

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10808 OF 2022

M/S REKHA GAS AGENCIES JALGAON
THROUGH ITS MANAGER RAMESH TULSHIRAM MHASKAR

VERSUS

THE REGIONAL PROVIDENT FUND COMMISSIONER THROUGH
STANDING COUNSEL

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Advocate for Petitioner : Mr Vinayak Narayan Upadhye
Advocate for Respondent : Mr N.K. Chaudhari

CORAM : SANDEEP V. MARNE, J.
DATE : 16th NOVEMBER, 2022

1. The petitioner is aggrieved by order dated 12th August, 2022 passed by the Regional Provident Fund Commissioner, Nashik. That order is challenged by the petitioner by filing Appeal No. CGIT/NGP/EPFA/34/2022-2023 before the Central Government Industrial Tribunal (CGIT), Nagpur. It is submitted that the post of Presiding Officer, CGIT, Nagpur is vacant on account of appeal filed by the petitioner or stay application filed therein has not been taken up for hearing.
2. Mr Chaudhari, the learned counsel appearing for the respondent confirms this position.
3. In the light of this peculiar position, the present writ petition is filed for the purpose of an interim arrangement till the appeal filed by the petitioner can be taken up for hearing by CGIT.
4. By the impugned order dated 12th August, 2022, the petitioner has been directed to deposit an amount of Rs. 89,17,954/- towards dues of provident fund of its employees.

5. Section 7 (O) of the Employees' Provident Funds and Employees Provident Funds and Miscellaneous Provisions, Act, 1952 provides as under :-

7-O. Deposit of amount due, on filing appeal.—No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent. of the amount due from him as determined by an officer referred to in section 7A:

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

6. Mr Upadhye, learned counsel for the petitioner submits that even though an appellant is statutorily required to deposit 75% of the amount due under section 74, in an appropriate case, deposit of such amount can be waived or reduced under the Proviso to section 74. He would submit that in the present case, there are appropriate reasons why the deposit of such amount can be waived. He invites my attention to the reply dated 15th April, 2021 filed by petitioner before the Assistant Provident Fund Commissioner, Jalgaon thereby, demonstrating that the total wages paid to the employees during the enquiry period of February, 2009 to July, 2019 is Rs. 1,77,25,100/- and the total amount deposited towards the provident fund by the Establishment is Rs.45,61,187/-.

7. Perusal of the impugned order shows that the Regional Provident Commissioner has recorded a finding that the Establishment had failed to file reply to the report of the Enforcement Officer. It appears that the reply filed by the petitioner on 15.04.2021 has not been taken into consideration. Thus, the factum of deposit of Rs.45,61,187/- by the Establishment appears to be ignored by the Regional Provident Fund Commissioner while passing the impugned order. That amount of Rs.45,61,187/- represents more than 50% of the amount due.

8. Mr Chaudhari submits that the amount of Rs. 45,61,187/- shown to have been deposited by petitioner is in respect of regular employees whereas the liabilities determined in the impugned order is in respect of Hamali payable to Hamals; other allowances payable to the regular employees and wages payable to 13 employees in respect of period from February, 2009 to July, 2019.

9. However, since the Regional Provident Fund Commissioner has proceeded to ignore the reply filed by petitioner, there is no finding in the impugned order to support the submissions of Mr Chaudhari.

10. In the light of these peculiar circumstances emerging before me, I deem it appropriate to direct the petitioner to deposit amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) as a pre-condition for entertainment of the appeal filed by it before the Tribunal. Let that amount be deposited with the Regional Provident Commissioner, Nashik within a period of four weeks from today.

11. If the petitioner deposits the aforesaid amount within the stipulated time, the order dated 12th August, 2022 shall remain stayed during pendency of appeal filed by the petitioner before the Tribunal.

12. The Tribunal shall proceed to hear the appeal filed by the petitioner and shall not be influenced by the observations made in the present order.

13. The writ petition is accordingly disposed of.

[SANDEEP V. MARNE, J.]

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