessary

steps in respect of the membership of the employees, who were required or entitled to become members of the fund for the period commencing from 01.04.2009 and ending on 31.12.2016, but who were not enrolled as members for any reason. The employer, upon complying with the mandate prescribed by para 82A(ii), is bound to remit the employer's contribution in accordance with the provision of the scheme and the employees contribution deducted from the employees wages along with the interest payable in accordance with the Section 7Q of the Act, 1952 along with the damages. The scheme contemplated that if the employer failed to remit the contribution, interest and damages payable by him, then he shall be deemed to have not made such payment under the scheme.

14. In the light of the aforesaid provisions of the Act, 1952 and the Scheme in force, the validity of para 82A of the Scheme of 1952 was extant upto 30.06.2017 only, whereas, the petitioners, from their own showing in the petitions state that they had shown the willingness for coverage under the Act only in the month of July-2018 i.e. after lapse of the period of the said provision and in any case it was not possible to cover the petitioners- establishment under para 82A of the Scheme of 1952. The premise of the petitioners'

argument that some officers of the department had indicated that if voluntarily they participate, then the establishment shall be exempted from the payment of interest penalty, is without any proof and has to be necessarily turned down.

15. The petitioners-establishment has categorically admitted the delay in making the remittances and in the wake of the aforesaid, in view of the mandate of Section 7Q and Section 14B of the Act, 1952, the petitioners are liable to pay the amount of interest and damages *vis-a-vis* the belated remittances. The impugned order which record sequence of events and the delay occasioned on part of the petitioners to make the payment has been clearly highlighted and the record and proceedings would clearly demonstrate that the petitioners-establishment during the course of inquiry conducted under Section 7Q of the Act, 1952 has availed the opportunities of hearing, pursuant to which the order has been passed.

16. It is the settled position that inquiry proceedings inter alia for the purpose of levying amount of interest u/s 7Q of the Act are summary in nature and restricted to the realm of the computation only and in view thereof, the modalities of the nature as has been contended by the petitioners in the grounds of the petition are totally

irrelevant as against the nature of liability sought to be imposed by virtue of the provision contained in Section 7Q of the Act, 1952. The respondent-authority has highlighted the details of the belated remittances made by the petitioners-establishment and levied the amount of interest in order to ensure the compliance of the scheme, whereby the competent authority is required to inter alia credit monthly interest into the members' account within due date, irrespective of the fact, whether the amount of interest is recovered or not from the defaulting employer.

17. In the wake of the above, the impugned order passed under Section 7Q of the Act, 1952 justify its existence as the competent authority after affording due opportunity to the petitioners-establishment had proceeded in a summary manner as contemplated under the provision and passed the impugned orders.

. Bare reading of Section 7I of the Act, 1952, which is a provision for appeal to the Tribunal make it manifest that the appeal can be preferred only being aggrieved by an order passed under Section 14-B and it could be discerned from the said provision which reads thus : -

7I. 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.

. No appeal can be entertained by the Tribunal against an order passed under Section 7-Q, which provides for interest payable as specified in the scheme on any amount due from the employer from the date on which the amount has become so due till it's actual payment. Since no appeal could lie against the said orders, the petitioners have knocked the doors of this court and on due examination of the impugned order, I do not find any legal infirmity in the orders being passed.

. Necessarily upholding the impugned order dated 19.07.2021 in both the petition, the petitions are dismissed. Rule is discharged. Easy on costs.

[BHARATI H. DANGRE]
JUDGE