IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8646 OF 2024

Vishal Enterprises ....Petitioner
V/S
Regional Provident Fund Commissioner-II ....Respondent

Ms. Samiksha Kanani a/w Ms. Prasanna Pawar *for the Petitioners.*
Mr. Ravi Rattesar *for Respondent.*

CORAM: SANDEEP V. MARNE, J.
DATE : 27 JUNE 2024.

P.C.:

1 The challenge in the Petition is to the order dated 15 May 2024 rejecting the Review Application filed by the Petitioner seeking review of the order dated 30 November 2023. It appears that although the main order passed under section 7A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (**the Act**) on 30 November 2023 as well as Corrigendum-II, dated 28 March 2024 is also challenged in the Petition. Ms. Kanani, the learned counsel appearing for the Petitioner has essentially restricted the challenge to the order dated 15 May 2024 passed under provisions of section 7B of the Act on Review Application. She relies upon judgment of this Court in ***Ashmit Motors Pvt. Ltd. Ahemadnagar vs. Assistant Provident Fund Commissioner, Nashik,*** 2017 1 Mh.L.J. 885 in support of her contention that

an opportunity of hearing must be afforded to the Revision Applicant before rejecting the Review Application.

2 I have gone through the judgment of this Court in ***Ashmit Motors Pvt. Ltd.*** (supra) in which this Court has held in paragraph 14 and 15 as under:

> "14. The thrust of Shri Chaudhary's submissions is that the officer receiving an application for review is only required to scrutinize the application and find out whether there is any ground for review and that no hearing is required. I do not find that the said submission could be entertained for the reason that the whole purpose of filing a review application is by way of an opportunity to the aggrieved party to make out a case that some material is discovered or an important document or piece of evidence, which could not be placed before the authority under section 7-A proceeding, despite due diligence, is now available and needs to be canvassed. Section 7-B(1) makes it abundantly clear that such material or evidence will have to be produced inasmuch as the review applicant will have to make out a mistake or error, apparent on the face of the record or for any other sufficient reason owing to which, the order at issue needs to be reviewed.
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> 15. If the submissions of Shri Chaudhary are to be accepted, it would mean that it will have to be left to the reviewing authority to scrutinize the application, refer to the record placed along with the review application and then pass an order rejecting an application for the reason that the reviewing authority is not satisfied. I find the said submissions to be unsustainable for the reason that the reasons for seeking review and the material placed will have to be canvassed by the parties so as to make out a sufficient ground or reason or cause for reviewing the order under section 7-A. This cannot be left to the reviewing authority alone to consider the application on the basis of the pleadings. A review applicant may not always be able to set out grounds for review in a manner so that a mere reading of the grounds would convince the reviewing authority. An opportunity to address the mind of the reviewing authority and canvass the importance and significance of the grounds for review and documents placed on record within the ambit of section 7-B(1), could be available only through a hearing of the party by the reviewing authority."

3 Thus in **Ashmit Motors Pvt. Ltd.** (supra) a view appears to be taken by this Court even where a Review Petition is to be rejected under section 7B of

the Act, an opportunity of hearing needs to be granted to the party to canvass the submissions in support of grounds taken in the Review Application.

4 It appears that before passing order dated 15 May 2024 no opportunity was granted to the Petitioner of being heard.

5 In view of the ratio of the judgment of this Court in ***Ashmit Motors Pvt. Ltd.*** (supra), Petitioner needs to be granted an opportunity of hearing before rejection of the Review Application. Accordingly the order dated 15 May 2024 is set aside. Petitioner shall appear before the Reviewing Authority on 1 July 2024 and obtain further directions with regard to fixation of date for hearing of the Review Application.

6 Needless to mention that Reviewing Authority shall consider the points canvassed by the Petitioner during the course of hearing of the Review Application before passing fresh order on the Review Application. It is clarified that this Court has not expressed opinion on any of the points raised in the Petition.

7 With the above directions, the Writ Petition is disposed of.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM
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Date: 2024.06.29 15:19:26 +0530