

**(2011) 12 KAR CK 0258**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 24141 of 2011 and Writ Petition No's. 44637-44658 of 2011 (L-PF)

M/s Sri Varamahalakshmi Education and Charitable Trust

APPELLANT

Vs

The Assistant Provident Fund Commissioner Employees"  
Provident Fund Organisation, Sub Regional office Rathmagiri  
Road, Chjkmagalur

RESPONDENT

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**Date of Decision :** 08-12-2011

**Acts Referred:**

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 7 I, 7 J,  
7 O

**Citation :** (2011) 12 KAR CK 0258

**Hon'ble Judges :** Ram Mohan Reddy, J

**Bench :** Single Bench

**Advocate :** Vives A.R, for the Appellant;

**Final Decision :** Dismissed

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**Judgement**

Ram Mohan Reddy

1. Petitioner preferred an appeal before the Employees" Provident Fund Appellate Tribunal, New Delhi in ATA No.261(6)2011 and sought for necessary orders relating to pre-deposit as a condition to admit the appeal u/s 7-J of the Employees Provident Funds and Miscellaneous Provision Act, 1952, for short "Act" The Appellate Tribunal having considered the application, passed an order directing the petitioner to deposit 40% of the amount demanded in the order in appeal Since, the petitioner allegedly was unable to muster 40% of the amount filed application, Annexure-N, for modification of the order dated 7.4.2011, to bring down the amount to any sum less than 40% which when considered by the Appellate Tribunal, was rejected by order dated 14.6.2011. Hence, this petition.

2. Having heard the learned counsel for the petitioner, who submits that the petitioner has suffered consistent losses over the years and unable to deposit 40% of the amount demanded a relevant factor, which the Appellate Tribunal did

not consider while passing an order rejecting Annexure-N application, I am afraid, is unacceptable. The provision for appeal u/s 7-I, read with Section 7-O of the Act relating to deposit of amount due on filing an appeal, the Appellate Tribunal for reasons recorded in the order dated 7.4.2011, Annexure-A, reduced the amount to be deposited to 40% of the demand. Therefore, it cannot be said that the subsequent order dated 14.6.2011, Annexure-A1 rejecting the petitioner's application for modification of the order dated 7.4.2011 is not legal and valid. The exercise of discretion by the Appellate Tribunal is seldom, interfered with by this Court, unless malafides are established. In that view of the matter, petition, devoid of merit, is rejected.

3. If the petitioner files an application before the Appellate Tribunal to recall its order dated 14.6.2011, the order impugned, and deposit the amount so as to restore the appeal to file, I have no reason to believe that the Appellate Tribunal would not consider the same and pass orders in accordance with law.