

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4973 OF 2021

Kulgaon Badlapur Nagar Parishad .. Petitioner
Versus
The Regional Provident Fund
Commissioner II, Compliance III,
Regional Office, Thane .. Respondent

WITH

WRIT PETITION NO.7814 OF 2021

Bhiwandi Nizampur Municipal
Corporation .. Petitioner
Versus
The Regional Provident Fund
Commissioner II, Compliance III,
Regional Office, Thane .. Respondent

WITH

WRIT PETITION NO.7815 OF 2021

Ambarnath Municipal Council .. Petitioner
Versus
The Regional Provident Fund
Commissioner II, Compliance III,
Regional Office, Thane .. Respondent

...

Mr. Shailesh Naidu i/b Aumkar V. Joshi for the petitioner.
Mr. Suresh Kumar with Krunali Satra for respondent.

CORAM: RAVINDRA V. GHUGE, J.
DATED : 22nd FEBRUARY, 2022

P.C:-

1 These three petitions involve three Municipal Councils who are identically placed. Each one of them had received the summons u/s.7-A of the EPF & MP Act, 1952 (hereinafter referred to as 'the PF Act'). Each one participated in the 7-A enquiry and suffered an order of assessment. Vide Section 7-A assessment orders, each one was directed to deposit the assessed amounts within 15 days from the date of the orders. Pursuant to the expiry of the period of 15 days, each one suffered coercive action u/s.8F and the PF authorities recovered the entire amounts by freezing the bank accounts of these petitioners and by directing the banks to remit the said amounts in the account of the PF authority.

2 These petitioners have prayed for quashing of the action initiated u/s.8F and have accordingly, amended their petitions and have added identical prayer clause (c-1) and (c-2), except that the account numbers and figures of the amounts are different. For the sake of brevity, prayer clause (c-1) and (c-2) in the first petition is reproduced herein :-

(c-1) That pending hearing and final disposal of the present Petition this Hon'ble Court be pleased to direct the Respondents to forthwith lift/raise the attachment levied on the bank accounts of Petitioner being account number 0215201005460, 0215201005460, 0215201001062 in

Canara Bank, Badlapur West, Opp. Railway Station Branch and all other Accounts attached without notice to Petitioner;

(c-2) That pending hearing and final disposal of the present Petition this Hon'ble Court be pleased to direct the Respondents to forthwith restore/refund the amount of Rs. 1,10,27,923.46/- by tendering a Demand Draft for the said sum in favour of the Petitioner or in the alternate by electronically transferring the said amount to the Petitioner's bank Account No. 0215201001062 maintained with Canara bank, Badlapur West, Opp. Railway Station Branch (IFSC Code No. CNRB00215).

3 In these petitions, the petitioners are aggrieved by the time duration fixed by the authority dealing with Section 7-A enquiry, by reducing the Appeal period for the purpose of forceful recovery of the assessed amounts. Only 15 days time was granted by the Provident Fund authorities to these petitioners to deposit the entire amount, failing which the PF authorities would recover the said amounts. There is no dispute that the Appeal period is of 60 days and if a delay is caused in preferring the Appeal u/s.7-I along with an Application u/s.7-0, the Appellate Tribunal can condone the delay upto 60 days. [Rule 7(2) of the E.P.F. Appellate Tribunal (Procedure) Rules, 1997].

4 By imposing a condition of depositing the amount within fifteen days and as these petitioners failed to deposit the

entire assessed amounts within the said period, the respondent authorities exercised powers under Section 8-F and recovered the entire amounts by freezing the bank accounts of the petitioners. It is in this backdrop that this Court had passed an order on 29/1/2021 which reads as under :-

“Heard learned counsel for the petitioner. Learned counsel for respondents nos.1 and 2 seeks further time to the affidavit-in-reply. It is pointed out by Shri Naidu that the impugned order has been partly implemented as reflected from the order of this Court dated 08/01/2021. His concern is that if the amount which has been recovered is appropriated, it will lead to further complications. In this view, the respondents are directed to retain the amount which has been recovered in no lien and interest bearing account.

The Petition is listed on 01/03/2021.”

5 The issue raised in these petitions is no longer *res integra* in view of the order delivered on 13/6/2019 by the learned Division Bench of this Court in Writ Petition No.992/2018 filed by Mangal Keshav Securities Ltd Vs. Assistant Provident Fund Commissioner, Mumbai. It would be apposite to reproduce paragraph nos.3 to 6 of the order hereunder :-

“3. Brief facts are as under :

The Petitioner is a limited company and its establishment is covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (“the Act” for short). The Respondent issued summons dated 8th April, 2014 with respect to the Petitioner's deposit of provident

fund dues of the employees for the period during October 2008 to October 2011. The Petitioner responded to such notice and appeared before the said authority. It is not necessary to go into the details of the proceedings before the said authority in connection with the said notice. Suffice it to record, the said authority passed an order on 7th April, 2016 holding that the Petitioner was late in depositing some of the provident fund dues, both the employer as well as employee's contribution. He therefore, raised a demand of said sum of Rs.22,23,281/-.

4. The said order passed by the competent authority is appealable before the Provident Fund Tribunal under Section 7I of the Act. The period of limitation prescribed for filing such appeal is 60 days. Long before this period of limitation was over, the Respondent on 18th April, 2016 withdraw the entire amount of Rs.22,23,281 from the Petitioner's bank account maintained with HDFC Bank. This Provident Fund Commissioner did by directly corresponding with the bank.

5. The Petitioner filed an Appeal against the order of the Respondent before the Tribunal on or around 12th May, 2016, thus within a period of limitation prescribed. The Petitioner also prayed for stay of the impugned order. The Tribunal passed an order on 17th May, 2016 which reads as under :-

“Case file put up today at camp court Mumbai on the request on behalf of appellant. Present appeal filed by appellant under section 7-1 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952(hereinafter shall be referred as 'the Act') against the order dated 07-04-2016 (in short 'impugned order') passed by the Respondent u/s 14-B & 7Q of the Act. At this stage, counsel for appellant requested for stay of operation of

impugned order on the ground that statutory dues with regard to fixed salary was paid and revised salary was approved by competent authority thereafter arrears of wages were paid within time so there is no delay in payment of statutory dues. Considering the contents of impugned order and facts that present case pertains to revision of wages/allowances and manner of assessment of damages and interest, operation of impugned order stayed till further order. Now come upon 20-09-2016 for filing counter reply on behalf of Respondent before EPFAT, Delhi”.

3. The grievance of the Petitioner is that the Respondent executed its order in hot haste. Respondent did not wait for completion of the period of limitation, nor communicated to the Petitioner his intention of withdrawing the decretal amount from the Petitioner's bank account.

3. Learned Counsel for the Respondent raised principally two contentions. Firstly, according to him, Respondent had power to make recovery and secondly, in any case, the Petitioner could have requested the Tribunal for refund, which it had not done.

4. The facts of the case are rather glaring. Respondent had passed an order raising provident fund demand from the Petitioner on 7th April, 2016. Within just over a week thereafter, Respondent recovered the entire amount from the Petitioner's bank account through garnisee order. Respondent did not give notice to the Petitioner to pay up such amount within reasonable time. Respondent did not give advance notice to the Petitioner communicating his intention to cause such recovery. Respondent did not even wait for limitation period to be over.

5. We do not dispute that Respondent has the power to make coercive recovery of unpaid provident fund dues. However, no such recovery can be made in such highhanded fashion. When the Statute provides for a period of limitation to an aggrieved party, the Respondent cannot make such Appeal negatory by implementing its own order within shortest possible time by directly and unilaterally making recovery from the Petitioner's bank account. Firstly, no extra ordinary circumstances are pointed out to us to enable the Respondent to do so. Secondly, such strong and extra ordinary powers of garnishee recovery must be exercised with due care and caution. Unless and until it is pointed out that but for such action, Petitioner would have diverted its fund lying in the bank account to frustrate recovery of the bank amount, such powers in any case could not have been exercised within a span of 11 days. Looked from any angle, the action of the Respondent is high handed, arbitrary and unreasonable.

6. As noted, subsequently when the Petitioner filed Appeal before the Tribunal, the Tribunal found prima facie merit in such appeal. The Tribunal was persuaded to stay the order of the competent authority. Before the Tribunal, petitioner pointed out that there is no delay in depositing provident fund dues. A portion of pay of the employers was approved by the authority later. As soon as the same was cleared, the Petitioner had deposited provident fund dues within the statutory period. This contention of the Petitioner has found prima facie favour with the Tribunal. The Tribunal has therefore, granted stay against the impugned order. The Tribunal's order has been

frustrated by the arbitrary action of the Respondent. Under the circumstances, action of the Respondent in recovering amount of Rs.22,23,281/- from Petitioner's bank account is declared as illegal. Respondent shall refund such sum latest by 25th June, 2019”.

6 The learned Advocate representing the Provident Fund Authorities, notwithstanding the above order, strenuously supports the impugned order, on instructions. He further submits that the PF Authority dealing with Section 7A applications invariably passes orders directing the assessee to deposit the assessed amounts within a particular period and such period is invariably between two weeks to three weeks.

7 I find that the PF authorities either have not gone through the order delivered by the learned Division Bench reproduced above, or do not intend to follow the rule of law in such matters. The learned Division Bench has concluded that the action of the respondent looked at from any angle is high-handed, arbitrary and unreasonable. It is also concluded that they have to wait for the limitation period to be over.

8 There is a purpose behind prescribing a limitation period to prefer an Appeal, by way of a statutory provision under any enactment. It is a period which is rightfully allocated to the aggrieved party to prefer an Appeal or such proceedings, as are statutorily permitted, before the superior forum. This period is at

the disposal of the aggrieved party. Being a statutory period, neither can any authority curtail the said period, nor can an authority act to the prejudice of the aggrieved party during the Appeal period so as to frustrate the appeal. The Scheme under the PF Act enables the aggrieved party to approach the Appellate PF Tribunal by preferring an Appeal u/s.7I. Along with the Appeal, an application u/s.7O seeking reduction of the deposit of 75% of the assessed amount or waiver of the deposit can be sought. The Appeal u/s.7I is considered after the assessee deposits 75% of the amount. It is only u/s.70 that the amount could be reduced or waived. The action of the authority dealing with Section 7-A proceeding in recovering the entire amount assessed u/s.7A before the aggrieved party could file an Appeal, and that too, within the limitation period, is apparently an arbitrary action which cannot be countenanced.

9 In view of the above, these Petitions are allowed with the following directions :-

- (a) The respondent Provident Fund Authorities shall refund 50% of the amount, as has been recovered u/s.8F to these petitioners on or before 21/3/2022. There shall be no request for extension of time.
- (b) The respondents are ordered that henceforth, in any matters u/s.7A, there shall be no order directing the assessee to deposit the amount within the appeal period since it creates an embargo

on the rights of the assessee to avail of the remedies permissible under the EPF and MP Act, 1952.

(c) The respondent authorities are hereby directed that henceforth in all matters u/s.7A Assessment, steps u/s.8F shall not be initiated until the Appeal period as prescribed u/s.7-I is exhausted.

(d) The 50% amount along with accrued interest, if any, that would remain with the PF authorities in terms of the order dated 29/1/2021, shall be subject to the result of the Section 7B proceedings and in the event of the applications u/s.7B being rejected, the said amounts would be subject matter of orders being sought by the assessee u/s.7-O, if an Appeal u/s.7-I has been filed.

10 The learned Registrar (Judicial) is directed to circulate this order to all the Regional Provident Fund Commissioners in India and the directions should be followed scrupulously.

11 No order as to costs.

RAVINDRA V. GHUGE, J