

(2024) 11 BOM CK 0023
In the Bombay High Court
Case No : Writ Petition No. 693 Of 2022

Murli Industries Limited

APPELLANT

Vs

Union Of India And Another

RESPONDENT

Date of Decision : 14-11-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 — Section 16, 31, 31(1), 31(4)
Employees' Provident Funds and Miscellaneous Provisions Act, 1952 — Section 8, 8B, 17B

Citation : (2024) 11 BOM CK 0023

Hon'ble Judges : Devendra Kumar Upadhyaya, CJ;Nitin W. Sambre, J

Bench : Division Bench

Advocate : M.G.Bhangde, S.S.Sarda, R.S.Sundaram

Final Decision : Disposed Of

Judgement

1. Heard Mr. M.G.Bhangde, learned Senior Counsel representing the petitioner and Mr. R.S.Sundaram, learned Counsel representing the respondent no.2.

2. The issue posed before us in this matter is as to whether the instant writ petition is cognizable by a learned Single Judge of this Court or by a Division Bench.

3. It has been argued by the learned counsel representing the Union of India that in view of the provisions contained in Chapter Rule 18 (31) of Chapter XVII of the Bombay High Court Appellate Side Rules, 1960 (hereinafter referred to as "the Appellate Side Rules"), since under challenge in this writ petition is to orders passed by the Authority concerned under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as "Employees' Provident Funds Act") as such, the writ petition is, in terms of the provisions of Rule 18 (1) of Chapter XVII of the Appellate Side Rules would be cognizable by the learned Single Judge.

4. Opposing the said submission, the learned Senior Counsel representing the petitioner, however, states that since the petitioner in this case has not challenged any order passed by any authority under the Employees' Provident Funds Act and an order to qualify as an 'order' as provided in the explanation appended to Chapter XVII of the Appellate Side Rules has to be passed by any judicial or quasi judicial authority empowered to adjudicate under the statute concerned, therefore, the petition is not cognizable by the learned Single Judge.

5. Before delving into the respective submissions made by the learned counsel representing the parties, we find it apposite to extract Rule 18 of Chapter XVII of the Appellate Side Rules, which runs as under:

"18.Single Judge's powers to finally dispose of applications under Article 226 or 227-Notwithstanding anything contained in Rules 1, 4 and 17 of this Chapter, applications under Article 226 or under Article 227 of the Constitution (or applications styled as applications under Article 227 of the Constitution read with Article 226 of the Constitution) arising out of -

(1)

(2)

(31) The orders passed under the Employees' State Insurance Act, 1948.

(32)

(33)

(46)

Provided when the matter in dispute is or relates to the challenge to the validity of any statute or any rules or regulations made thereunder, such application shall be heard and disposed of by a Division Bench to be appointed by the Chief Justice.

Provided further that the Chief Justice may assign any petition or any category of petitions falling under Clauses 1 to 46 or any Clause that may be added hereinafter to, a Division Bench:

Provided also that all petitions/applications under Article 226 and/or 227 of the Constitution of India arising out of or relating to an order of penalty or confiscation or an order in the nature thereof or an order otherwise of a penal character and passed under any special statute shall be heard and decided by a Division Bench hearing Writ Petitions.

Explanation – The expression "order" appearing in clause (1) to (46) means any order passed by any judicial or quasi judicial authority empowered to adjudicate under the abovementioned statutes".

6. As per the aforequoted provisions, we may notice that Rule 18 of Chapter XVII of the Appellate Side Rules commences with a non-obstante clause, according to

which, even if anything contrary is provided in Rules 1, 4 and 17 of Chapter XVII, a petition/application under Article 226 or under Article 227 of the Constitution or a petition or application styled as application under Article 227 of the Constitution read with Article 226 of the Constitution arising out of the orders passed under various statutes enlisted therein, are to be heard and finally disposed of by the learned Single Judge appointed in this behalf by the Chief Justice.

7. The explanation appended to Rule 18 of Chapter XVII, defines the expression 'order' appearing in clauses (1) to (46) of Rule 18 to mean any order passed by any judicial or quasi judicial authority empowered to adjudicate under the statutes mentioned or enlisted under Rule 18 of Chapter XVII of the Appellate Side Rules. Thus, if the provision contained in Rule 18 of Chapter XVII of the Appellate Side Rules is to operate, the order under challenge in a petition either filed under Article 226 of the Constitution of India or under Article 227 of the Constitution of India or in an application styled as application under Article 227 read with Article 226 of the Constitution of India, would have been passed by any judicial or quasi judicial authority in exercise of its powers under the statutes mentioned in Rule 18 of the Appellate Side Rules.

8. To arrive at an appropriate conclusion on the issue being considered at present, we need to reflect upon the nature of order/notices, which are under challenge in this petition, which has been filed under Article 226 read with Article 227 of the Constitution of India. The prayer clause of the petition, after it was amended, is extracted herein below:

"I) Declare that in view of the approval of Resolution plan by National Company Law Tribunal, Mumbai, National Company Law Appellate Tribunal, New Delhi and Hon'ble Supreme Court of India, claim of EPFO, if any, against the Corporate Debtor which is not included in the approved Resolution Plan stands extinguished and no proceedings can be initiated or continued for recovery of alleged provident fund dues.

II) Quash and set aside demand notice dated 08.06.2021 (Annexure No.15) and the communication of Employees Provident Fund Organization to the petitioner dated 29.09.2021 (Annexure No.18).

II-a) quash and set aside the impugned show cause notice dated 19.01.2023 (Annexure-29) issued by the Regional Provident Fund Commissioner-II, Regional Office, Nagpur and demand notice dated 13.07.2023 (Annexure-30) issued by the Regional Provident Fund Commissioner-II/Recovery Officer, Regional Office, Nagpur."

III) Pending disposal of the instant petition the effect, execution and operation of the demand notice dated 08.06.2021 (Annexure No.15) and the communication of Employees Provident Fund Organization to the petitioner dated 29.09.2021 (Annexure No.18) be kindly stayed.

III-a) Pending disposal of instant petition, the effect execution and operation of the impugned demand notice dated 13.07.2023 (Annexure-30) may kindly be stayed.

IV) Allow the petition with costs throughout.

V) Grant any other relief as may deem fit under the facts and circumstances in favour of the applicants.”

9. Prior to the amendment of the prayer clause, the assessment order dated 4th February, 2020 passed by the Appropriate Authority under the Employees’ Provident Funds Act was also challenged, however, by amending the prayer clause, the petitioner now seeks to challenge certain demand notices/show cause notices alone.

10. The first challenge is made to a notice of demand dated 8th June, 2021. The petitioner has also challenged a letter/order/demand notice dated 29th September, 2021. The challenge has also been made by the petitioner to the show cause notice dated 19th January, 2023 and consequential notice of demand dated 13th July, 2023. Having noticed the challenge made in the instant writ petition, we need to consider as to nature of the demand notices/show cause notices/letters/orders, which are under challenge in this petition.

11. Before considering the nature of each challenge, we may refer to certain judgments relied upon by the learned counsel representing the Union of India to buttress his argument that considering the nature of the challenge in the instant petition, the petition is cognizable by learned Single Judge. The first such judgment cited and relied upon on behalf of the Union of India is Maharashtra State Cooperative Bank Ltd. Vs. State of Maharashtra, 2008 (6) Mh.L.J.463, wherein it has been held that in the facts of the said case, public auction notice will amount to an order, as per the explanation appended to the Rule 18 of Chapter XVII of the Appellate Side Rules. Para 5 is extracted herein below:-

“5. The submission is that the petitioner being third person, the present petition is before the Division Bench. Even as per explanation to the rule the action taken by the judicial or quasi-judicial authority, who is empowered to adjudicate under the statute, includes the present case of public auction also, as it is consequence of the order of attachment by the authority under the Act. The public auction notice cannot be issued independently unless there is basic order of attachment passed under the Act”.

12. The next judgment relied upon by the learned counsel representing the Union of India is Jyoti w/o Anil Ganeshpure Vs. State of Maharashtra, 2006 (2) Mh.L.J. 173. In the said case, what was under challenge was a show cause notice issued by the Competent Authority under Section 16 of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961, which empowers the Competent Authority to disqualify a person from being chosen as or for being a Councillor of the Zilla Parishad and Panchayat Samiti is concerned, the learned Single Judge of

this Court in *Jyoti* (supra) has held that the show cause notice issued under Section 16 of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961, will qualify as an order in terms of the provisions contained in Rule 18 of Chapter XVII of the Appellate Side Rules for the reason that the show cause notice is the evidence of the decision by the Competent Authority to issue the notice itself and accordingly, such notice will qualify to be an order and in case such a show cause notice is challenged by invoking the writ jurisdiction of this Court, the petition shall be cognizable by the learned Single Judge.

13. Lastly, the learned counsel representing the Union of India relied upon the judgment of this Court in the case of *R.V.P.R.T. Ayurved Mahavidyalaya, Akola Vs. Assistant Provident Fund Commissioner and others*, 2007(4) Mh.L.J. 273. In the said case, the petitioner had sought a direction to the State Government by filing the petition under Article 227 of the Constitution of India for releasing the grant to the petitioner towards provident fund and in the facts of the said case, it was held that this Court is under duty to adjudicate upon the correctness of the impugned orders made by the provident fund authority and the Appellate Authority under the Provident Funds Act and, therefore, the Court should not abdicate its function of deciding the validity of those orders as per Chapter XVII of Rule 18 of the Appellate Side Rules. Accordingly, the submissions made in the said matter that the petition should be ordered to be adjudicated by the Division Bench was rejected.

14. On the basis of the aforementioned arguments, it has been submitted by the learned counsel representing the Union of India that even the show cause notices or demand notices in the instant case will amount to an order within the meaning of the said expression occurring in the explanation appended to Chapter XVII, Rule 18 of the Appellate Side Rules, hence, the instant writ petition should be transferred to the learned Single Judge for deciding the issues.

15. Countering the said submissions, learned Senior Counsel representing the petitioner, has argued that so far as the first challenge in the writ petition is concerned, the petitioner has laid its challenge to the notice of demand dated 8th June, 2021, whereby the Competent Authority under the Employees' Provident Funds Act has directed recovery of an amount of Rs.25,23,74,205/- from the petitioner, however, it has been argued that such a demand notice cannot be said to be an order passed by any statutory authority under the Employees' Provident Funds Act. In absence of any adjudication of the default or arrears against the petitioner, his submission is that the notice of demand dated 8th June, 2021 has been issued pursuant to an order of assessment passed by the Authority concerned under the Provident Funds Act and the said assessment order is not under challenge in the writ petition and therefore the demand notice in itself will not amount to an 'order' and thus the instant petition has to be heard by a Division Bench.

16. On behalf of the petitioner, in respect of the second challenge made to the letter/order dated 29th September, 2021, it has been argued that even the

said letter/order cannot be termed to be an order passed by statutory authority under the Employees' Provident Funds Act for the reason that the said order is passed on representation/application preferred by the petitioner. The petitioner has prayed that no recovery from the petitioner can be made on the ground that in the proceedings under the Insolvency and Bankruptcy Code, 2016, the resolution plan has been approved by the adjudicating authority under Section 31, which has been upheld up to the Hon'ble Supreme Court and accordingly in view of the provisions contained in sub-section (1) and sub-section (4) of Section 31 of the Insolvency and Bankruptcy Code, 2016, and in view of the law laid down by the Hon'ble Supreme Court in the case of Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, (2021) 9 SCC 657, the order of assessment under the Employees' Provident Funds Act stood extinguished. He has relied upon the conclusion drawn in the said matter by the Hon'ble Supreme Court, as can be found in para 102.1, which is extracted herein below:-

"102.1: That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan."

17. His submission is that the letter/order dated 29th September, 2021 does not qualify to be an 'order' within the meaning of said expression occurring in the Explanation appended to Rule 18 of Chapter XVII of the Appellate Side Rules for the reason that the said letter/order has not been issued by adjudicating upon any issue between the parties in exercise of any statutory powers under the Employees' Provident Funds Act and hence, such a challenge will be cognizable by the Division Bench.

18. As far as the challenge to the show cause notice dated 19th January, 2023 is concerned, the submission made by learned Senior Counsel for the petitioner is that the said show cause notice will also not qualify to be an order which could be challenged in the writ petition cognizable by the learned Single Judge.

19. In respect of the notice of demand dated 13th July, 2023, the argument on behalf of the petitioner is that the said notice of demand is the consequence of the show cause notice dated 19th January, 2023 and since no adjudication of any issue has been made by any judicial or quasi judicial authority under the Employees' Provident Funds Act, as such, the challenge to the notice of demand dated 13th July, 2023 is also cognizable by the Division Bench.

20. We now proceed to consider the respective submissions in respect of each

challenge made in the instant writ petition.

21. So far as the challenge to the notice of demand dated 8th June, 2021 is concerned, admittedly, it is based on an assessment order passed by the appropriate authority under the Employees' Provident Funds Act. Assessment of any dues by the authority concerned under the said enactment is a quasi judicial function, however, since the very basis of the notice of demand dated 8th June, 2021 i.e. assessment order, though was initially challenged in the instant writ petition, however, by way of amendment to the writ petition, the challenge to the assessment order has been withdrawn, we are of the considered opinion that the notice of demand dated 8th June, 2021 will not amount to an 'order' within the meaning of the said expression, which occurs in the explanation appended to Rule 18 of Chapter XVII of the Appellate Side Rules.

22. We may refer to Section 8-B of the Employees' Provident Funds Act which states that, where any amount is in arrear, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on its receipt of such certificate, shall proceed to recover the said amount. Thus, for issuance of certificate the only condition precedent is that the party concerned should be in arrear. Once an assessment order is passed and the amount under the assessment order is not paid, it does not require any adjudication to fulfill the condition precedent for issuance of the certificate to the Recovery Officer for the reason that the fact as to whether the party concerned is in arrears or not, will not require any adjudication between the parties. Once a finding is reached that the party is in arrear under Section 8 of the Employees' Provident Funds Act, the certificate to the Recovery Officer is issued for recovering the said amount and, in our opinion, issuance of certificate to the Recovery Officer under Section 8-B of the Employees' Provident Funds Act is only a ministerial task to be performed by the authorised officer, which does not require any adjudication of any issue between the parties. As a matter of fact, for existence of the factum of arrears under Section 8 of the Employees' Provident Funds Act, it cannot be said that there exists any issue between the parties, which requires any adjudication. In fact existence of arrears precedes adjudication and once such adjudication is made, no lis remains between the parties as regards quantum of arrears. For the said reason, we are of the considered opinion that the judgments cited by the learned counsel representing the Union of India will not come in the way of the Court holding that the notice of demand dated 8th June, 2021 does not qualify to be an 'order' within the meaning of said expression occurring in the explanation appended to Rule 18 of Chapter XVII of the Appellate Side Rules.

23. The reason for arriving at such a conclusion can be found in the judgments cited by the learned counsel representing the respondent, especially the judgment in the case of Jyoti (supra), wherein it has been held that the show cause notice issued under Section 16 of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 will qualify as an "order". We may look into the

reason assigned by the learned Single Judge in Jyoti (supra) for arriving at such conclusion. The learned Single Judge in para 12 of the report has clearly returned a finding that the act of issuing notice under Section 16 of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 and the procedure to issue such show cause notice is in fact an evidence of a decision. So far as the notice dated 8th June, 2021, which is under challenge in the instant petition is concerned, in our opinion, the said notice is the result of only a ministerial task performed by the authorised officer, which in itself is not an 'order'. We may reiterate that challenge to the assessment which preceded this notice of demand, has been withdrawn by way of amending the prayer clause of the instant petition.

24. Accordingly, we hold that the writ petition in respect of the challenge made to the impugned demand notice dated 8th June, 2021 is cognizable by a Division Bench of this Court.

25. However, so far as the challenge to the letter/order dated 29th September, 2021 is concerned, for the reasons which follow, we are of the opinion that challenge to the said order/letter is cognizable by the learned Single Judge of this Court in terms of the provisions contained in Rule 18 of Chapter XVII of the Appellate Side Rules.

26. If we peruse the order/letter dated 29th September, 2021, what we find is that though the same has been passed pursuant to the application/representation preferred by the petitioner, however, the said letter/order does reflect adjudication. The adjudication of the issues made vide letter/order dated 29th September, 2021 is referable to Section 17-B of the Employee's Provident Funds Act, which provides for adjudication of liability in case of transfer of establishment. Accordingly, so far as the challenge to the letter/order dated 29th September, 2021 is concerned, we do not find ourselves in agreement with the submissions made by the learned counsel for the petitioner and thus we opine that the writ petition in respect of the said letter/order is cognizable by a Division Bench of this Court.

27. Coming to the challenge to the show cause notice dated 19th January, 2023, we find that the said show cause notice has been issued by the Regional Provident Commissioner-II, Regional Office, Nagpur, not by performing merely a ministerial job/task. The show cause notice dated 19th January, 2023 if perused, would clearly indicate that the said notice has been issued on adjudication of the issue regarding the liability under Section 17-B of the Employees' Provident Funds Act. Accordingly, since the show cause notice dated 19th January, 2023 is issued after verification of the liability under Section 17-B of the Provident Funds Act, such show cause notice has been definitely preceded by an adjudication by the Regional Provident Fund Commissioner under Section 17-B of the Employees' Provident Funds Act and therefore the show cause notice dated 19th January, 2023 would qualify as an 'order' within the meaning of the said expression occurring in the Explanation appended to Rule 18 of Chapter XVII of the Appellate Side Rules. In this view, we are of the opinion that the challenge to the

show cause notice dated 19th January, 2023 is cognizable by the Division Bench of this Court.

28. The last challenge in the instant writ petition is to the notice dated 13th July, 2023 which appears to have been issued on the basis of the show cause notice dated 19th January, 2023 where despite notice, the petitioner had failed to offer an explanation. In this view, it also cannot be said that the notice of demand dated 13th July, 2023 did not precede any decision and accordingly applying the law laid down by this Court in the case of Jyoti (supra), we have no hesitation to hold that the challenge to the said demand notice dated 13th July, 2023 will be cognizable by the learned Single Judge of this Court, more so because challenge to the demand notice is only consequential to the challenge to the notice dated 19th January 2023.

29. The question, which now arises in the wake of our finding that out of four challenges made in this writ petition, challenge to the notice of demand dated 8th June, 2021 is cognizable by the Division Bench of this Court whereas the challenge to the letter/order dated 29th September, 2021, show cause notice dated 19th January, 2023 and demand notice dated 13th July, 2023 is cognizable by the learned Single Judge, is whether the instant writ petition ought to be heard by a Division Bench or by a learned Single Judge of this Court.

30. The State Legislature in the year 1986 passed the Maharashtra High Court (hearing of writ petitions by Division Bench and Abolition of Letters Patent Appeals) Act, 1986, which was modified by the Maharashtra Act No. XXVII of 2013 and on its notification the said Act came in effect from 18th March, 2013. By the said Act, the provision of intra-court appeal or Letters Patent Appeal i.e. an appeal before a Division Bench against the order or the judgment passed by the learned Single Judge of this Court has been abolished. Accordingly, if all the four challenges made in this writ petition are tried and considered by the Division Bench, it is not going to cause to any prejudice to either of the parties. Since, at least one of the challenges made in the instant writ petition is cognizable by the Division Bench of this Court in terms of the provisions contained in Chapter XVII, Rule 18 of the Appellate Side Rules and there is no right of intra-court appeal, we are of the opinion that entire matter needs to be heard and decided by the Division Bench of this Court.

31. Interim order granted earlier shall continue to operate till next date. Stand over to 19th December, 2024.

Civil Application (CAW)No.933/2024

32. Heard learned counsel for the respective parties.

33. In respect of the prayers made in the Civil Application, learned counsel for the petitioner agrees to disclose the address of the subsequent purchaser to the learned counsel for the respondent. He also agrees to provide a copy of the sale deed to the learned counsel for the respondent.

34. In view of the aforesaid statement, the application stands disposed of.

35 However, we provide that in case any application seeking impleadment of the purchaser is moved, it will be open for the petitioner to raise an objection to such proposed amendment.