
(2021) 08 MP CK 0029
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 677 Of 2021

Tata International Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner, Indore And Another

RESPONDENT

Date of Decision : 02-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Employees' Provident Funds And Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2021) 08 MP CK 0029

Hon'ble Judges : Sujoy Paul, J;Anil Verma, J

Bench : Division Bench

Advocate : Parth, Sanjay Sharma

Final Decision : Dismissed

Judgement

Sujoy Paul, J

1. Heard on admission.

This intra-court appeal assails the order dated 18.06.2021 passed in W.P. No.4362/2021 whereby learned Single Judge declined interference in the

writ petition, which was directed against the show-cause notice.

2. Learned counsel for the appellant submits that the appellant was put to notice under Section 7-A of the Employees' Provident Funds &

Miscellaneous Provisions Act, 1952. The petitioner filed reply dated 29.09.2019 Annexure P-6 and raised an objection regarding sustainability of

proceeding. The competent authority without deciding this objection is proceeding with the matter which compelled the appellant to knock the doors of

the writ court. The writ court without entering into the merits of the case and without considering the contention of appellant dismissed the writ

petition. The appellant is seeking a direction to the competent authority to take a decision as preliminary issue regarding maintainability of the

proceeding and if proceeding survives, he may proceed further.

3. Shri Sanjay Sharma, learned counsel supported the order of learned Writ Court.

4. The learned Single Judge recorded as under:-

“In pursuant to the show cause notice, the petitioner has already submitted a reply on 29.09.2019 (Annexure P/6). Thereafter, another written

submissions have also been filed on 21.09.2020. The petitioner is regularly participating in the enquiry since 9.7.2019 till today. The preliminary

submissions have been made only in the written submissions submitted by the petitioner. The petitioner filed the present petition on 24.02.2021 which

came up for hearing on 16.03.2021 but the petitioner’s counsel sought an adjournment. Thereafter, this petition came up for hearing on 22.3.2021,

again the petitioner’s counsel sought time and thereafter this petition coming up for hearing today. During this period the petitioner has not made

any effort for getting this petition listed and regularly appearing before the authorities. Since the enquiry has reached the final stage, therefore, this

petition challenging the show cause notice is not maintainable. The authority who has issued the notice is competent to decide its jurisdiction also if

raised before it. All the grounds raised in this petition have already been raised before the authority conducting the proceeding under section 7A,

therefore, this petition being pre-mature is dismissed at this stage.

5. Indisputably, the show-cause notice dated 28.06.2019 was subject matter of challenge before the writ court. The appellant already has filed its

reply dated 29.09.2019 Annexure P-6. The singular question is whether show-cause notice was liable to be interfered with by writ court at this stage

when the competent authority has not taken any decision on the said show-cause notice and on the objection filed by the petitioner.

6. The point is no more res-integra. In 2004 (3) SCC 440 (Special Director and another Vs. Mohd. Ghulam Ghouse and another), the Apex Court

opined as under:-

“Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice

and such issues also can be adjudicated by the authority issuing the very notice

initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter?? (Emphasis supplied)

7. If petitioner has taken the objection and a decision is yet to be taken by the competent authority on the said objection, no interference was warranted at this stage. It is the prerogative of the competent authority to take a decision on the said objection in accordance with law at appropriate stage. Interference under Article 226 of the Constitution can be made at interlocutory stage in any adjudicating process, if the proceeding is shown to be without jurisdiction or suffers from any manifest procedural impropriety or palpable perversity. Another view is possible, is not a ground for interference in exercise of power under Article 226 / 227 of the Constitution. It is the prerogative of the adjudicating authority to decide the preliminary objection at appropriate stage. No case is made out for issuance of a writ or issuance of command to the authority to act in a particular manner or at a particular stage.

8. We find no infirmity in the order of learned Single Judge. Writ appeal fails and is hereby dismissed. However, in the interest of justice, we deem it proper to observe that it will be lawful for the authority exercising jurisdiction under Section 7-A of the Act to decide the objection raised by the appellant at appropriate stage in accordance with law.