

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1596 OF 2023

Solapur Municipal Corporation through ... Petitioner
Assistant Commissioner.

Versus

Regional Provident Fund Commissioner-II ... Respondents
and Anr.

Mr.Ramdas Hake Patil, for the Petitioner.
Mr.Suresh Kumar, for the Respondents .

CORAM: G. S. KULKARNI, J.

DATED: FEBRUARY 07, 2023

PC.

1. Heard learned Counsel for the parties. The challenge in this petition is to an order dated 26 August 2022 passed by the Regional Provident Fund Commissioner-II, EPFO, RO Solapur, whereby exercising powers under Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short '**the Act**'), the petitioner has been directed to deposit with the respondent an amount of Rs.1,44,72,085/- The operative part of the said order is required to be noted, which reads thus:-

"ORDER

I, Lalitesh Singh Nayak, Regional Provident Fund Commissioner-II, Regional Office, Solapur, in exercise of the powers conferred upon me by Section 7Q of the Act quantify the interest, to the tune of Rs.1,44,72,085/- (Rupees One Crore Forty Four Lakhs Seventy Two Thousand and Eighty Five only) at the above mentioned rates, for delay in remittance of dues for the period 01/2011 to 08/2021.

Particulars	A/C I	A/C II	A/C X	A/C XXI	A/C XXII	Total
Interest	4003552	1072589	8852776	532948	10220	14472085
Paid	0	0	0	0	0	0
Balance	4003552	1072589	8852776	532948	10220	14472085

The above dues must be paid by the employer in relation to the establishment within 15 days of receipt of this order failing which action will be taken in accordance with provisions of the Section 8B to 8G of the act.

This is without prejudice to any other action pending under various provisions of the Act for which the establishment has already rendered itself liable.

Issued under my hand & seal on 26th August 2022.”

2. The first contention as urged on behalf of the petitioner in assailing the impugned order is that the enquiry under Section 7A is pending, however, there are no averments to that effect in the petition. To make good such submission, the petitioner is not in a position to satisfy that there is a bar for the authority to exercise powers under 7Q of the Act and to pass orders thereunder, as impugned in the present petition.

3. However, learned Counsel for the petitioner, on instructions, has placed on record a communication addressed to him by the Commissioner of the petitioner, Solapur Municipal Corporation dated 2 February 2023 which is to the effect that without prejudice to the merits of the matter, the petitioner is willing to show its bonafides in paying the interest amount as demanded by the respondent as per the Schedule as set out in the said notice, which is to the effect that every month namely for the months of February, March, April, May, 2023, an amount of Rs.25,00,000/-, totalling to Rupees One crore shall be deposited with the respondent towards the demand in question. There is no mention in

respect of the balance amount. Learned Counsel for the petitioner submits that in respect of the balance amount, he would take instructions.

4. It is difficult to accept the contention as urged on behalf of the petitioner that for the amount which is due and payable for a period from January 2011 to August, 2021, the Municipal Corporation without any justifiable reasons can seek any such extension and certainly in that regard the explanation as set out in paragraph 4 of the petition, which is without any details, is not acceptable by any standard. Mere averments in the petition, without any material to support the financial crises cannot be accepted, that too to avoid the liability of the petitioner to make payment under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Thus, such justification not to deposit the amounts, is certainly untenable. There is no other contention as urged on behalf of the petitioner.

5. It is the absolute statutory liability of the petitioner to make payment of such amounts which the petitioner has defaulted and moreso there is no acceptable justification whatsoever to avoid the liability of making payment of such amount.

6. For the above reason, the petition is devoid of any merits. It is accordingly dismissed. It is, however, directed that the petitioner shall deposit the entire amount of demand i.e. an amount of Rs.1,44,72,085/- with the respondents, within a period of one month from today . There shall not be any further extension for any reasons. Ordered accordingly.

7. No costs.

(G. S. KULKARNI, J)