(2016) 10 BOM CK 0136

In the Bombay High Court

Case No : Writ Petition No. 52 Of 2016 With Civil Application No. 3412 Of 2016

Municipal Council, Gangapur APPELLANT

Vs

The Central Provident Fund Commissioner RESPONDENT

Date of Decision : 07-10-2016

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7B

Citation : (2017) 2 CLR 340 : (2017) 152 FLR 1056 : (2017) LabLR 17

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri Kakde Yuvraj V, Advocate, for the Petitioners; Deleted, for the Respondent Nos. 1 and 2; Shri Chaudhary K.B, Advocate, for the Respondent No. 3

Final Decision : Partly Allowed

Judgement

Ravindra V. Ghugu , J. (Oral) - Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. Learned Advocate for the petitioner submits on instructions that respondent Nos.1 and 2 are not necessary parties and prays for leave to delete.

5. Deletion is permitted. As such, Civil Application does not survive and stands disposed off.

6. Learned Advocate for the petitioner submits that the Review Application filed under Section 7B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 ("1952 Act") has been rejected without even issuance of notice of hearing to the petitioner / applicant.

7. As such, the petitioner did not get the opportunity of addressing the mind of the respondent.

8. Shri Chaudhary strenuously submits that the review application dated 2.12.2015 was filed only to avoid the payment under Section 7- A and to avoid approaching the appellate Tribunal at Delhi under Section 7-I since, it mandates depositing of 75% of the assessed amount under Section 7-O. He, therefore, submits that the entire amount of Rs.16,03,907/- should be deposited by the petitioner in the respondent office as a precondition for hearing Section 7-B application.

9. I have considered the submissions of the learned Advocates.

10. It cannot be ignored that 42 hearings were afforded to the petitioner before the order under Section 7-A was passed.

11. In so far as hearing on Section 7-B application is concerned, this Court has concluded in it''s judgment dated 19.9.2016 delivered in Writ Petition No. 9676 of 2016 in between M/s Ashmit Motors v. Assistant Provident Fund Commissioner, Nasik that a Review Application under Section 7-B requires a hearing and the party concerned ought to be afforded a reasonable opportunity of hearing.

12. In the light of the above, this petition is partly allowed and the impugned order dated 31.12.2015 is quashed and set aside on the following conditions:-

(A) The petitioner shall deposit an amount of Rs.7,75,000/- with the respondent / office at Aurangabad, on/or before 25.11.2016.

(B) The petitioner shall appear before the respondent / office on 18.11.2016 at 11.00 am and thereafter, shall remain present on the dates on which the matter would be posted for hearing by the respondent / APFC Aurangabad.

(C) If the above said amount is not deposited as directed, the liberty for a hearing granted by this order, shall stand recalled and the respondent would then be at liberty to seek execution of the order dated 20.10.2015 passed under Section 7-A of the Act.

(D) The petitioner shall not seek an extension of time for depositing the said amount.

(E) The petitioner shall refrain from seeking adjournments on trivial and unreasonable grounds.

13. Rule is made partly absolute in the above terms.