IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17354 OF 2024

General Mills India Private Limited & Anr. ....Petitioners
V/S
Regional Provident Fund Commissioner-II
& Ors. ....Respondents

Mr. Sanjay Ghose, Senior Advocate a/w Mr. Rohan Mandal, Mr. Jeevan B. Panda, Ms. Jyoti Sinha, Ms. Yashasvi Kanodia i/b M/s. Khaitan & Co. *for the Petitioners.*
Ms. Shehnaz V. Bharucha *for Respondent Nos.1 to 4.*
Ms. Purnima Awasthi *for Respondent No.5/UOI.*

CORAM: SANDEEP V. MARNE, J.
DATE : 18 DECEMBER 2024.

P.C.:

1. The Petition challenges summons issued to the Petitioners on 16 September 2024 in connection with enquiry initiated under provisions of section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (**the Act**) in respect of the period from September 2008 to December 2019. It appears that previously instituted Petition questioning initiation of proceedings under section 7A of the Act came to be withdrawn by the Petitioner as it believed that the entire issue was being put to an end by the Employees' Provident Fund Office (**EPFO**). At this juncture it is not necessary to delve deeper into the circumstances in which the previous Petition was withdrawn.

2. It appears that the Petitioner filed an application on 5 August 2000 seeking exemption under the provisions of section 17 of the Act read with paragraph 27 of the Employees Provident Fund Scheme, 1952 (the **Scheme**). Paragraph 79 of the Scheme provides that when an application for exemption under section 17 of the Act is received, the Commissioner can relax the applicability of provisions of the Scheme. It is the case of the Petitioner that on account of submission of proposal for exemption under section 17 of the Act, the Commissioner indeed granted relaxation from applicability of the Scheme from the year 2000 onwards. Ms. Bharucha would rely upon communication dated 1 December 2008 issued by Respondent-No.1-RPFC which in turn refers to the earlier communication dated 21 January 2008, in which Petitioner was communicated that its concrete proposal for grant of exemption was not received and that therefore RPFC, Thane was not in a position to grant relaxation/continue the relaxation 'already granted' under paragraph 17 of the Scheme in absence of complete proposal for grant of exemption. Letter dated 21 January 2008 does indicate that relaxation as per paragraph 79 of the Scheme was indeed granted to the Petitioners. On account of grant of such relaxation Petitioners have operated their own fund, which is admittedly subjected to inspection and audit by the EPFO. Ms. Bharucha places reliance on order dated '4 February 2010' issued by the Government of India, Ministry of Labour and Employment, by which the application for exemption under section 17 of the Act is shown to have been rejected. However the said order which

bears date of '4 February 2010' refers from meeting held on 15 September 2010 of the Central Board of Trustees, EPFO. If the meeting was held on 15 September 2010 it becomes incomprehensible as to how the order could be passed on dated '4 February 2010'.

3. It appears that during the course of previous proceedings Respondent-EPFO has filed Affidavits contending that there is a typographical error in the date of ‘4 February 2010’ which infact is ‘4 February 2011’. More pertinent question is whether this order of 4 February 2010/4 February 2011 was actually communicated to the Petitioner or not. Ms. Bharucha would rely upon order dated 20 July 2012 passed by this Court in Writ Petition No.3346 of 2009, which contains a reference to the order dated 4 February 2010. She would accordingly submit that the Petitioner was thus made aware about passing of the order dated 4 February 2010/4 February 2011. However Ms. Bharucha has also invited my attention to proceedings of 27 January 2020 conducted by the RPFC-1, in which the Director, HR of the Petitioner was apprised of the order dated 4 February 2010. If Petitioners were already served with order dated 4 February 2010/2011, why the same was made known to its Director-HR during the course of hearing on 27 January 2010 is quite perplexing. As of now, there appears to be serious dispute as to whether the Petitioner was indeed made aware of the so called order of 4 February 2010/4 February 2011 before 27 January

2020. Even if one is to go by the observations made by this Court in order dated 20 July 2012, which refers to the order of 4 February 2010. Mr. Ghose would submit that Respondent-RPFC continued the relaxation under paragraph 79 of the Scheme till the year 2019, which again would imply that the proposal was either never rejected or in any case rejection of the proposal was never communicated to the Petitioner till the year 2020.

4. Now Respondent-RPFC has initiated enquiry under provisions of section 7A of the Act for the period of September 2008 to December 2019 possibly on account of alleged withdrawal of relaxation under paragraph 79 of the Scheme vide letters dated 21 January 2008/1 December 2008. As observed above, whether the relaxation was indeed withdrawn from September 2008 appears to be a serious matter of dispute. In that view of the matter, whether enquiry under provisions of section 7A of the Act can be conducted covering the period form September 2008 onwards becomes prima facie questionable.

5. Mr. Ghose has submitted that the Petitioner no longer desires to press its proposals for exemption and now desires to be treated as a covered establishment from 1 January 2025. He has shown willingness to transfer the entire corpus of the fund in the Petitioner-Trust, which it has operated since the year 2000 till December 2024 to the account of Respondent-EPFO so that the employees retiring/transferring/ceasing to be in a service would

be in a position to secure the due amounts of provident fund from Respondent-EPFO.

6. In view of the above position, following interim order is passed:

i) The enquiry initiated under provisions of section 7A of the Act for the period September 2008 to December 2019 shall remain suspended till the next date of hearing.

ii) Petitioner shall transfer the accumulations from its existing provident fund to the Respondent-EPFO in a manner provided for under paragraph 28 of the Scheme as on 31 December 2024 on or before 31 January 2025. This would be without prejudice to the rights and contentions of both the sides.

iii) Respondents to file their Affidavit-in-Reply to the Petition within a period of four weeks from today.

6 List the Petition for further consideration on **29 January 2025**.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM

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