

(2017) 05 BOM CK 0131
In the Bombay High Court
Case No : 622 of 2012

M/s Fabrica dE Gas Carbonico Pvt. Ltd., Through its
Authorized Representative, Mrs. Dipali S. Dharwardkar

APPELLANT

Vs

Asst. Provident Fund Commissioner

RESPONDENT

Date of Decision : 15-05-2017

Acts Referred:

[Employees Provident Funds and Miscellaneous Provisions Act, 1952](#),
[Section 7\(b\)](#), [Section 7\(b\)](#), [Section 7\(a\)](#),
[Section 7\(a\)](#), [Section 7\(a\)](#), [Section 7\(d\)](#), [Section 7\(d\)](#)

Citation : (2017) 05 BOM CK 0131

Hon'ble Judges : M. S. Sonak

Bench : SINGLE BENCH

Advocate : G. Teles, P. P. Singh

Judgement

1. Heard Mr. G. Teles, learned Advocate for the petitioner and Mr. P. P. Singh, learned Advocate for the respondent.

2. The challenge in this petition is to the order dated 6.8.2012 made by the Assistant Provident Fund Commissioner, Regional Office Goa in proceedings under Section 7(A) of the Employees Provident Fund and Miscellaneous Provision Act 1952 ("the Act" for short).

3. Upon a query as to why the petitioner should not be relegated to avail alternate remedy available under Section 7(D) of the said Act, Mr. Teles, had made following submissions:-

(a) that, since the impugned order is in violation of the principles of natural justice, the petitioner may not be relegated to avail alternate remedy and the matter may be examined by this Court itself;

(b) Against the impugned order dated 6.8.2012, the petitioner has instituted a review petition dated 25.8.2012 which was filed on 27.8.2012, in terms of

Section 7(B) of the said Act. He submits that such review is yet to be disposed of.

4. Mr. P. P. Singh, learned Counsel for the respondent submits that this is case where more than ample opportunities were granted to the petitioner as reflected in the impugned order dated 6.8.2012. Mr. Singh submits that review petition was only filed by the petitioner but not pursued instead, the petitioner, directly instituted the present petition, by-passing the statutory alternate remedy by way of an appeal. Mr. Singh submits that there is neither any case made out to interfere with the impugned order nor, this is a case in which any indulgence ought to be granted to the petitioner.

5. Since, the petitioner's review petition is pending before the respondent, there is no necessity to entertain the present petition. The petitioner, cannot be permitted to seek two remedies concurrently. However, since this petition was admitted on 7.9.2012 and even some conditional interim order was granted in the matter, some indulgence is required to be shown to the petitioner, subject of course, on payment of reasonable costs.

6. Accordingly, without going into merits of the rival contentions, this petition, can be disposed of and is being disposed of with the following order:-

a. The petitioner to pay costs of Rs.10,000/- to the respondent within a period of four weeks from today.

b. That on the date, the petitioner pays costs or, within a period of four days, thereafter, the respondent shall issue to the petitioner certified copy of the deposition of Himesh R. Prakash, Enforcement Officer alongwith inspection report submitted by him on 3.4.2012 as also, copies of roznamas. This shall be subject to payment of charges for such copies.

c. If the amount of costs as aforesaid is paid to the respondent within a period of four weeks from today, then, there shall be direction to the respondent to take up and dispose of the petitioner's review petition against the impugned order dated 6.8.2012, on its own merits and in accordance with law within a period of three months from today. All contentions of all the parties are specifically kept open.

d. Until the disposal of the review petition as aforesaid, interim order made by this Court on 7.9.2012 shall continue to operate. This means that the petitioner will have to keep alive the Bank guarantee submitted, if necessary, by making suitable amends thereto.

e. The respondent shall fix a date for making orders on the review petition, so that, there is no difficulty of communication of the order. In case, review petition is dismissed, the respondent shall not encash the Bank Guarantee for a period of four weeks.

f. The petitioner will obviously entitled to institute an appeal and in case, no

interim relief is obtained, within a period of four weeks, the respondent will be entitled to encash Bank Guarantee.

g. It is once again made clear that this Court has not examined merits of the matter and all contentions of the parties are left open for the determination of the respondent.

h. The petitioner to appear before the respondent on 16.6.2017 at 3.00p.m.

7. Rule stands disposed of in the aforesaid terms.