IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7471 OF 2021

Municipal Corporation Kalyan Dombivli, Through Municipal Commissioner.]	…	Petitioner

Vs.

Regional Provident Fund Commissioner-II.]	…	Respondent

…

Mr. S.K. Talsania, senior counsel i/b Mr. A.S. Rao for the petitioner.

Mr. Suresh Kumar with Ms. Krunali Satra for the respondent.

…

CORAM : RAVINDRA V. GHUGE, J.

DATED : 16TH FEBRUARY, 2022.

P.C. :-

1. In this petition, the petitioner is the Municipal Corporation for the city of Kalyan-Dombivli. The prayers put forth by the petitioner in paragraphs (a) and (b) read as under:

"a) This Hon'ble Court be pleased to issue writ of

mandamus or any other appropriate writ, order or direction in the like nature under Article 226 & 227 of the Constitution of India, quashing and setting the impugned order dt. 03/09/2021 passed by the C.G.I.T.-1 Mumbai.

b) The Hon'ble Court will be pleased to call for the records and proceedings of the APPEAL NO.CGIT-1/EPFA/MISC/37(W) and 37(S) OF 2020 DT. 03/09/2021 and upon perusing the same will be pleased to quash and set aside the impugned order dt. 03/09/2021 directing the petitioner to deposit 40% of the Assessed amount as a condition precedent for entertaining Appeal of the petitioner."

2. I have considered the strenuous submissions of Mr. Talsania, the learned senior counsel along with Mr. Rao appearing on behalf of the petitioner-Corporation and the learned standing counsel for the respondent.

3. Considering the peculiar facts and circumstances of this case, I am passing an equitable order, which would protect the interest of the petitioner as well as the Provident Fund Authorities, keeping in view that the issue involved is under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, **"the 1952 Act"**), a beneficial piece of legislation.

4. The gamut of the dispute is that the petitioner is aggrieved by the directions of the Provident Fund Appellate Tribunal, which is C.G.I.T.-1, Mumbai dated 03/09/2021, by which, the petitioner is directed to deposit 40% of the amount assessed under Section 7-

A. The impugned order has been passed under Section 7-O in an appeal filed under Section 7-I of the 1952 Act.

5. The competent authority has ordered a recovery of Rs.110,07,47,838/- for the period January, 2011 to November, 2015, under Section 7-A.

6. The learned senior counsel for the petitioner has strenuously conveyed to the court as regards the weak financial condition of the petitioner-Corporation. At the same time, he submits on instructions, that the contractors who have deployed the contract labourers with the Corporation, are duty bound to pay the Provident Fund contribution of the contract labourers. He is aware of the duties of the employers as set out in paragraph No.36 of the Employees Provident Fund Scheme, 1952, which mandates an employer to maintain documents, on regular basis, pertaining to contract labourers and it's own employees as well.

7. It is well settled that while passing an order under Section 7-O, which vests discretion/discretionary power in the appellate tribunal, it can reduce the deposit from 75% to such percentage as it thinks appropriate or even grant a waiver of deposit. The appellate tribunal has already exercised it's discretion and has directed 40% of the assessed amount to be deposited by the petitioner-Corporation. The said amount is somewhere around Rs.45 crores.

8. The contention of the petitioner-Corporation is that a list of contractors along with their addresses was supplied to the respondent-authority. Tendering the list of contractors is not enough. The list of contractors must be accompanied with their detailed addresses, contact numbers, e-mail addresses and the person, who would represent the contractors and would be the custodian of the documents. It is equally settled that after the end of the calendar month, the contractor has to deposit the entire documents pertaining to the number of contract labourers deployed, their attendance register, their pay register and the challans, by which their contributions were deposited with the Provident Fund Authority.

9. Apparently, the learned senior counsel for the petitioner is not able to make a statement as the petitioner-Corporation is doubtful as to whether it performed it’s duty of collecting such documents from the contractors, after the end of each calendar month.

10. In these peculiar circumstances, expecting the appellate tribunal, which is vacant in the entire State of Maharashtra today, to perform the exercise of summoning the contractors, recording their statements, investigating into their documents and then draw a conclusion, would not be as fruitful as the authority under Section 7-A, exercising/performing these functions.

11. In view of the above, this petition is partly allowed with the following directions:-

(a) The impugned order passed by the appellate tribunal is modified by directing the petitioner-Corporation to deposit an amount of Rs.40 crores on or before 31/03/2022 with the respondent authority. There shall be no request for extension of time.

(b) If such amount is not deposited, the protection being granted by this court would stand vacated, without reference to the court on 01/04/2022.

(c) After compliance of the above, the petitioner-Corporation shall appear before the respondent on 05/04/2022 at 11.00 a.m. along with the following documents:-

(i) The entire list of contractors, who have deployed the contract labourers during the period for which the Section 7-A Enquiry was conducted, along with their addresses, telephone numbers, e-mail addresses and the authorized contact persons, who would represent these contractors.

(d) The respondent would then issue notices to these contractors and direct them to appear on a particular date. A legal representative is permitted.

(e) In the event of any contractors not being served by the notice of the respondent, within 45 days of the issuance of notice, these contractors would be served through substituted service by publishing the notice in a widely circulated *Marathi* newspaper in the jurisdiction of the petitioner-Corporation and the Corporation shall spend on publishing such notices.

(f) Within 30 days of appearance of these contractors, they shall submit their written statements along with documents pertaining to the contract labourers deployed, attendance register, wage register, provident fund contributions and the challans, by which the provident fund contributions were deposited.

(g) After affording reasonable opportunity of hearing to all the parties, the respondents would arrive at a fresh decision under Section 7-A and decide the liabilities of the contractors to pay the PF contributions, if the contractors have failed in paying the contributions.

(h) The entire exercise, stated above, shall be completed as expeditiously as possible and, in any case, on or before 15/09/2022.

(i) If, eventually the contractors don’t pay their respective Section 7-A outstanding amounts, the said amount shall be recovered from the principal employer, which is the Municipal Corporation.

12. In view of the above, the impugned order under Section 7-A will stand set aside. The pending appeal before the appellate authority, is disposed off.

13. As such, the Corporation would be released from the undertaking that is tendered earlier.

[RAVINDRA V. GHUGE, J.]