IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3756 OF 2022

M/s. Metric Consultancy Limited ..Petitioner
vs.
The Assistant Provident Fund Commissioner and anr. ..Respondents

Mr. Aumkar V. Joshi, for petitioner.
Ms. S.V. Bharucha, for Respondent.
Dr.Ameeta Deshmukh- Managing Director and Mr. Shrinivas Dharmadhikari- Director of the petitioner present.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 27, 2022

P.C. :

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The order impugned in this petition filed under Article 227 of the Constitution of India is passed under section 7B of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the said Act"). Pursuant to the enquiry held under section 7A of the said Act against the petitioner, the Assistant Provident Fund Commissioner assessed the provident fund dues for the period from June

2010 to June 2015 at Rs.88,56,354/-. Being aggrieved by the said order dated 06/08/2021, the petitioner filed a review application before the Assistant Provident Fund Commissioner under section 7B of the said Act. The review application is dismissed.

3. Learned counsel for the petitioner submitted that the impugned order passed under section 7A of the said Act is completely contrary to the records as wrong finding is recorded that matter was listed on 86 occasions. It is his submission that on as many as 12 dates fixed for hearing, the petitioners have attended 8 hearings. According to him, the petitioners co-operated with the Provident Fund authorities. It is however mainly his contention that the petitioner was not heard when the review application under section 7B was decided by learned Commissioner. Learned counsel for the petitioners submitted that the order passed under section 7B of the said Act is without hearing the petitioner and in breach of the provisions of the natural justice, nonetheless, to show the bonafides of the petitioner, the petitioner- Dr.Ameeta Deshmukh- Managing Director

and Mr. Shrinivas Dharmadhikari- Director of the petitioner who are present in the Court today, have instructed him that they will deposit a sum of Rs.15,00,000/- within four weeks from today with the Regional Provident Fund Commissioner-II (Legal) having office at Employees Provident Fund Organization, Regional Office, Pune Cantonment Board Building, Golibar Maidan, Pune-411001.

4. Learned counsel for the respondents vehemently opposed the petition. It is the submission of the learned counsel that the petitioner is only delaying the matter one way or the other. She further submitted that the petitioner had not co-operated with the authorities in the enquiry held under section 7A of the said Act. It is submitted that every possible opportunity is given to the petitioner to contest the proceeding in the 7A enquiry. She further submits that all the documents are given. It is submitted that the review application filed by the petitioner was not tenable as the petitioner had not produced any new point or evidence along with review application and therefore the authority has rightly rejected the application. In her

submission, in any case, unless and until the petitioner deposits the entire amount as determined in 7A enquiry, the present petition should not be entertained.

5. I have gone through the impugned order. Learned counsel for the petitioner relied upon the decision of this Court (Nagpur Bench) dated 27/08/2008 in Writ Petition No.1002 of 2008 in the case of Shri Gajanan Maharaj Sansthan Shegaon Vs. Regional Provident Fund Commissioner, where this Court remanded the matter back to the Regional Provident Fund Commissioner on the ground that the authority had not heard the petitioner while deciding the review application under section 7B. It is further observed that there has to be an adjudication of the review petition. It presupposes the hearing of the review petition.

6. Admittedly, in the present case, the petitioner was not given oral hearing. In this view of the matter, the impugned order passed under section 7B of the said Act dated 29/10/2021 is set aside.

7. The matter is remanded to the Assistant Provident

Fund Commissioner, Pune for considering the review application filed by the petitioner afresh and after giving them an opportunity of oral hearing.

8. The petitioner to co-operate.

9. The petitioner shall remain present before the Assistant Provident Fund Commissioner, Pune on 09/11/2022 at 11.00 a.m. when Assistant Provident Fund Commissioner, Pune may fix further schedule of hearing. This shall however be subject to the petitioner depositing a sum of Rs.15,00,000/- with the Assistant Provident Fund Commissioner, Pune within a period of 4 weeks from today.

10. Statement of the petitioners that they will deposit a sum of Rs. 15,00,000/- within 4 weeks from today is accepted. 11. It is made clear that in the event review petition is allowed and decided in favour of the petitioner, the deposit so made shall forthwith be refunded to the petitioner.

12. The review petition to be decided on its own merits in accordance with law.

13. The writ petition is disposed of.

(M. S. KARNIK, J.)