



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 2764 of 2022

Morarjee Textiles Limited, through its Mr. Sharad Deshpande

Versus

The Regional Provident Fund Commissioner-II, Regional Office, Nagpur
and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri H.V.Thakur, Advocate for the petitioner.

Ms. Laxmi Malewar, Advocate for the respondent nos.
1 to 4.

CORAM : ANIL S. KILOR, J.

DATED : 17th OCTOBER, 2023.

Heard.

2. The order dated 31st December, 2021 directing the petitioner to pay sum of Rs.11,83,656/- and the order dated 2nd May, 2022 rejecting the review application under Section 7-B of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as 'Act, 1952') passed by the Regional Provident Fund Commissioner-II, Nagpur, are under challenge in this writ petition.

3. I have heard learned counsel for the respective parties.

4. Shri Thakur, learned counsel for the petitioner submits that the impugned order was passed under Section 7-A of the Act, 1952 vide order dated 31st December, 2021 and the review application also came to be dismissed vide order dated 2nd May, 2022. It is submitted that the amount directed to pay is in respect of some unidentified persons and the whole order is based on a report of the Inspection which has been considered as an evidence by the Commissioner. It is submitted that if any deposition of the Enforcement Officer was considered as evidence in that event the Commissioner ought to have granted an opportunity to the petitioner to cross-examine the Enforcement Officer as contemplated under Sub-Section 2 of Section 7-A of the Act, 1952. He therefore submits that in absence of such opportunity granted to the petitioner, the impugned order vitiates.

5. On the other hand, Ms. Laxmi Marlewar, learned counsel for the respondents submits that no application was ever made by the petitioner for cross-examination and as the Regional Provident Fund Commissioner is a quasi judicial authority, unless such a

request is made there is no question of granting any such opportunity to the petitioner.

6. It is submitted that the inquiry was initiated in the year 2014 and it was concluded in the year 2021 i.e. after about seven years for the reason that numerous opportunities were granted to the petitioner to file necessary documents and evidence which he failed to produce before the authority. She, therefore, submits that no error has been committed by the Commissioner in passing the impugned order.

7. In the light of rival contentions of the parties, I have perused the record and the impugned order.

8. From the record, it is evident that the Commissioner proceeded in the matter on the basis of Enforcement Officer's report dated 22nd December, 2021 and issued the direction to make the payment of Rs.11,83,656/-.

9. No doubt that the petitioner has not moved any application seeking permission to cross-examine the Enforcement Officer. However, the provision namely Sub-section 2 of Section 7A shows that there is a power to enforce the attendance of any person or examining him on oath; requiring the discovery and production of

documents; receiving evidence on affidavit; issuing commissions for the examination of witnesses.

10. It is a settled law merely stating that the statement of an officer is being utilised for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross-examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. (As held by the Hon'ble Supreme Court of India in the case of *Transmission Corporation of A.P. Ltd., and others Vs. Sri Rama Krishna Rice Mill.*¹)

11. In the circumstances as it is the case of the petitioner that the petitioner has been held liable to pay the amount in respect of certain persons who are not identified by the Commissioner, I am of the opinion that the petitioner shall get an opportunity to apply for cross-examination of the Enforcement Officer and the Regional Provident Fund Commissioner shall consider such application and shall decide the same in accordance with law.

12. Thus, I am of the opinion that the matter needs to be remanded back to the Regional Provident

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Fund Commissioner, Nagpur for deciding the matter afresh after giving such opportunity to the petitioner.

13. In that view of the matter, I pass the following order :

- i. Writ Petition is partly allowed.
- ii. The order dated 31st December, 2021 and order dated 2nd May, 2022 passed by the Regional Provident Fund Commissioner-II, Nagpur are hereby quashed and set aside.
- iii. The matter is remanded back to the Regional Provident Fund Commissioner-II, Nagpur for deciding the same with liberty to the petitioner to apply for cross-examination of Enforcement Officer. In case, the petitioner applies for cross-examination of the Enforcement Officer, the Regional Provident Fund Commissioner-II, Nagpur shall decide the application on its own merit.
- iv. The petitioner shall appear before the Regional Provident Fund Commissioner-II, Nagpur on **31st October, 2023** at 11 am and on the same day if the applicant desires to file such application for permission to cross-examine the Enforcement Officer, shall file the same.
- v. On filing such application, Commissioner shall decide the application within 10 days from the

date of filing of such application. If such opportunity is granted to cross-examine the Enforcement Officer that be completed within two weeks from the date of appearance and on conclusion of the cross-examination, if the petitioner desires to lead further evidence, the Commissioner may further grant an opportunity to the petitioner and decide the matter within four weeks thereafter.

[ANIL S. KILOR, J.]