
(2015) 02 BOM CK 0342
In the Bombay High Court
Case No : Writ Petition No. 495 of 2014

Leonaras Restaurant

APPELLANT

Vs

Assistant P.F. Commissioner

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Employees Provident Funds Family Pension Fund And Deposit-linked Insurance Fund Act, 1952 — Section 7A

Citation : (2015) 5 ALLMR 707 : (2016) 148 FLR 616 : (2015) 6 MhLj 605

Hon'ble Judges : N.M. Jamdar, J.

Bench : Single Bench

Advocate : G. Naik, Advocate, for the Appellant; C.A. Ferreira, Advocate, for the Respondent

Final Decision : Allowed

Judgement

N.M. Jamdar, J.—Rule. Rule made returnable forthwith. Respondent waives service. Taken up for final disposal. By this petition, the petitioner challenges the order passed by the Regional Provident Fund, Commissioner, Goa dated 19 May 2014/9 July 2014. The Commissioner passed an order under Section 7A of Employees Provident Fund and Miscellaneous Provisions Act, 1952 directing the petitioner to pay an amount of Rs. 3,00,171/- (Rupees Three Lakhs One Hundred & Seventy One Only) in respect of Provident Fund, Employees Fund and Insurance Fund contribution and other charges for the month of April, 2011 to November, 2012.

2. The impugned order is challenged on the ground of violation of principles of natural justice. Shri G Naik, the learned Counsel for the petitioner submitted that the advocate for the petitioner had attended the inquiry and filed application for cross-examination of the witnesses. He submitted that though in the impugned order it is mentioned that no witnesses were presented and examined by the department, the impugned order discloses that Enforcement Officer had deposed before the Commissioner. The learned Counsel relied upon decision of the

learned Single Judge (F.M. Reis, J.) in the case of M/s. Mustifund Sauntha v. The Asst. Provident Fund Commissioner in Writ Petition No. 587/2012 rendered on 27 September 2012.

3. The Act provides for an appeal from the order passed under Section 7A of the Act. However, it is also settled that if the order is passed in violation of principles of natural justice, writ court may take up the matter for consideration, irrespective of availing of alternate remedy. The perusal of the impugned order shows that in the first part of the order the Commissioner has stated that the application for cross-examination is meaningless as no witness is presented or examined by the department. The second part of the order shows that Enforcement Officer deposed before the Commissioner. The application of the petitioner for cross-examination was already filed. The application to cross-examine the witness was rejected on a misleading ground.

4. Denying the right of cross-examination to the petitioner would be in violation of principles of natural justice as held by this Court in the case of M/s. Mustifund Sauntha (supra). That case arose from the very same provisions and the Court also entertained the petition directly without relegating the petitioner to an alternate remedy. No contra decision is shown.

5. The impugned order therefore requires to be quashed and set aside. An opportunity needs to be given to the petitioner to cross-examine the Enforcement Officer who has deposed. Considering the object of the Act, the petitioner needs to be put to terms and conditions. Shri Naik submitted that the petitioner is ready and willing to deposit the entire amount to show their bonafides. Accordingly, the petition is allowed. The impugned order dated 9 July 2014/19 May 2014 at exhibit P-7 is quashed and set aside subject to the condition that the petitioner deposits an amount of Rs. 3,00,171.00 (Rupees Three Lakhs One Hundred & Seventy One Only) within a period of four weeks from today. The amount will be deposited with the office of the Regional Commissioner, Provident Fund without prejudice to the rights and contentions of the petitioner. The rule is made absolute on above terms. No costs.