IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.11425 OF 2022

Sandesh Enterprises,
Through its Proprietor Sandesh Patil ...Petitioner
vs.
Union of India and Others ...Respondents

Mr. Chidambar Gavnekar a/w. Mr. Ashutosh Gavnekar and Mr. Rohit Parab, for the Petitioner.
Mr. Parag Vyas a/w. Ms. Karuna Yadav, for Union of India.
Mr. G.S. Hegde, Senior Advocate a/w. Ms. P.M. Bhansali, for CIDCO.
Mr. Gunjan Chaubey a/w. Mr. Vinay Kate, for Respondent No. 2.

CORAM : N. J. JAMADAR, J.
DATE : JUNE 12, 2023

ORAL ORDER

1. Heard the learned counsel for the parties.

2. A limited challenge in these petitions is to a prohibitory order dated 18th February, 2022 purported to be issued under section 8-F(3)(i) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (the Act, 1952) directing the Manager, Bank of Maharashtra, the banker of the petitioner, to pay a sum of Rs. 6,66,682/- to the Regional Provident Fund Commissioner and Recovery Officer, Regional Office, Vashi.

3. The petitioner is a contractor employed by respondent N. 4-City and Industrial Development Corporation of Maharashtra

Limited (CIDCO). In respect of certain works executed by the petitioner, CIDCO had fixed the wages and levies to be deducted from the wages of the labourers employed by the petitioner. Those amounts were remitted towards provident fund contribution as directed by CIDCO.

4. A proceeding was initiated under section 7A of the Act, 1952 for failure to remit the contribution in respect of the Special Allowance and Field Allowance paid to the employees. By an order dated 15th June, 2017, the Assistant P.F. Commissioner determined a sum of Rs. 6,66,682/- to be due and payable towards provident fund and allied charges for the period September, 2008 to December, 2013. The Assistant P.F. Commissioner, in the said order, held only respondent No. 4 CIDCO liable for not remitting the contribution towards Special Allowance and Field Allowances and thus responsible for assessment of dues under section 7A of the Act, 1952. Resultantly, respondent No. 4- CIDCO, the principal employer, was ordered to remit the aforesaid amount within 15 days of the said order.

5. It is the case of the petitioner that initially the recovery officer had proceeded to attach the account maintained by the

petitioner with Bank of Maharashtra. Pursuant to the representation made by the petitioner that the order under section 7A of the Act, 1952 was passed against the principal employer alone, vide communication dated 23rd December, 2019, the Branch Manager, Bank of Maharashtra was requested to de-refreeze the account.

6. By a fresh order dated 18th February, 2022 purportedly passed under section 8-F(3)(i) of the Act, 1952 the banker of the petitioner has again been directed to pay aforesaid amount. Since the order of determination is not passed against the petitioner and only the principal employer/ CIDCO is held liable for assessment of dues under section 7A of the Act, 1952, the petitioner could not have been proceeded against under section 8-F(3) of the Act, 1952, asserts the petitioner.

7. An affidavit in reply is filed on behalf of respondent No.4-CIDCO as well as respondent Nos. 1 to 3, the authorities under the Act, 1952. In view of the nature of the controversy, it may not necessary to delve deep into the contentions in the affidavits in reply, especially the larger issue as to whether respondent No.4-CIDCO is liable to remit the amount towards provident fund on the

premise that it is an exempted establishment. The said issue can be considered in the connected Petition (St.) No. 6164 of 2023 independently. It would be suffice to note the relevant contentions of respondent Nos. 1 to 3.

8. In the affidavit in reply filed on behalf of respondent Nos. 1 to 3, the impugned action is sought to be justified by asserting as under:-

> 11] I say that Petitioner is well aware the entire provision of EPF & MP Act, 1952 and Schemes, thereunder. It was expected that establishment would remit the proper dues as per provision. However, default has been reported against the establishment for long period.
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> 12] I say that 7A action initiated against the defaulter establishment i.e. M/s. Sandesh Enterprises for the period 06/2008 to 02/2011 and assessed the dues of Rs. 6,66,682/- by Assessing Officer.
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> 13] Being the principle Employer, CIDCO is also responsible for defaulter establishment engaged by its as per Section 8A of the EPF & MP Act, 1952. Hence, 7A Assessing Officer has held CIDCO responsible in its 7A order dated 15/06/2017.
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> 14] Dues assessed against M/s. Sandesh Enterprises can also be recovered from M/s. CIDCO under provision 8F(3) only to the limit of the money which is either due or can become due from M/s. CIDCO to M/s. Sandesh Enterprises. However, this provision does not restrict Recovery Officer from recovering dues from M/s. Sandesh Enterprises through other provisions of the EPF & MP Act and Scheme. Hence, M/s. Sandesh Enterprises Bank account was attached.

9. The learned counsel for the petitioner took the Court through

the orders passed by the Assistant P.F. Commissioner and recovery officer, and the impugned order. It was submitted that since the original determination has not been made against the petitioner, the petitioner's account could not have been directed to be freezed. Taking the Court through the provisions of section 7A and 8 of the Act, 1952 which provide the mode of recovery of the amount due and payable under Act, 1952, it was submitted that the impugned action is wholly unsustainable.

10. In opposition to this, the learned counsel for the respondent Nos. 1 to 3 submitted that the endevour of the respondents is to protect the interest of poor employees. In the case at hand, on one hand, the petitioner asserts that liability is not fastened on the petitioner and, on the other hand, respondent No. 4 CIDCO contends that it is an exempted establishment. The situation which thus obtains is that the poor employees are deprived of the benefits envisaged by the Act, 1952.

11. Learned counsel for respondents No. 1 to 3 further submitted that the authorities under the Act, 1952 can independently proceed against CIDCO as well. However, that does not exonerate the petitioner from the liability to make the contribution.

12. The aforesaid submission would have carried some substance had the determination order under section 7A of the Act, 1952 been passed against the petitioner as well. From the perusal of the order dated 15th June, 2017 passed by the Assistant P.F. Commissioner, it becomes abundantly clear that the Assistant P.F. Commissioner has categorically and at more than one places recorded that it is only the principal employer CIDCO, who was responsible for remitting the amount determined towards the provident fund and allied charges. The Assistant P.F. Commissioner has recorded the said finding after adverting to the provisions of the Act, 1952 as well as the submissions canvassed by the authorities. The legality and validity of the said order can be assailed in an appropriate proceeding. However, till the order subsists the determination would operate qua CIDCO alone.

13. The reliance sought to be placed on behalf of respondent Nos. 1 to 3 on the provisions contained in section 8-F of the Act, 1952 does not seem to advance the cause of respondent Nos. 1 to 3. Section 8 provides different modes of recovery of the money due from employer. Section 8F authorizes the officer to effect the recovery from the debtor of the employer. However, the liability of employer must first be determined before the debtor of the

employer can be proceeded against. In substance, section 8F is a machinery provision and the liability cannot be fastened thereunder unless it is determined under changing provision, i.e. sec. 7A of the Act, 1952.

14. In the case at hand, the order passed by the Assistant P.F. Commissioner under section 7A of the Act, 1952 plainly did not hold the petitioner liable to make the contribution towards the provident fund. In such a situation, unless it could be shown that the petitioner is the debtor of respondent No. 4 CIDCO, the recourse to the provisions contained in section 8F(3) of the Act, 1952 may not be justifiable. As noted above, it is the case of respondent Nos. 1 to 3 that the petitioner is also liable to remit the amount towards the provident fund. However, that is not the determination made by the Assistant P.F. Commissioner.

15. In the aforesaid view of the matter, the impugned prohibitory order dated 18th February, 2022 cannot be sustained. Resultantly, the petition deserves to be allowed.

Hence, the following order.

ORDER

1] The petition stands allowed in terms of prayer clauses (a) and (b).

2] It is hereby made clear that the observations hereinabove are confined to test the legality and validity of the order dated 18th February, 2022 and this Court has not entered into the question as to whether only respondent No. 4 CIDCO or the petitioner also is liable to pay the determined amount towards the provident fund.

3] Rule made absolute to the aforesaid extent.

4] There shall be nor order as to costs.

(N. J. JAMADAR, J.)