

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5377 OF 2023

J.M. Engineering

...Petitioner

vs.

Union of India and Others

...Respondents

Mr. Sanjay Shinde a/w. Mr. Prathamesh Bhanuwanshe, for the
Petitioner.

Ms. Shamiana Hussain i/b. Mr. Rakesh Sawant, for the
Respondents.

CORAM : N. J. JAMADAR, J.

DATE : JULY 04, 2023

P.C.:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order passed by the Regional Provident Fund Commissioner dated 31st May, 2022 under section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (Act, 1952) and further order dated 29th November, 2022 passed on an application for review of the said order under section 7B of the Act, 1952, whereby the application came to be rejected.
3. The learned counsel for the petitioner would urge that the Review Application came to be rejected without providing an opportunity of hearing to the petitioner. Attention of the Court was invited to the order dated 29th November, 2022 which indicates that

the Review Application was filed on 17th November, 2022 and it came to be decided by the order on 29th November, 2022.

4. In the concluding paragraph of the order dated 29th November, 2022 the Regional Provident Fund Commissioner has opined that since the Review Application had not been preferred within 45 days of the passing of the order dated 31st May, 2022, it was liable to be rejected.

5. The learned counsel for the petitioner submitted that the order dated 31st May, 2022 was not served on the petitioner and upon a grievance being raised by the petitioner, the said order came to be furnished to the petitioner along with a letter dated 12th October, 2022.

6. The learned counsel for the respondents countered the submissions on behalf of the petitioner. It was urged that the petitioner was provided an efficacious opportunity of hearing as the impugned order would indicate that the matter was adjourned on a number of occasions and the hearing lasted for over four years and therefore the Regional Provident Fund Commissioner was justified in rejecting the Review Application. An endeavour was also made to draw home the point that the petitioner had failed to make out a case for review within the parameters indicated in section 7B of the Act, 1952.

7. The question as to whether a case for review was made out could have been lawfully entered into and decided by the Regional Provident Fund Commissioner after providing an opportunity of hearing to the petitioner.

8. The challenge qua the impugned order dated 29th November, 2022 is primarily with regard to the decision making process. The learned counsel for the petitioner invited the attention of the Court to the judgment of this Court in the case of **Deogiri Nagari Sahakari Patsanstha Limited vs. Assistant Provident Fund Commissioner**¹ wherein after adverting to the previous pronouncement, this Court has enunciated that the review application must be decided after providing an opportunity of hearing to the petitioner.

9. In the aforesaid view of the matter, the impugned order dated 29th November, 2022 rejecting the application for review without providing an opportunity of hearing to the petitioner is clearly unsustainable. The petition thus deserves to be allowed.

Hence, the following order.

ORDER

1] The petition stands allowed.

2] The impugned order dated 29th November, 2022 rejecting the Review Application preferred under section 7B of the Act, 1952

¹ 2022 (1) Mh.L.J. 259.

stands quashed and set aside.

3] The Review Application stands restored to the file of Regional Provident Fund Commissioner.

4] The Regional Provident Fund Commissioner shall decide the Review Application afresh after providing an opportunity of hearing to the petitioner.

5] The petitioner shall appear before the Regional Provident Fund Commissioner on 17th July, 2023 and Regional Provident Fund Commissioner is requested to make an endeavour to decide the Review Application as expeditiously as possible.

6] It is hereby made clear that this Court has not entered into the merits of the matter especially the legality, propriety and correctness of the order dated 31st May, 2022 passed under section 7A of the Act, 1952. And all questions are kept open for consideration before the Provident Fund Commissioner.

(N. J. JAMADAR, J.)