* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 16th January, 2024**

\+ W.P.(C) 2881/2019 & CM APPL. 13382/2019

M/S LOTUS HERBALS PRIVATE LIMITED ..... Petitioner

Through: Mr. Amit Khemka, Mrs. Himani Singh and Ms.Tanvi Agrawal, Advocates.

versus

EMPLOYEES' PROVIDENT FUND ORGANIZATION AND ORS.

..... Respondents

Through: Mr. Siddharth, Standing Counsel for EPFO with Mr. Anshul Saxena and Mr. Shivam Prakash, Advocates for R- 1-3.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 read with Article 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

> *"a. quashing the Notice under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, bearing No. 14758/EPFO/R0/N0I/Comp.C-II/23069/7A dated 22.01.2019 and the consequential proceedings thereto.*
> *b. stay the proceedings being conducted by the Respondent No.*

3 in respect of Notice under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, bearing No. 14758/EPFO/RO/NOI/Comp.C-II/23069/7A dated 22.01.2019, against the Petitioner, till the final disposal of the writ petition.

c. pass any other/ further order(s)/ relief(s) which this Hon'ble Court may deem fit, just and proper in the present circumstances of the case in favour of the Petitioner."

2. The petitioner company is an entity, enrolled as a member of the Employee Provident Fund Organization ('EPFO' hereinafter) in the year 1997, bearing Code no. MRNOI0023069000 and has a head office situated in New Delhi.

3. In the year 2018, the petitioner company was notified regarding a scheduled inspection from the respondent Authority and therefore, was advised to keep the records ready for the perusal of the officials of the respondent Authority.

4. Thereafter, an official of the respondent Authority informed the petitioner regarding its dues toward the difference in salaries and deductions of the Provident Fund ("PF" hereinafter) made and deposited, however, the same were denied by the petitioner. Due to denial of the said allegations, the respondent Authority sent another officer to verify the status and submit a detailed report.

5. In the year 2019, the respondent Authority issued summons/show cause notice dated 22nd January, 2019 to the petitioner under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952

('the Act' hereinafter) directing the petitioner to state reasons for such non-compliance with the statutory provisions.

6. Aggrieved by the same, the petitioner has preferred the present writ petition.

7. Learned counsel appearing on behalf of the petitioner submitted that the acts of the respondents is bad in law and violates the petitioner's rights as the same is arbitrary in nature and not in terms of the settled position of law.

8. It is submitted that the impugned notice/show cause dated 22nd January, 2019 issued under Section 7A of the Act and consequential proceedings thereto are a nullity and issued with *mala fide* intention without following the procedure prescribed under the law.

9. It is submitted that the said notice has been issued ignoring the finding of its own enforcement officers and without application of mind as the inspection report dated 17th January, 2019 appended in the instant writ petition as Annexure- P-11 has not been taken into consideration and the respondent Authority has issued the show cause notice by solely relying upon the inspection report dated 16th January, 2019 appended in the instant writ petition as Annexure- P13.

10. It is submitted that the respondent Authority had sent two officials at similar time period to inspect the records, and the said officials had submitted reports dated 16th January, 2019 and 17th January, 2019 respectively, however, the respondent Authority solely relied upon the report dated 16th January, 2019 and not the second one, asserting towards *mala fide*

or intentional act to frame the petitioner entity.

11. It is also submitted that the issuing authority has not assigned any reasons for taking into consideration only report dated 16th January, 2019 and not the one dated 17th January, 2019 which is in favor of the petitioner.

12. The learned counsel for the petitioner further contended that as per the settled principle of law, the respondent Authority ought to have given precedence to the second report dated 17th January, 2019 and not the first one.

13. In view of the above facts and circumstances, it is submitted that that the present petition may be allowed and reliefs be granted, as prayed.

14. *Per contra,* learned counsel appearing on behalf of the respondents submitted that the instant petition filed by the petitioner is not at all maintainable as no valid cause of action has arisen in favor of the petitioner and against the respondents at this stage.

15. It is submitted that the arguments advanced during the course of proceedings before this Court and the contents made in the writ petition may be addressed by the petitioner at the time of submitting reply of the show cause notice before the competent authority and the same shall be duly considered by the competent authority in accordance with the law.

16. It is also submitted that as per the settled position of law, no writ petition may be entertained against such statutory notice issued for the purpose of only directing a person to participate in the enquiry proceedings pending against any entity and the only ground to challenge such notice is in case the said notice is not issued by the competent authority, which is not the

case in the present factual scenario.

17. It is further submitted that the subsequent inspection carried out by another official was done only on one of the premises of the petitioner entity and therefore, the report made by the said official cannot be a basis to determine liability of the establishment as a whole.

18. In view of the foregoing submissions, the learned counsel for the respondent Authority submitted that the present petition, being devoid of any merits, may be dismissed.

19. Heard learned counsel for the parties and perused the record.

20. It is the case of the petitioner that the impugned notice issued under Section 7A of the Act is issued with a *mala fide* intention and therefore, the same is liable to be quashed by this Court since the respondent Authority has considered only one of the two reports submitted by two officials deputed to inspect the premises and records of the petitioner entity.

21. In rival submissions, the learned counsel for the respondent has opposed the present petition by stating that the issuance of the said notice has been done by following the due process of law and the petitioner entity shall be provided with an opportunity to defend itself during the course of proceedings before the competent authority and in view of the same, the present petition is not maintainable at this stage.

22. In light of the above, at this stage, the only limited question for consideration before this Court is whether the impugned show-cause notice was rightly issued by the respondent Authority or not.

23. The EPFO Act was enacted for the benefits of the laborers who retire

after providing services to an industry/entity. Many a times, the Act is also called a social security measure enacted for providing retiral benefits to the workman.

24. Section 7 of the said Act provides for determination of the amount due from an employer for contribution towards the funds intended to be created for the benefit of retired laborers. The said section reads as under:

> *"**7A. Determination of moneys due from employers.—**2 [(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,— (a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and (b) determine the amount due from any employer under any provision of this Act, the Scheme or the 3 [Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary]; (2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:— (a) enforcing the attendance of any person or examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavit; (d) issuing commissions for the examination of witnesses; and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860). (3) No order 4*** shall be made under sub-section (1), unless 5 [the employer concerned] is given a reasonable opportunity of representing his case. 6 [(3A) Where the employer, employee or any other person required to attend*

the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.] 7 [(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry: Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer. Explanation.— Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order."

25. Upon perusal of the aforesaid provision, it is clear that the enquiry conducted by the officials shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860. As per the above said provision, the enforcement officer is supposed to give reasonable opportunity of hearing to the concerned party and in present case, to the petitioner entity. Sub-section (3) of said provision explicitly provides

for providing reasonable opportunity to the concerned institution/establishment to put forth their case, thereby, making it mandatory for the concerned Authority to provide an opportunity of fair hearing.

26. Therefore, this Court needs to analyze whether the same was done by the respondent Authority or not. In order to assess the same, it is imperative to refer to the impugned notice. The extracts of the same reads as follows:

> *"Notice Under Section 7A of The Employees' Provident Funds and Miscellaneous Provisions Act 1952*
> *Whereas upon consideration of the records and documents submitted by Area Enforcement Officer of this Department, 1am prima facie of the opinion that in spite of applicability of the Provident Fund Act and the Scheme framed there under to your establishment namely M/s Lotus Herbal Limited, B-9, Sector-58, Noida, GB Nagar, UP, having EPF Code No. MR/NOI/23069. I have reason to believe that you have failed to comply the EPF & MR Act 1952. The same is in violation of the provisions of the aforesaid Act and the Scheme.*
> *1. Whereas the Enforcement Officer submitted his report dated 16/01/2019 and observed that the establishment could not produce the complete records and it is seen that EPF contribution has not been deducted on the pay entitled for deduction of E.P.F. contribution. Hence there is a reason before me to assess the above dues under section 7A of the Act for the period 04/2015 to 10/2018.*
> *2. And whereas I, Shashwat Shukla, Regional Provident Fund Commissioner-11, employed under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act 1952 to initiate enquiry to determine the amount due from your establishment under the provisions of the Employees' Provident Funds & Miscellaneous Provisions Act 1952, Employees' Provident Funds Scheme 1952, Employees' Pension Scheme*

1995 and the Employees' Deposit Linked Insurance Scheme 19/6. '
3. The enquiry and determination of the amount payable by your establishment will be done upon consideration of the aforesaid documents, report and your response and reply if any, submitted by you. You are hereby given a reasonable opportunity of representing your case as provided under Section 7A (3) of the Act and you are requested to give explanation and / or submit your representation, response and reply to this notice along with relevant documents and particulars upon which you intend to rely upon for the judicious determination of the amount payable by your establishment in this office on 12/02/2019 at 11.00 AM.
4. In order to assess the dues under the Act you may be required to produce the following documents during the course of enquiry:
I) Business profit & Loss account and Balance Sheet ' '
II) Accounts Books, General Ledgers, Paid Vouchers, Payment Registers / Pay Bills
III) Salary / wages registers
IV) Attendance registers"

27. Upon perusal of the same, it is crystal clear that the respondent Authority had relied upon the report dated 16th January, 2019 and was of the opinion that the petitioner entity did not have complete records to show the due compliance with the EPF contribution and therefore, impugned show cause notice was issued to the petitioner.

28. The extracts of the impugned show-cause notice also makes it clear that the said notice was issued by the competent Authority i.e. the Regional Provident Fund Commissioner as provided for in Section 7A of the Act. Therefore, it is established that there is no dispute regarding the validity of

issuance of the impugned notice by the respondent authority.

29. The question of interference of the writ Court at the stage of issuance of show cause notice was answered by the Hon'ble Supreme Court in ***Union of India v. VICCO Laboratories*, (2007) 13 SCC 270,** where the Hon'ble Court clarified the position of law regarding interference with the show cause notice and held as under:

> *"31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out."*

30. The perusal of the aforesaid paragraph from the abovementioned case makes it crystal clear that the law regarding interference by the writ Court is settled where such interference (if any) is only warranted if the show cause notice is issued illegally i.e. without jurisdiction or there is a clear abuse of

process of law.

31. In the instant case, the impugned show cause notice has been duly issued under the relevant provision dealing with such instances of non-payment of due towards employee contribution, therefore, negating the possibility of any illegality with issuance of the impugned show cause notice.

32. During the course of proceedings, the learned counsel for the petitioner has submitted that the impugned show cause notice was issued solely by relying upon one out of the two reports submitted by the officials of the respondent Authority, thereby, the said issuance is bad in law as the respondents have not provided any reason for placing their reliance upon one report and ignoring the other.

33. The said contentions advanced by the learned counsel for the petitioner are rebutted by the learned counsel appearing for the respondent Authority by stating that the Authority had sent another official to determine the coverage status of one of the premises petitioner entity and the same has nothing to do with non-compliance with the EPF contribution, as the report submitted by the said official cannot be relied upon to determine the liability of the entire establishment.

34. Furthermore, the learned counsel for the respondent also submitted that the petitioner entity shall be provided with adequate opportunity to contradict the preliminary findings and therefore, no cause of action arise at this stage to file the instant petition as the respondent Authority is duly complying with the procedure prescribed under the Act.

35. There is no iota of doubt that the relevant provision, i.e. Section 7A of the Act binds respondent Authority to provide opportunity to the petitioner against the claims made by it. Since, the respondent Authority has stated on record about the due compliance with the procedure, this Court does not have any reasons to disbelief the said statement.

36. In light of the same, this Court agrees with the contentions of the learned counsel for the respondent Authority and does not find any reasons to interfere with the show cause notice by way of issuance of the writ of mandamus to set aside the impugned show cause notice dated 22nd January, 2019 as the same were issued with due procedure established under law.

37. Accordingly, the instant petition, being devoid of any merit, is dismissed along with pending applications, if any.

38. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 16, 2024

rk/av /ryp

Click here to check corrigendum, if any