IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14332 OF 2024

M/s. Ace Constructions ....Petitioner
V/S
Regional Provident Fund
Commissioner-II & Anr. ....Respondents

Mr. S.C. Naidu a/w Mr. Niraj Prajapati a/w Ms. Divya Yajurvedi *for the Petitioners.*
Mr. Gunjan Chaubey *for Respondent No.1.*
Ms. Shehnaz V. Bharucha i/b Mr. A.A. Ansari *for Respondent No.2-UOI.*

CORAM: SANDEEP V. MARNE, J.
DATE : 17 OCTOBER 2024.

P.C.:

1. **Rule**. Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties Petition is taken up for final hearing and disposal.

2. This Writ Petition is being filed seeking following prayers:

> "(a) Issue a Writ of Certiorari or any other appropriate writ, direction or order in the nature of Certiorari quashing and setting aside the Second 7A Summons dated 26th February, 2021 issued to the Petitioner in respect of the period April 2014 to May, 2016 qua the Petitioner.

(b) Issue appropriate Writ of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India staying the Second 7A Summons proceedings or any order passed therein qua the Petitioner pending appointment of Member, EPFAT cum CGIT-1, Mumbai and for a period of four weeks therefrom.

(c) Ad-interim relief in terms of prayer clause (b).

(d) Any other/further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. It appears that the Petitioner has faced an order dated 5 November 2020 under provisions of section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**the Act**) under which the Assistant Provident Fund Commissioner has determined an amount of Rs.14,90,488/- against the Petitioner. It appears that shortly after passing of order dated 5 November 2020, the Assistant Provident Fund Commissioner issued summons for conduct of further enquiry under provisions of section 7-A of the Act for determination of dues with respect to salary wages of poor workers with respect to independently covered contractors.

4. Petitioner has filed an Appeal under provisions of section 7-I of the Act before the Central Government Industrial Tribunal No.1, Mumbai, (**CGIT-1**) which is registered as EPFA No.46 of 2021. In the Appeal the Appellant has challenged both the order dated 5

November 2020 as well as the summons issued on 26 February 2021. Thus permissibility to conduct further afresh enquiry under section 7-A of the Act by issuance of summons dated 26 February 2021 is subject matter of challenge before the Tribunal. It appears that in pursuance of the summons dated 26 February 2021, the enquiry has progressed and the Assistant Provident Fund Commissioner expected the Petitioner to produce various documents and records for determining further amounts against the Petitioner. It is Petitioner's case that all the records relating to its own employees as well as relating to the 16 uncovered contractors have already been produced before the authorities and that it does not have any further records. On 2 August 2024 the Regional Provident Fund Commissioner has issued summons threatening the Petitioner of issuance of arrest warrant as well as attachment of property on account of failure on its part to produce the required records. While in ordinary course Petitioner could have moved Central Government Industrial Tribunal No.1, Mumbai, and sought appropriate interim orders in pending EPFA No.46 of 2021, the present Petition is filed with a complaint that no Presiding Officer is available in CGIT-1, Mumbai, before whom Interim Application can be moved. Therefore the limited scope of present Petition is for seeking interim orders qua the fresh enquiry issued against the Petitioner vide summons dated 26 February 2021 during pendency of the Appeal.

5. I have heard Mr. Naidu, the learned counsel appearing for Petitioner, Mr. Chaubey, the learned counsel appearing for Respondent No.1-RPFC and Ms. Bharucha, the learned counsel appearing for Respondent No.2-UOI.

6. After having considered the submissions canvassed by the learned counsel appearing for parties, it appears that by order dated 5 November 2020, the Assistant Provident Fund Commissioner has already determined liability under section 7-A of the Act at Rs.14,90,488/- against the Petitioner. During the course of enquiry, the Assistant Provident Fund Commissioner found that the Petitioner has utilized services of workers through 20 contractors out of whom four contractors are already covered under the Act. Accordingly, Assistant Provident Fund Commissioner has decided to conduct independent and separate enquiry qua the workers of the said four covered contractors. The expression used to describe the said four contractors by the Assistant Provident Fund Commissioner in the order dated 5 November 2020 is 'independently covered contractors'. The operative portion of the order dated 5 November 2020 reads thus:

> "I, Durgesh Kumar, Assistant Provident Fund Commissioner, in exercise of the powers conferred on me under Section7-A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 having regard to the facts of the case/documents available in the records, rule provisions and analysis of facts vis-a-vis rule hereby determine an amount of

> **Rs.14,90,488/- (Rs. Fourteen Lakhs Ninety thousand four hundred eighty eight only**) deposed in the deposition by the Enforcement Officer due and payable from the establishment **M/s. Ace Constructions, P.F. code no.TH/THA/1106689** for the period from **04/2014 to 05/2016** in accordance with the provisions of the Act and the Schemes framed there under and it is further ordered to initiate a fresh enquiry under the section against the establishment for determination of dues with respect to salary wages of the poor workers with respect to independently covered contractors for the period.
>
> Any escaped amount shall be determined Under Section 7 C of the EPF & MP Act, 1952. The amount assessed under this order is exclusive of penal damages, interest leviable under Sec. 14B and 7Q of the Act."

7. Thus after determining the liability under section 7-A of the Act against Petitioner, the Assistant Provident Fund Commissioner has further ordered to initiate a 'fresh enquiry' under section 7-A of the Act against the establishment for determination of dues with respect to salary wages of the poor workers with reference to 'independently covered contractors'. *Prima facie* therefore there appears to be contradiction in the findings recorded by the Assistant Provident Fund Commissioner where he proposed to conduct a separate inspection against the four 'independently covered contractors' and to fasten liability under section 7-A of the Act against that, and directing of afresh enquiry against Petitioner establishment qua the workers of such 'independently covered contractors'.

8. Perusal of the summons dated 26 February 2021 shows that further enquiry is directed against in respect of workers of 'independently covered contractors'. This is clear from the first recital of the summons dated 26 February 2021, which reads thus:

> "Whereas a separate hearing for determination of dues with respect to salary wages of the poor workers with respect to independently covered contractors as per 7A order dated 05/11/2020 thereof, **M/s. Ace Constructions** bearing PF Code No.MH/1106689 has failed to produce the records of contractual employees for inspection **from Apr 2014 to May 2016**."

9. After stating in the first recital of summons dated 26 February 2021 that the Assistant Provident Funds Commissioner wanted to conduct fresh enquiry under section 7A of the Act in respect of 'independently covered contractors', it appears that the second recital talks of determination of dues in respect to 'remaining contractual employees and difference of wages with respect to own employees whose records were not verified'. The second recital to summons dated 26 February 2021 reads thus:

> "And, whereas in accordance with section 7A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 **to summon you to determine the dues with respect to remaining contractual employees and difference of wages with respect to own employees whose records were not verified as the establishment had failed to produce these documents to ascertain its actual liability for the said period** under the provisions of the Employees Provident Fund & Miscellaneous Provisions Act, 1952, the Family Pension Fund Scheme 1971 and Employees Deposit Linked Insurance Scheme 1976. It is desired to give you a reasonable opportunity of representing your case."

10. *Thus prima facie* there appears to be several contradictions in the action initiated by the Assistant Provident Fund Commissioner, which are as under:

i) It has directed to conduct of separate inspection qua the four 'independently covered contractors' but wants to conduct a fresh enquiry against Petitioner establishment in respect of the workers of the said four 'independently covered contractors'.

ii) While the summons dated 26 February 2021 was sought to be issued in view ordering of fresh enquiry as envisaged in the operative portion of order dated 5 November 2020 which was supposed to be conducted only in respect of the workers of 'independently covered contractors', the summons envisage conduct of such enquiry in respect of 'remaining contractual employees' as well as 'difference of wages with respect to own employees'."

11. *Prima facie* therefore, initiation of fresh enquiry vide summons dated 26 February 2021 appears to erroneous. Therefore, Petitioner deserves to be protected by way of an interim order on conduct of any enquiry in pursuance of summons dated 26 February 2021 during pendency of EPFA No.46 of 2021.

12. The Petition accordingly succeeds and I proceed to pass following order:

O R D E R

i) During pendency of EPFA No.46 of 2021 filed before Central Government Industrial Tribunal-1, Mumbai, Respondent No.1 is restrained from conducting any enquiry in pursuance of summons dated 26 February 2021.

ii) EPFA No.46 of 2021 shall be decided by the Tribunal on its own merits, without being influenced by any of the observations made in the present order.

13. With the above observations, the Writ Petition is allowed. Rule is made absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM

Digitally signed by SUDARSHAN RAJALINGAM KATKAM Date: 2024.10.19 11:42:36 +0530