

(2011) 08 BOM CK 0059

In the Bombay High Court

Case No : Writ Petition No. 4519 of 2011 with W.P. No. 4520 of 2011

Nocil Limited (Erstwhile National Organic Chemical Industries Limited) APPELLANT

Vs

Regional Provident Fund Commissioner-II and another RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 — Rule 15
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

Citation : (2011) 131 FLR 21 : (2012) 1 LLJ 600

Hon'ble Judges : K.K. Tated, J

Bench : Single Bench

Advocate : K.M. Naik and Sujeet P. Salkar, for the Appellant; Deepak Rai i./b. Suresh Kumar, for the Respondent

Final Decision : Allowed

Judgement

K.K. Tated, J.—Heard the learned Counsel for the Parties.

2. Rule. Rule made returnable forthwith.

3. By consent, matters are taken on board for final hearing at the stage of admission itself.

4. By these Petitions, under Articles 226 & 227 of the Constitution of India, the Petitioner-Original Appellant challenges the order dated 21st February, 2011 passed by the Appellate Authority in Appeal (ATA) No. 672/9/2007, (Writ Petition No. 4519 of 2011) and Appeal (ATA) No. 673/9/2007 (Writ Petition No. 4520 of 2011) dismissing their Appeal against order under 14-B of Employees' Provident Fund Act. In the present case, the authority passed order u/s 14-B of the said Act, dated 25th July, 2007 holding that Petitioners are liable to pay Penal Damages along with interest to the tune of Rs. 97,29,728/- in respect of establishment bearing Code No. MH/9437 and Rs. 8,01,021 in respect of Code

No. MH/7780. The said order was challenged by the Petitioners before the Appellate Authority. The hearing of the said Appeal was posted on 21st February, 2011. At that time, the Petitioners filed application dated 21st February, 2011 for adjournment, on the ground that the Petitioners are having office at Bombay, the papers and concerned records were lying at Bombay, their Advocate was at New Delhi, and as notice of hearing of the Appeal received recently, the Petitioners could not arrange for bringing the entire record of the case for giving proper instructions to the advocate at Aurangabad. On this ground, the Petitioner requested for postponement of the hearing of Appeal. Thereafter, the Petitioner received a notice dated 22nd February, 2011 on 8th March, 2011 from the Employees' Provident Fund Appellate Tribunal, New Delhi, stating that the Appeals are kept for hearing on 15th April, 2011 at 10.30 a.m. before the Hon'ble Presiding Officer/Registrar. Before 15th April, 2011, the Petitioners received the impugned order dated 21st February, 2011. The said order is challenged by the Petitioners in these Petitions. The learned Counsel appearing for the Petitioner submits that the impugned order dated 21st February/ 2011 was passed by the Appellate Authority without hearing them. He submits that on 21st February, 2011, they specifically made application for adjournment. Thereafter, they received a notice from the office of Employees' Provident Fund Appellate Tribunal in ATA No. 672/9/2007 and 673/9/2007 dated 22nd February, 2011, stating that the hearing of the Appeal was kept on 15th April, 2011 at 10.30 a.m. and suddenly before that day, they received the impugned order dated 21st February, 2011. In the order, the Appellate Authority recorded that no one appeared on behalf of the Petitioners and, therefore, the Appellate Authority decided their Appeal as per Rule 15 of Employees' Provident Fund Appellate Tribunal, Rules 1997. The learned Counsel appearing for the Petitioners submits that the impugned order passed by the Appellate Authority is against justice, equity and good conscience and the same is liable to be set aside, as the Appellate Authority without hearing them passed the order ex-parte on 21st February 2011, when the matter was adjourned on the application of the petitioners. He further submits that after filing present petitions in this Court, they immediately intimated the Regional Provident Fund Commissioner- II by their letter dated 13th June, 2011 that matters were kept for hearing on 21st June, 2011 at 11.00 a.m. In spite of that, the Respondent-authority in both the matters recovered total sum of Rs. 1,08,18,546/- from their HDFC Bank on 13th June, 2011. The learned Counsel appearing for the Petitioner states that initially Assistant Provident Fund Commissioner and Recovery Officer, SRO by its order dated 8th June, 2011 informed the Manager, HDFC Bank to remit the said amount to them. The letter forwarded to the Enforcement Officer in which it was specifically stated that he has to comply with the said order on or before 20th June, 2011. Suddenly, after the receipt of the notice from the Petitioner's Advocate dated 13th June, 2011, the Assistant Provident Fund Commissioner amended order dated 8th June, 2011 addressed to the Manager, HDFC Bank Ltd., and copy marked to Enforcement Officer, directing to comply with the said order on or before 13th June, 2011. On the above mentioned submissions and facts,

the learned Counsel appearing for the Petitioners submits that the impugned order passed by the Appellate Authority in ATA No. 672/9/2007 and 673/9/2007 dated 21st February, 2011 is liable to be set aside and the Respondent authority be directed to refund amount recovered by them from the Petitioner Bank, pursuant to the order/letter dated 8th June, 2011, issued by the Assistant Provident Fund Commissioner and Recovery Officer, SRO.

5. The learned Counsel appearing for the Respondent vehemently opposed the present Petition. They filed their affidavit in reply dated 2nd August, 2011, affirmed by one Mr. Pawan Kumar Thakur, Enforcement Officer working in the office of Regional Provident Fund Commissioner, Sub-Regional Office, Vashi, New Mumbai. He submits that the Appellate Authority rightly passed the order