IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

32 WRIT PETITION NO.7791 OF 2017

MUNICIPAL COUNCIL VAIJAPUR THROUGH ITS
CHIEF OFFICER V D DAKE
VERSUS
THE REGIONAL PROVIDENT FUND COMMISSIONER
AURANGABAD AND ANOTHER

Mr. Yuvraj V. Kakde, Advocate for the Petitioner.
Mr.Nitin K. Chaudhari h/f. Mr. K.B. Chaudhary, for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : FEBRUARY 15, 2023.

PER COURT :

1. Heard.

2. By this Petition, the challenges is to the order dated 24.01.2017 passed under Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1950 and order passed of even date under Section 7-Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1950.

3. Heard the learned counsels appearing for the parties.

4. Learned Counsel for the petitioner submits that the impugned order has been passed without giving a fair opportunity to the Petitioner to place on record the correct calculations. He would submit that the damages under Section 14-B and the interest under Section 7-Q have been computed by the respondent-

Commissioner without taking into consideration the fact that the due amounts have been deposited within time and as such, the levy of the damages and interest is unwarranted. In support of his submission, he has furnished a copy of the chart detailing the challan details for the period January, 2011 to February, 2014.

5. Per contra, learned counsel appearing for the Respondent-Commissioner has invited the attention of this Court to the impugned order, wherein it has been recorded that on 28th December, 2016, the Assistant Accountant from the Municipal Council was present during the hearing and has admitted that the calculations of the Provident Fund Office is correct and he was ready to pay the amount. He would further urge that considering the admission by the Assistant Accountant, no fault can be found with the impugned order. He would further submit that along with the summons which are issued on 9th November, 2016 the calculations are also annexed and it is this calculation which has been admitted by the Assistant Accountant for the Municipal Council. In support of his submission that the inquiry contemplated under the provisions of Section 14-B and Section 7-Q, is a summary enquiry, reliance is placed on the decision of the Apex Court in the case of **Arcot Textile Mills Limited Vs. Regional Provident Fund Commissioner and Others,** reported in **(2013) 16 SCC.**

6. Considered the rival submissions of the parties.

7. At the outset, a query was posed to the learned counsel

for the petitioner as regards the alternative remedy which is available against an order passed under Section 14-B of the Employees Provident Fund Act, to which the learned counsel for the petitioner submits that as no opportunity of hearing was given, writ petition is maintainable. Perusal of the impugned order passed under Section 14-B shows that the submission is incorrect, inasmuch as the Assistant Accountant appeared for the establishment and has submitted his say and as such it cannot be said that no opportunity of being heard was given to the Petitioner.

8. However, in spite of the existence of the alternate remedy, since the petition impugns orders passed under Section 14-B as well as the order passed under Section 7-Q of the Act which are not appealable, the present petition is taken up for hearing. In this context it would be necessary to reproduce the provisions of Sections 7-Q and 14-B of the Act, which read as under:

> *“**7Q. Interest payable by the employer.—** The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:*
>
> *Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.*

> ***14B. Power to recover damages.—****Where an employer makes default in the payment of any contribution to the Fund the Pension Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:*
>
> *Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:*
>
> *Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme."*

9. Perusal of the sections aforesaid shows that these proceedings are independent proceedings and are not correlated with any proceeding under Section 7-A of the Act. The provisions

relating to Section 14-B are in respect of the damages for the delayed payment and the proceedings under Section 7-Q are in respect of the interest which is leviable on the delayed payment. Along with the summons the statement has been annexed which has been sent to the Municipal Council, which has not been disputed by the Assistant Accountant, who appeared for the Municipal Council and on the other hand he has admitted the calculations to be correct and has stated his readiness to pay the amount. The proceedings under Section 14-B are summary in nature and all that is required is computing the amounts by taking into consideration the date of payment and the due date on which it should have been made. Learned counsel for the petitioner submits that the calculations are faulty and seeks an opportunity to place the correct calculation.

10. In view of the specific admission which has been given by the Assistant Accountant of the Council that the calculations are correct, in my opinion, there is no interference warranted with the impugned order passed under Section 14-B of the Act.

11. As regards the order passed under Section 7-Q is concerned, the position is no less different and on the basis of the delayed payment the interest is calculated. In those proceedings the same position is recorded that the Assistant Accountant has appeared and admitted the calculations and has also shown his willingness to pay this amount. In the Petition, it is pleaded that due to general elections , the hearing could not be attended and

communication to that effect was sent to the Respondent Commissioner, however without considering the application, the Respondent proceeded to pass the impugned order.

12. The impugned order records the presence of the Assistant Accountant in the hearing scheduled on 28.12.2016 and the pleadings are contrary to the records. It appears that the Petitioner Council is unaware of the factual position and has impugned the order on the ground of non observance of principles of natural justice, which is unsustainable.

13. Considering the records, the submission of the learned Counsel for the Petitioner cannot be accepted. The payments are being directed on the basis of the calculations, which were admitted by the representative of the Council and it is now late in the day to contend otherwise. A perusal of the chart tendered by the Petitioner would *prima faice* show that for the period January, 2011 to February, 2014, the payments were made in the month of August, 2014. As such it cannot be stated that the payments were made on due date and there was no occasion to levy interest or damages.

14. For the reasons above, the Petition is devoid of merits and stands dismissed.

(SHARMILA U. DESHMUKH, J.)

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