

(2026) 03 BOM CK 0379
In the Bombay High Court, Nagpur Bench
Case No : Writ Petition No. 7975 Of 2025

Municipal Council

APPELLANT

Vs

Assistant Provident Fund Commissioner

RESPONDENT

Date of Decision : 05-03-2026

Acts Referred:

Constitution Of India, 1950 — Article 227

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 7(A), 8(F)
(3)(i)

Citation : (2026) 03 BOM CK 0379

Hon'ble Judges : Prafulla S. Khubalkar, J

Bench : Single Bench

Advocate : M.I. Dhatrak, A.R. Prasad

Final Decision : Allowed

Judgement

Prafulla S. Khubalkar, J

1. RULE. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. By seeking indulgence under Article 227 of the Constitution of India, the petitioner-Municipal Council, Pusad has assailed the order dated 08.12.2025 passed by the respondent no.2-Recovery Officer, Regional Provident Fund Office, Akola purportedly under Section 8-F(3)(i) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, 'the Act').

3. The background facts leading to the instant petition are succinctly put below:-

i. The respondent no.1-Assistant Provident Fund Commissioner had issued a summons under Section 7-A of the Act on 12.04.2023 to the petitioner-Municipal Council to appear and submit details of record for conducting enquiry regarding payment of dues of provident fund to their employees for the period from 08.01.2011 to March-2013.

- ii. The show cause notices dated 06.02.2016 and 19.05.2016 also came to be issued calling upon the petitioner to appear for hearing in the matter.
- iii. On 04.05.2017, the respondent no.1 passed an order under Section 7-A of the Act and held that the petitioner-Municipal Council is liable for payment of the provident fund dues of the employees for the period from 08.01.2011 to August-2016, to the tune of Rs.8,52,33,497/-.
- iv. On 14.06.2017, a notice under Section 8-F of the Act came to be issued.
- v. The petitioner challenged the order of imposition of liability vide Writ Petition no.4014 of 2017 before this Court in which this Court passed an interim order dated 29.06.2017 and granted stay to the impugned order.
- vi. By order dated 04.07.2022, the writ petition came to be disposed of with liberty to the petitioner to file an appeal under Section 7-I of the Act within six weeks and the interim order was directed to be continued for six weeks.
- vii. On 18.08.2022, the petitioner filed an appeal before the Employees Provident Fund Tribunal, Nagpur alongwith a separate application under Section 7-D of the Act for stay alongwith a separate application under Section 7-O of the Act for exemption to deposit as per the liberty granted by the High Court.
- viii. The appeal was heard by the Tribunal on 23.01.2023 and thereafter it was adjourned for several dates.
- ix. On 15.10.2025, the appeal came to be dismissed in default.
- x. On 24.11.2025, the petitioner attempted to file an application for restoration of the appeal but it was not filed, as alleged by the petitioner.
- xi. On 08.12.2025, the respondent no.2 passed an order under Section 8-F(3)(i) of the Act seeking recovery of the amount.
- xii. On 09.12.2025, an amount of Rs.3,65,86,242/- came to be withdrawn from the accounts of the petitioner-Municipal Council held in State Bank of India and the Punjab National Bank, allegedly for recovery of provident fund dues.
- xiii. The petitioner has alleged that on the same day, i.e. 09.12.2025, the petitioner appeared before the Tribunal by filing an application for restoration alongwith condonation of delay and it is alleged that the said application was not accepted.
- xiv. On 10.12.2025, the application for restoration filed by the petitioner-Municipal Council was accepted by the Tribunal and it was directed to be registered with an order to issue notice to the other side. The said application for restoration is pending.
- xv. On 11.12.2025, the petitioner-Municipal Council filed the instant petition challenging the order dated 08.12.2025 passed by the respondent no.1 under Section 8-F(3)(i) of the Act and also the order dated 15.10.2025 passed by the

Tribunal by which the petitioner's appeal was dismissed in default.

4. In the backdrop of these factual events, Shri M.I. Dhatrak, learned counsel for the petitioner-Municipal Council submitted that the impugned order under Section 8-F(3)(i) of the Act is grossly illegal and unsustainable in law being passed without any notice or opportunity of hearing to the petitioner-Municipal Council. His further submission is that the impugned order having stringent consequences is passed by the respondent no.1 despite pendency of the application for restoration of the appeal and the order being passed in great haste is unsustainable on this count also. He also submitted that the impugned order dated 08.12.2025 under Section 8-F of the Act of is unwarranted since it is passed despite there being an earlier order under Section 8-F of the Act passed on 14.06.2017 imposing the same liability upon the petitioner i.e. for a sum of Rs.8,52,34,097/-and this apparent discrepancy demonstrates gross non-application of mind. On the basis of these submissions, he pressed for orders on a civil application filed on behalf of the petitioner-Municipal Council being C.A.W. no.412 of 2026 by which the petitioner-Municipal Council has prayed for amendment to incorporate a prayer in the petition to claim refund of Rs.3,65,86,242/- which was recovered from the petitioner-Municipal Council and by way of this application he prayed for appropriate directions to refund the said amount.

5. In support of his submissions, he relied on the judgments of the Principal Seat of this Court in B.T. Kadlag Constructions Versus Employees Provident Fund Organization & Others [2025 SCC OnLine Bom 4547] and Kulgaon Badlapur Nagar Parishad & Others Versus Regional Provident Fund Commissioner II [2022 DGLS (Bom.) 1184]. By relying upon the position of law in B.T. Kadlag Constructions (supra), he strenuously submitted that the order passed under Section 8-F(3)(i) of the Act is having drastic consequences and it being passed without any notice or opportunity of hearing is unsustainable in law. He submitted that the proceedings before the respondent no.2 are in the nature of quasi judicial determination and required observance of principles of natural justice and in view of infraction of statutory mandate, the order under Section 8-F(3)(i) of the Act is wholly unsustainable. He also invited attention to the directions issued by this Court in Kulgaon Badlapur Nagar Parishad & Others (supra) to the respondent-Authorities by which the Authorities were directed in all matters under Section 7-A of the Act, to restrain them from taking steps under Section 8-F of the Act until the appeal period as prescribed in 7-I of the Act is exhausted.

6. Per contra, Shri Amit Prasad, learned counsel for the respondents strenuously opposed the petition and submitted that in view of the overall conduct on the part of the petitioner-Municipal Council in making persistent default to pay the provident fund dues of the employees, the impugned order is justified. He submitted that the petitioner-Municipal Council has even failed to prosecute the appeal which demonstrates its delaying tactics. He submitted that the petitioner-

Municipal Council is liable to pay the statutory dues as decided by the Authorities under Section 7-A of the Act to the tune of Rs.8,52,33,497/-. He also submitted that the orders under Section 8-F(3)(i) of the Act are passed by giving a prior notice to the petitioner, which was given on 14.06.2017 itself and on failure of the petitioner to comply with the said notice, the respondents have rightly passed the impugned order. By inviting attention to the order passed by the Authorities under Section 7-A of the Act, he pointed out that the petitioner has failed to appear before the Authorities on about forty four dates and due opportunity of hearing was therefore afforded to the petitioner before passing the order under Section 7-A of the Act. By relying on the judgment of the Hon'ble Supreme Court in Regional P.F. Commissioner Versus Hooghly Mills Company Limited & Others [(2012) 2 SCC 489], he submitted that the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is a social welfare legislation and considering the object of the Act, the employers are duty bound to strictly comply with the orders passed by the Authorities.

7. Rival contentions thus fall for my consideration.

8. It has to be noted that the order dated 08.12.2025 under Section 8-F(3)(i) of the Act, which is impugned herein, does not make reference to any notice issued to the petitioner prior to passing of the said order. The order records that it is passed on the basis of information available on record and it is inferred that on the basis of information available on record the Recovery Officer of the Regional Office Akola had a reason to believe that the establishment has committed default attracting action under Section 8-F(3)(x) of the Act. Further, it has to be noted that the Assistant Provident Fund Commissioner had earlier passed an order dated 14.06.2017 which was also an order under Section 8-F of the Act ordering the petitioner to pay an amount of Rs.8,52,33,497/-. This order was challenged by the petitioner vide appeal before the Tribunal which is pending as on today. It is thus apparent that the Authorities have passed orders under Section 8-F of the Act on two occasions i.e. on 14.06.2017 and again on 08.12.2025. On a specific query to the counsel for the respondents in this regard, there is no explanation as to why the order dated 08.12.2025 impugned herein is passed by the Authority for the second time.

9. Further, to controvert the arguments about passing of impugned order without notice, reliance is placed on the notice dated 14.06.2017 which was allegedly issued prior to eight years. Pertinent to note, on the basis of the notice dated 14.06.2017 first order under Section 8-F of the Act was passed on the same day i.e. on 14.06.2017 and the respondents have failed to clarify this discrepancy.

10. While giving anxious consideration to the contentions canvassed on behalf of the petitioner and the respondent about absence of notice and violation of principles of natural justice, it becomes clear that the order dated 08.12.2025 under Section 8-F of the Act is passed without giving any prior reasonable notice and opportunity of hearing to the petitioner. It has to be noted that the notice dated 14.06.2017 issued prior to eight years cannot be considered as a

reasonable notice before passing the order dated 08.12.2025 under Section 8-F of the Act. As such, the impugned order dated 08.12.2025 based on the notice dated 14.06.2017 is unsustainable on this count.

11. A statutory provision mandating requirement to give notice inheres in itself the requirement to give reasonable notice. It is trite law that the notice should give sufficient time to the person concerned to reply to the cause and at the same time, the notice should be in reasonable proximity with the final order, meaning thereby that the issuance of notice, submission of explanation and consideration of the cause should have coherence with respect to time period as well. A stale notice issued prior to eight years, cannot be made the basis to pass final order having serious and drastic consequences to the extent of freezing all the bank accounts of the Municipal Council (25 Bank Accounts) and unilaterally recovering an amount of more than Rupees Three Crores from some of the accounts.

12. It is fruitful to refer here and rely upon the elucidation of legal position by the Hon'ble Supreme Court in Delhi Development Authority Versus Ram Prakash [(2011) 4 SCC 180], about reasonableness of notice, from which paragraphs 21 and 22 are reproduced below:-

"21. Having considered the submissions made on behalf of DDA and by the respondent appearing in person, and also having considered the reasoning of the learned Single Judge and the Division Bench in repudiating the claim of misuser charges by DDA, we are unable to convince ourselves that the decisions rendered by the High Court, both by the learned Single Judge as also the Division Bench, require any interference in these proceedings. The materials on record will show that the respondent took prompt steps against the tenants for their transgression. During arguments it was indicated that, in fact, one of the tenants had already vacated the portion of the premises occupied by him. It is also very clear that after issuing the show-cause notices, the petitioner did not take any follow-up action thereupon. Instead, after a lapse of 25 years, the petitioner set up a claim on account of charges for the entire period. It would be inequitable to allow the petition which had sat over the matter to take advantage of its inaction in claiming misuser charges.

22. Even as to the contention raised on behalf of the petitioner that there was no limitation prescribed for making a demand of arrear charges, the Division Bench relying on the decision of this Court in State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd., observed that even where no period of limitation is indicated, the statutory authority is required to act within a reasonable time. In our view, what would construe a reasonable time, depends on the facts and circumstances of each case, but it would not be fair to the respondent if such demand is allowed to be raised after 25 years, on account of the inaction of the petitioner."

13. It has to be noted that based on the impugned order under Section 8-F(3)(x)

of the Act, the drastic action of freezing twenty five accounts of the petitioner-Municipal Council is already taken and in that process an amount of Rs.3,65,86,242/- is already recovered from the accounts of the petitioner-Municipal Council. In view of my inference that the impugned order under Section 8-F of the Act is unsustainable being passed without prior notice and any opportunity of hearing, the consequent action of freezing the accounts of the petitioner-Municipal Council is apparently arbitrary and unsustainable in law.

14. The contentions canvassed on behalf of the petitioner-Municipal Council that the respondents have straightway resorted to the action of freezing of the accounts of the petitioner-Municipal Council for recovering the alleged dues of the employees also needs due consideration. It has to be noted that the Recovery Officer has invoked the enabling provision contained in Section 8-F of the Act titled 'other modes of recovery' and straightway directed freezing of the accounts of the petitioner-Municipal Council. It has to be noted that Section 8-F(3)(i) of the Act requires notice to be issued upon the debtor of employer providing an opportunity to contest the notice and these proceedings being of quasi judicial in nature, the requirement to afford an opportunity of hearing is apparently mandatory. In the instant case, the impugned order under Section 8-F of the Act being passed without any reasonable notice and opportunity of hearing is thus grossly unsustainable in law. In this context, it is beneficial to refer to the judgment of the Principal Seat of this Court in B.T. Kadlag Constructions (supra) in which while dealing with an identical situation, this Court has clarified the legal position in paragraph 41, which is reproduced below:-

"41. On the aforesaid touchstone, reverting to the facts of the case, it becomes abundantly clear that the Respondent No.1 has straightaway issued the prohibitory order to the debtor of the employer not to pay the amount due to the employer and instead credit the same with the Provident Fund Commissioner without given a notice as envisaged by Clause (i) of sub-Section (3) of Section 8-F and also without providing an opportunity to meet the said demand by filing a statement on oath under Clause (vi) of sub-Section (3) of Section 8-F. The Recovery Officer is enjoined to first give a notice and then consider the statement on oath filed by the debtor of the employer and take a decision in observance of the principles of natural justice. Clearly there is infraction of the statutory mandate. Mere reference to the provisions contained in Section 8-B and 17-B of the EPF Act, 1952 without following the procedure prescribed under Section 8-F of the EPF Act, 1952 would not lend legality and validity to the prohibitory order."

15. It is also crucial to note that the petitioner has already filed an appeal challenging the order under Section 7-A of the Act and the appeal although dismissed in default, the application for restoration is pending before the Tribunal. The petitioner has specifically averred in the petition that the application for restoration alongwith an application for condonation of delay was not even accepted by the Tribunal on few dates and ultimately on 10.12.2025 the

application for restoration was ordered to be registered. It is thus clear that the application for restoration in the appeal is pending and the contentions on behalf of the petitioner challenging the order under Section 7-A of the Act would be subject matter of adjudication in the appeal. Thus, the legality of action of recovery of Rs.3,65,86,242/- would be decided after the contentions of the petitioner/appellant in the appeal are decided. Thus, the action of the respondents to recover the amount of more than Rupees Three Crores Fifty Lakhs from the bank accounts of the petitioner-Municipal Council also appears hasty. Hence, the petitioner is entitled to apply for refund of Rs.3,65,86,242/- by filing appropriate application before the Tribunal in the pending appeal. As such, the C.A.W.No.412 of 2026 filed by the petitioner-Municipal Council in this petition seeking amendment to claim refund of the said amount is disposed of with liberty to the petitioner to file a separate application before the Central Government Industrial Tribunal, Nagpur.

16. Having regard to the above mentioned factual and legal aspects, the impugned order passed by the respondents under Section 8-F of the Act deserves to be quashed and set aside. However, it is clarified that the liability of the petitioner-Municipal Council for payment of provident fund dues of the employees being subject matter of adjudication in the appeal before the Tribunal the same shall be adjudicated by the Tribunal based on the grounds raised in the said appeal. This petition is decided by considering the limited issue about challenge to the order under Section 8-F of the Act on the contention of it being passed without notice or opportunity of hearing.

17. In view of above, the following order is passed:-

I. The writ petition is allowed.

II. The impugned order dated 08.12.2025 passed by the respondent no.1- Assistant Provident Fund Commissioner, Akola under Section 8-F of the Act is quashed and set aside.

III. The petitioner-Municipal Council is entitled to prosecute the application for restoration of appeal before the Tribunal and hence, no orders are passed with respect to Prayer Clause (b) of the petition.

18. Rule is made absolute in aforesaid terms with no order as to costs.