Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17354 OF 2024

General Mills India Pvt Ltd & Anr. .. Petitioners

Versus

Regional Provident Fund Commissioner II & Ors. .. Respondents

WITH
INTERIM APPLICATION NO. 15253 OF 2024
IN
WRIT PETITION NO. 3346 OF 2009

WITH
INTERIM APPLICATION NO. 15271 OF 2024
IN
CONTEMPT PETITION NO. 138 OF 2023

....

Mr. Sanjoy Ghose, Senior Advocate a/w. Mr. Jeevan Ballav Panda, Ms. Dhriti Mehta, Ms. Jyoti Sinha, Mr. Rohan Mandal, Ms. Yashasvi Kanodia, Mr. Tapamoy Ghose, Advocates i/by Khaitan & Co for the Petitioners.

Ms. Payoja Gandhi, Advocate for Respondent Nos.1 to 4.

Ms. Purnima Awasthi, Advocate for Respondent No.5 – Union of India through VC

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 22, 2025

P. C.:

1. Heard Mr. Ghose, learned Senior Advocate for Petitioners; Ms. Gandhi, learned Advocate for Respondent Nos. 1 to 4 and Ms. Awasthi, learned Advocate for Respondent No. 5 - Union of India.

2. Present Petition is filed in 2024. It challenges the summons issued to Petitioners - Company on 16.09.2024 in connection with inquiry initiated under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short **"the said Act"**) in respect of the period from September 2008 to December 2019. The gist of the entire case as proceeded against the Petitioners is contained in the previous order passed by this Court on 18.12.2024 (Coram : Sandeep V. Marne, J.) which is reproduced herein under:-

> *"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that previously instituted Petition questioning initiation of proceedings under section 7A of the Act came to be withdrawn by the Petitioner as it believed that the entire issue was being put to an end by the Employees' Provident Fund Office (**EPFO**). At this juncture it is not necessary to delve deeper into the circumstances in which the previous Petition was withdrawn.*
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> *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**."*

3. Paragraph No. 5 of the above order is determinative of response of Petitioners to the case of the Respondents. Petitioners showed willingness to transfer the entire corpus of fund which was accumulated by Petitioners in Petitioners' Trust (under the Scheme elected by Petitioners for its employees subject to exemption). Mr. Ghose has been candid in informing the Court that provisional sanction for exemption was granted to Petitioners and final sanction was awaited. Be that as it may, bonafides of Petitioners to be ready and willing to transfer the entire corpus until December 2024 as available with Petitioners to the account of Respondent is clear so that all employees of Petitioners belonging to whichever category they may be namely retiring/transferred/ceasing to be in a service, if any, would be in a position to secure and get payout of their provident fund dues which belong to them and henceforth receive them from Respondent Nos. 1 to 4 instead of Petitioners.

4. I am informed that a demand draft dated 23.01.2025 for the amount of Rs. 3,36,33,76,273/- was given by Petitioners to Respondent Nos. 1 to 4. Respondents however returned back the said demand draft to Petitioners citing inadequacy of third party audit determining the entitlement of employees of Petitioners to their respective amounts. Respondents also desired that applicable rules and Standard Operating Procedure (SOP) be followed by Petitioners before depositing the said amount. The matter was thereafter heard on 29.01.2025 and following order was passed:-

> "1. On 18 December 2024 this Court passed following interim order:
>
> > "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. 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.
> >
> > ii) Respondents to file their Affidavit-in-Reply to the Petition within a period of four weeks from today."
>
> 2. It appears that in pursuance of direction No.6(ii) of the order dated 18 December 2024 Petitioners approached the Regional Provident Fund Commissioner with Demand Draft of Rs.3,36,33,76,273/- vide letter dated 23 January 2025. The Demand Drafts are however returned by Regional Provident Fund Commissioner vide letter dated 23 January 2025 by citing following reasons:
>
> > "Mr. Sripad More and Mr. Nitin Gijam (Reportedly representatives have approached this office today @ 04.:30 PM with some papers/folders along with Demand Draft dated 23.01.2025 of amount. 336.14 crore.
> >
> > Upon enquiry both the above named persons informed that they had no relationship with the establishment and are neither carrying any authority letter for the stated work. Further, it is also prima facie observed that the proposal as contained in the letter does not follow the extant Law/Rule provisions.
> >
> > First hand bare scrutiny indicates that the papers/records being forwarded falls short of the prescribed procedures and merit. In good faith, accordingly, all such papers/records along with Demand Draft are hereby returned to you without any prejudice. You are requested to kindly scrutinise in detail your referred proposal in terms of the rule and legal provisions in place for

example the contents of Section 17 of EPF and MP Act, related provisions of EPF Scheme, 1952, the applicable rules/SOP and thereafter accordingly approach this office."

3. The learned counsel appearing for Respondent Nos.1 to 4 would invite my attention to the Standard Operating Procedure for Surrender of EPF Exemption and would submit that one of the requirements for transfer of accumulations from existing provident fund to Respondent-EPFO under paragraph 28 of the Scheme is to get third party audit done in consultation with RPFC as well as to secure prior permision of RPFC for liquidation of the securities. She would submit that since prior permission of the RPFC was not obtained before liquidation of securities and since third party audit has not been done, the EPFO cannot accept the amounts from the Petitioners under paragraph 28 of the Scheme.

4. Mr. Ghose, the learned Senior Advocate appearing for the Petitioners would submit that the application for surrender of EPF exemption was made in April 2024 and it was the responsibility of the EPFO to nominate the third party Auditor for conduct of audit.

5. The purpose of third party audit is to ensure that correct amount of accumulation is transferred to EPFO. In the event, it is found that the liability of Petitioner towards accumulations exceed the amount deposited, it can always be directed by this Court to make good the differential amount. Till conduct of audit, if the process of surrender is suspended, the employees would suffer.

6. In my view, the EPFO can be directed to provisionally accept the amount of Rs.3,36,33,76,273/- from the Petitioners in terms of directions issued in paragraph 6(ii) of the order dated 18 December 2024 so that the employees do not suffer in the meantime. So far as conduct of third party audit is concerned, the EPFO can be directed to nominate a third party Auditor and process of audit can continue in the meantime.

7. Accordingly I proceed to pass the following order.

i) The Respondent-EPFC shall provisionally accept the amount of Rs.3,36,33,76,273/- from the Petitioners under paragraph 28 of the Scheme without prejudice to its rights and contentions.

ii) The Respondent-EPFC shall nominate an Auditor for conduct of third party audit in respect of funds to be transferred to the EPFO within the period of two weeks.

iii) The third party Auditor shall forthwith commence the aduit proceedings and complete the same inan expeditious manner. The report of the third party Auditor shall be placed before this Court on the next date of hearing.

8. List the Petition on **18 March 2025.**

9. Interim relief granted earlier shall continue to operate till the next date of hearing.

10. Time to file Reply shall stand extended by a period of four weeks."

5. By virtue of the above order it was argued by Respondents that third party audit in consultation with RPFC as well as prior permission of RPFC for liquidation of securities not having been taken would be two specific requirements which were required to be undertaken by Petitioners and the Petitioners should be directed to undertake the same before they deposit the amounts belonging to their employees' provident fund with Respondents.

6. In view of the above objections, this Court directed Respondent Nos. 1 to 4 to provisionally accept the aforesaid amount so that employees seeking payout of provident fund amount do not suffer in the meantime and directed Respondents to nominate an Auditor for third party audit within two weeks and immediately commence the audit proceedings and complete the same in an expeditious manner. It was also directed to place the report of third party Auditor before the forum on 18.03.2025. Audit was completed and Report placed before Court.

7. An argument is advanced today by Ms. Gandhi that serious attempts were made and steps taken by Respondents to disburse the amount but there is a complete data mismatch and therefore Respondents have referred the issue to National Date Centre. When a question is put to Ms. Gandhi as to when has the reference been made to the National Data Centre and details of the alleged data mismatch, she is unable to respond neither she is aware about the exact dates nor the aforesaid submission made across the bar is stated on affidavit by Respondent Nos. 1 to 4. An affidavit is filed by Respondent Nos. 1 to 4 which is dated 12.08.2025. Matter has been languishing from March until today before the Court. In the interregnum, this Court has passed several orders. Sequitur of all the orders passed until today ought to have been oriented towards disbursement and apportionment of the provident fund amounts to the employees. There are approximately 2500 employees in all the three aforesaid categories past and present whose provident fund amounts are / were accumulated by Petitioners over the years. It is not the case of Respondents that nothing is identifiable. Infact such a stand cannot be taken by Respondents since third party audit report itself certifies the disbursement / apportionment of amounts which is required to be made to the employees as per the lists provided by Petitioners and certified by the Auditor. Third party Auditor was Auditor of Respondent Nos. 1 to 4 themselves. As per order dated 29.01.2025, Auditor was supposed to be from their panel. Once the said Auditor ascertains and confirms the lists, the disbursement / apportionment of the amounts to the employees would have to be undertaken. There cannot be any further argument. Except for oral objections raised today about mismatch there is no cogent material or any incriminating material to show that there is a mismatch. Even if at all there is mismatch it can always be corrected and taken recourse to either by going back to the third party Auditor or by calling for appropriate explanation from Petitioners. Withholding the entire amount by Respondents on the above pretext in my opinion and it being such a humongous amount which does not belong to Respondent but belongs to the employees of the Petitioners is nothing less that a sin according to me. This is the provident fund amount of the employees of Petitioners and only they are entitled to it. The Regional Provident Fund Commissioner and its functioneris and officers namely Respondent Nos. 1 to 4 in my opinion have no explanation neither any right to withhold this amount. Their own Auditor has certified and accepted the lists and details of all employees. Be that as it may, my primary aim is to ensure that the disbursement / apportionment takes place of the provident fund amounts to the eligible employees of Petitioners. One of the reason which impels me to pass this order is because of a grievance narrated by Mr. Ghose which is documented in detail in the additional affidavit filed by Petitioners. He would submit that an employee called Mr. Bhalerao desired to withdraw amounts from his provident fund account for a second bone marrow transplant (referred to in para 24 at page 479 of Petition) since the earlier transplant failed. He waited and waited but to no avail. He did not get the money till the end all because of the present imbroglio which is deciphered herein above beginning from the first order passed in December 2024. Sadly it is only today as this matter was heard and the order dictated in open Court that news is received that he has succumbed to his ailment in the hospital.

8. The directions contained in the order dated 29.01.2025 which are replicated herein above are fully complied with. Third party audit report is filed on 17.03.2025. The bane of the aforesaid twin orders was to ensure that the employees of Petitioners got back their monies which were due to them. Unfortunately from 17.03.2025 onwards until today, there is a complete stalemate. Who is responsible for this stalemate is another question which perplexes the Court? While going into that question and answering the same would cause further delay in disbursement / apportionment. Amounts are held by Respondents and the third party audit report is also filed and hence it calls for immediate implementation.

9. *Prima facie* I am of the opinion that pursuant to the deposit made by Petitioners' and third party audit report submitted on 17.03.2025, there is a clear dereliction on the part of the Respondents in not disbursing / apportioning the amount to the concerned eligible employees who have been certified by the third party Auditor. Till today not a single employee has been paid off, that too of the amount which belongs to them and to which Respondents have no right to withhold whatsoever. Be that as it may, Respondent Nos. 1 to 4 are now directed by this Court to ensure that once the third party audit report is accepted by them and if they have not challenged the same, they will have to take appropriate steps in law. They have accepted the report. Withholding the said report and contents of the said report is to no avail. Respondents may raise innumerable number of questions to retain the amounts. Be that as it may, none of those questions raised by Respondents dating back in point of time to the year 2000 can withhold disbursement / apportionment of the amounts which are deposited and as certified by the third party Auditor. Nowhere Respondent Nos. 1 to 4 have stated that they do not accept the third party audit report. Once that is the position, the disbursement / apportionment of the amounts to the employees certified by the third party Auditor has to begin forthwith. The demeanor of Respondent Nos. 1 to 4 *prima facie* amounts to dilatory tactics resulting in the corpus not being paid to the beneficiaries which is contrary to their rights and interest. Respondents can continue whatever inquiry they may desire to continue against Respondent strictly in accordance with law. If the Respondents desire any further cooperation from Petitioners, they may write to the Petitioners. Once the *bonafides* have been showed by Petitioners with respect to the issue at hand namely transferring the entire corpus amount from the Petitioners Trust to the Respondents account upto 31.12.2024, then it would be the duty of the Respondents now to deal with those amounts and transfer out of the same to the accounts of the employees and disburse /apportion the same to employees who are entitled to the same without any further delay.

10. Ms. Gandhi in her submissions would also inform the Court that in cases of certain mismatch the issue has been referred to National Data Centre. Be that as it may if there is any response by the National Data Centre, Respondents are free to ask for further details from the Petitioners and only after receiving the details and engaging the Petitioners and conducting further inquiry, steps can be taken by the Respondents for disbursement / apportionment strictly in accordance with law. It needs to be reiterated that whenever Section 7A inquiry is undertaken this Court has always come across the Enforcement Officer having been appointed by the Respondents to undertake the exercise of ascertaining the issue of assessment and liability and the Enforcement Officer's appointment is the first step towards ascertaining the same. Only when the Enforcement Officer prepares a report on the basis of material supplied by the employer, the entire report along with the material on which the said report is based upon is given to the employer for calling his say. Thereafter the

Enforcement Officer hears the employer before he makes his recommendation to the Regional Provident Fund Commissioner and on the basis of recommendations made by Enforcement Officer, a statutory hearing is given to the employer and only after hearing the employer, the 7A order is passed. If this is the statutory exercise which is contemplated to be followed and which is indeed followed in all such cases by Respondents, in the present case also Respondents shall adhere to the same in the case of any mismatch with respect to any employees. Ultimately Respondents should realize that the amounts belong to the employees and withholding the amounts for an unreasonably long period of time does not serve any purpose neither it looks good on the part of the Government Statutory Authorities. This is only to ensure that the directions contained in the previous orders as well as this order are complied with. Needless to state that Petitioners shall cooperate with the Respondents if they are called upon to provide data with respect to any mismatch if so called upon by the Respondents

11. Needless to state that inaction on the part of Respondents to not disburse / apportion the amounts to the employees / past employees of Petitioners brings disrepute to the Petitioners also and damages their goodwill which is detrimental to the prospects of the Petitioners Company. Mr. Ghose has drawn my attention to the fact that immediate action is required in the case of at least 96 employees which is stated in the affidavit but which is now pruned down to 85 employees whose provident fund transfer payout is pending. All details are there with the Respondents. Severe hardship and prejudice is caused to these employees will have to be addressed forthwith by the Respondents. The list all the aforesaid 85 employees is also reiterated in the additional affidavit filed by Petitioners. Respondents will have to take cognizance of the same and ensure that payout transfer is made accordingly not only to these current employees but all those employees who are entitled to the said respective provident fund amounts after ascertaining the same from the third party audit Report or any further inquiry.

12. The aforesaid exercise is directed to be carried out by Respondents in respect of all the employees as expeditiously as possible and in any event within the next three months from today. Needless to state that payout transfer of the employees which are presently pending with Respondents shall be done forthwith within a period of two weeks from today after ascertaining their veracity and details. All payments and payouts made by Respondents to the employees shall be informed to Petitioners by way of a consolidated statement for their record henceforth.

13. In view of the directions contained in the orders dated 18.12.2024 and 29.01.2025 and the subsequent steps taken by the parties in compliance thereof, summons issued to Petitioners under Section 7A of the said Act need not be kept pending for any further inquiry and in view of the above observations and findings the same is quashed and set aside. Needless to state that after the aforesaid disbursement / apportionment is completed by Respondent Nos. 1 to 4, if any further question remains, Respondent Nos. 1 to 4 can write to Petitioners seeking the details. It needs to be reminded to Respondents that law of limitation applies equally to all litigants whether it is a private litigant or Government litigant. Hence when a demand is made in the year 2024 for the first time of any data pertaining to the year 2000 regarding the employees working at that time the Authorities need to do so with a lot of circumspection and understand its powers in doing so. This does not mean that the Authorities cannot question the Petitioners and seek the data. Legitimate questions can always be put to the Petitioners and Petitioners will be duty bound to answer the same and provide its explanation. *Prima facie* once the third party audit has been completed in accordance with the directions contained in the previous orders, disbursement has to be immediate and quick. No delay should ever incur. It is clarified that if there is any delay in complying with the directions contained in this order, Petitioners' Company shall be at liberty equally every employee of the Petitioners who is entitled to disbursement / apportionment / transfer payout of his / her provident fund dues will be at liberty to approach this Court in appropriate proceedings against the Respondents and that leave and liberty granted by this Court under its jurisdiction under Article 226 of the Constitution of India. Respondents and Petitioners to comply with the directions herein above. Right to undertake any further inquiry under Section 7A by Respondents is kept open strictly in accordance with law.

14. In view of the above observations and findings, Writ Petition is allowed and disposed. Pending Interim Applications, if any are also disposed.

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR

Digitally signed by RAVINDRA MOHAN AMBERKAR Date: 2025.09.25 17:23:16 +0530