IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO.14848 OF 2021

NAGAR PARISHAD, UMARI THROUGH ITS CHIEF OFFICER/ AUTHORIZED OFFICER JYOTIRAM MANIKRAO JADHAV
VERSUS
THE ASSISTANT PROVIDENT FUND COMMISSIONER, AURANGABADAND ANOTHER

Mr.H. P. Jadhav, Advocate for the petitioner
Mr. N. K. Choudhary, Advocate for the respondent Nos. 1 and 2

CORAM : RAVINDRA V. GHUGE, J.

DATE : 17-03-2022

P. C.

1. The petitioner- Nagar Parishad, Umri, Tq. Umri, Dist. Nanded has approached this court for challenging the order passed by the competent authority under Section 7-B of the Employees Provident Fund and Misc. Provisions Act, 1952 (hereinafter referred to as '1952 Act').

2. It is beyond any debate that the statutory appeal against the order under Section 7-A is prescribed under Section 7-I and Section 7-O prescribes depositing 75% of the assessed amount. Of course, the appellate tribunal, which is presently,

the CGIT, Nagpur has the discretion to decide the quantum of deposit subject to circumstances, which are narrated by the accessee.

3. This court has consistently held that if statutory remedies are by-passed by preferring writ petitions in order to avoid depositing the statutory deposit amount, this court should not show any leniency after noticing the design of the Management. The learned Division Bench of this Court has also held in *M/s Shewalkar Developers Ltd. Vs Rupee Co-operative Bank Ltd and others reported in 2016 (1) Mh.L.J. 382,* that a blanket stay in the matters of payments of dues, is impermissible.

4. The learned Advocate for the petitioner has strenuously canvassed that because of the Covid-19 situation, the Nagar Parishad is short of funds. It is, therefore, prayed that instead of directing the petitioner to deposit 75% amount akin to Section 7-O, the petitioner can deposit Rs.6,00,000/- since an amount of Rs. 5,99,978/- (roughly Rs.6,00,000/-) has been recovered by the Provident Fund Authorities under Section 8-F of the Act.

5. It is well settled that when it comes to recovery of dues under such enactment which is Social Security Legislation, there should be zero tolerance to non-payment of the assessed amounts. In the instant case, recovery under Section 7-A is for the period 01/11 to 04/12. Section 7-A order has been passed on 27-06-2016, when there was no Covid-19. Even if it is assumed that because of Covid-19 situation, Nagar Parishad is short of funds, I deem it appropriate to direct that at least 50% of the amount should be deposited as these arrears pertain to employees under the 1952 Act.

6. In view of the above, the learned Advocate for the petitioner has taken instructions from Jyotirao Manikrao Jadhav, Accountant with the Nagar Parishad, Umri that if this court passes an appropriate order, the Municipal Council would comply with the said direction.

7. The impugned order dated 27-09-2021, is passed by the competent authority under Section 7-B which is a review provision. Around fifty dates were granted to the petitioner by the reviewing authority, beginning from 02-11-2016 till 21-09-

2021, over five years. The Plea taken by the petitioner that they could not participate in the hearing because of Covid-19, is apparently false and a frivolous stand taken. Several dates of hearing granted to the petitioner were before the Covid-19 lockdown commenced on 24-03-2020. The last date of hearing was 24-02-2020. The lockdown was lifted in January, 2021 and the hearing commenced on 21-01-2021 and the last date was 21-09-2021. This speaks voluminous of the conduct of the petitioner.

8. In view of the above, the impugned order does not call for any interference and the petition is, therefore, disposed off. However, as the petitioner is agreeable to deposit 50% of the amount inclusive of Rs.6,00,000/- (which has been recovered by the Provident Fund Department), I am issuing the following directions:

a] If the petitioner prefers an appeal under Section 7-I, on or before 25-04-2022, keeping in view that the 7-A order has been sustained by impugned order, there shall be no coercive action against the petitioner for the recovery of the remainder

Rs.16,00,000/-, on the condition that the petitioner shall deposit an amount of Rs. 10,11,000/- in the respondent Provident Fund Department on or before 21-04-2022.

b] Receipt of depositing the amount alongwith a copy of this order, shall be produced before the CGIT, Nagpur while preferring an appeal under Section 7-I, on or before 25-04-2022. It is on this condition that the relief of protecting the petitioner against coercive action would continue till the decision in the appeal preferred before the CGIT.

c] After the Presiding Officer, CGIT, Nagpur is appointed, notice in the appeal preferred by this petitioner shall be issued within four weeks of taking charge and the CGIT shall grant the returnable date in the matter within four weeks.

d] Thereafter, it shall decide the appeal under section 7-I within four months.

e] Needless to state, if the direction of depositing the amount is not complied with by the petitioner, there shall be no protection to the petitioner against the recovery of amount of Rs. 26,11,030/-.

[RAVINDRA V. GHUGE, J.]

VishalK/wp14848.21