

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7773 OF 2021

S/w Bindhyachal Bajpayee Memorial Trust ... Petitioners
Thr. Chairman Harendra Kumar Bajpayee
and anr.

vs.

Union of India thr. Secretary and ors ... Respondents

WITH

WRIT PETITION NO. 2679 OF 2021

M/s. Deccan Management Consultants ... Petitioner
Finishing School skill Foundation

vs.

Union of India thr. Secretary and ors ... Respondents

WITH

WRIT PETITION NO. 2682 OF 2021

M/s Yashaswi Academy for skills ... Petitioner

vs.

Union of India thr. Secretary and ors ... Respondents

WITH

WRIT PETITION NO. 2681 OF 2021

Yuvashakti Foundation ... Petitioner

vs.

Union of India thr. Secretary and ors ... Respondents

WITH

WRIT PETITION NO. 3442 OF 2021

Cummins India Limited ... Petitioner

vs.

Union of India thr. Secretary and ors ... Respondents

WITH
WRIT PETITION (ST) NO. 13829 OF 2021

BSA Corporation Ltd ... Petitioner

vs.

Union of India thr. Secretary and ors ... Respondents

Mr. Pralhad Paranjape a/w M.A. Parab, Mr. Nitesh Gupta i/b Vidhat Legal for the Petitioners in WP/7773/2021.

Mr. Kiran Bapat i/b M/s. Desai & Desai Associates for the Petitioner in WP/2679/2021, WP/2682/2021, WP/2681/2021.

Mr. Varun Joshi a/w Rama Somani i/b Mr. Chetan Alai for the Petitioner in WP/3442/2021.

Mr. Kiran Bapat i/b Mr. Jayesh Desai for the Petitioner in WP(St)/13829/2021.

Mr. D.P. Singh for Respondent No. 1 (UOI).

Mr. Suresh Kumar for Respondent No. 3 in WP(St)/13829/2021 and Respondent No. 4 in WP/7773/2021.

**CORAM : S.V. GANGAPURWALA, ACJ. &
S. G. CHAPALGAONKAR, J.**

DATED : 16 DECEMBER, 2022

P.C. :-

1. Learned counsel for the parties refer to order of the Division Bench of this Court dated April 26, 2022 in Writ Petition No.3918 of 2022.

2. It is submitted that the petitioners would be similarly situated as far as raising dispute with the Provident Fund

Office is concerned.

3. The Division Bench of this Court in its order dated April 26, 2022 in Writ Petition No.3918 of 2022 has observed thus ;

“9. The statutory intent appearing from section 7A(1) (a & b) read with sub-section (3) as well as the other provisions is clear. Section 7A is a complete code in itself which begins with the procedure for a determination of the points covered by clauses (a) and (b) as to whether the provisions of the PF Act is applicable to an establishment and if so, any amount is due from any employer thereunder. If any dispute arises regarding the applicability of the PF Act to any establishment, such a point has to be raised at the first instance before the relevant Provident Fund Commissioner and it is the statutory duty of such Commissioner to decide the dispute as to applicability of the PF Act to an establishment. While determining such point, the Commissioner has powers akin to a civil court as encapsulated in clauses (a) to (d) of clause (2). In course of proceedings, the right of the employer is amply protected. The statutory mandate of sub-section (3) is that the employer has to be given a reasonable opportunity of representing his case. Sub-sections (3A) and (4) provide how the proceedings are to be carried forward once there is, inter alia, a determination that the provisions of the PF Act apply to an establishment.

10. This being the statutory scheme, what we find in the present case is that without even raising the point before the relevant Provident Fund Commissioner who has issued the summons dated 1 st October 2019 that a decision ought to be given by him on the applicability of the PF Act to the establishment, the petitioning company has rushed to this Court. At this stage, no legal right of the petitioning company can be said to have been affected. Unless there is a legally protected right which is

*judicially enforceable and such right is shown to have been clearly abrogated, the writ courts do not interfere. The Supreme Court in its decision in **Union of India vs. Kunisetty Satyanarayana**, reported in AIR 2007 SC 906, has held that ordinarily no writ lies at the stage of show-cause or charge-sheet, because a mere show-cause or charge-sheet does not infringe the right of the noticee or the person charged. Although such decision arose out of a service matter, the observations in paragraphs 14 and 15 thereof have relevance to any matter concerning a challenge to a summons by which a party is invited to participate in proceedings drawn up against it. Pertinently, the jurisdiction of the relevant Provident Fund Commissioner to issue the summons is not challenged; hence, it is not a case of an action initiated without jurisdiction.*

11. It is true that this Court has received similar writ petitions and has passed interim orders on it. However, none of the orders brought to our notice records any reason. Hence, we do not feel bound by such orders.

12. It is always open to the petitioning company to appear before the relevant Provident Fund Commissioner and to impress upon him by raising all contentions that are available to it in law for returning a finding in its favour that the PF Act does not apply to it. One never knows, the relevant Provident Fund Commissioner may even rule in favour of the petitioner. However, in view of the statutory mandate, the relevant Provident Fund Commissioner has to decide the dispute regrading applicability of the PF Act at the first instance whereafter any other remedy provided by law may be pursued. We see no reason to entertain this writ petition, and uphold the objection raised by Ms. Bharucha that the writ petition is premature.

13. We grant the petitioning company a fortnight's time to raise a dispute before the relevant Provident Fund Commissioner with regard to the applicability of the PF Act to it. It is, however, made abundantly clear

that if, at all, the petitioning company raises such a dispute, the relevant Provident Fund Commissioner shall proceed to decide such dispute, as raised by the petitioner, without in any way being influenced by the letter dated 4th September 2018 referred to above. An appropriate determination may be made accordance with law.”

4. In the light of the above, we also follow the same course.
5. The present Writ Petitions are disposed of in terms of order dated April 26, 2022 in Writ Petition No.3918 of 2022.
6. All contentions on merits of the parties are expressly left open.

(S. G. CHAPALGAONKAR, J.) (ACTING CHIEF JUSTICE.)