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**(2011) 08 BOM CK 0057**

**In the Bombay High Court**

**Case No :** Writ Petition No. 3116 of 2011

Vyankatesh Shetkari Vinkari Sahakari Sool Girani Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner and Recovery Officer and Others RESPONDENT

**Date of Decision :** 29-08-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7A

**Citation :** (2012) 132 FLR 759

**Hon'ble Judges :** S.C. Dharmadhikari, J

**Bench :** Single Bench

**Advocate :** M.S. Topkar, for the Appellant; D.J. Khambata, Additional Solicitor-General of India, a/w and Mr. Suresh Kumar, for the Respondent

## Judgement

Hon''ble Mr. S.C. Dharmadhikari, J.—This Writ Petition is directed against the order of the Employees'' Provident Fund Appellate Tribunal, New Delhi in ATA No. 218 (9) 2006 delivered on 7.1.2011.

2. This is one more instance where the order of the Appellate Tribunal delivered and pronounced by the same Presiding Officer is required to be set aside on the ground of complete non application of mind.

3. The order recites that the appeal is preferred by the Appellant (Petitioner before me) against the order of the Provident Fund Authority passed u/s 14B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, "EPF Act"). The order proceeds on the basis that it is arising out of the proceedings u/s 14B of the EPF Act directing the Petitioner to deposit the penalty and interest.

4. If the learned Presiding Officer, namely, Mr. Srikanta Nayak had been careful, he would have noticed that the challenge before him is to an order passed by the Assistant Provident Fund Commissioner on 19.9.2001. The appeal memo and

particularly paragraph 3 thereof, makes it clear that what is challenged is an assessment of provident fund u/s 7A of the EPF Act. It the appeal memo had been perused little carefully, it would have been apparent to the Presiding Officer that neither was there any issue of penalty, damages nor of any interest, but this was an assessment for the payment of the provident fund. The inquiry u/s 7A of the EPF Act assessing the provident fund contributions as Rs. 45,12,505, Employees'' Pension Scheme (EPS) contributions of Rs. 8,42,039, administrative charges as Rs. 64,980 and Employees'' Deposit Linked Insurance (EDLI) contributions as Rs. 50,001 together with administrative charges as Rs. 1,012. Thus, in all Rs. 54,70,537 was directed to be paid by the Petitioner/assessee.

5. It was pointed out by the learned counsel appearing for the Petitioner that from this order, which was communicated to the Petitioner, the subject appeal was filed aggrieved thereby and raising several pleas as set out in the grounds of appeal memo. In the meanwhile, the authorities also initiated certain recovery proceedings.

6. It has also been pointed out to me that the Petitioner Assessee has already deposited Rs. 27,22,937. In such circumstances, had the Appellate Tribunal applied its mind to the nature of challenge and the proceedings, it would have been apparent further to it that the finding and conclusion recorded could not have been recorded at all. There was no case of any damages being levied. The facts in some other case possibly have been mixed up. Even that does not appear to be the case inasmuch as paragraph 6 of the impugned order reads thus:--

6. The applicability of the EPF Act to the appellant establishment and the delay in depositing of the EPF dues is not disputed. Though it is asserted that the appellant paid the EPF contribution no document has been filed to that effect so there is no material to hold that the contribution was made. Financial problem is a very common problem in all the industrial establishments. The financial problem or crises is not a ground to justify the default in payment of dues. In the case of Sky Machinery Ltd. v. RPF Commissioner, reported in 1998 LLR 925 the Hon''ble Court of Orissa held that, "the financial grounds will not be sufficient for waiving penal damages for delay in depositing of PF contribution." Also, in the case of M/s. Hindustan Times Limited Vs. Union of India and Others, , the Lordship held that "power cut, financial problem relating to other indebtedness or delay in realization of amount paid by check are not relevant explanation to avoid liability for the default.

7. Reading of paragraph 6 of the order, would make it clear that this paragraph is common to all orders that are made by this Presiding Officer. This is a stereo type recording of findings and conclusions. Even in the matters u/s 14B of the EPF Act, this paragraph is invariably found in the orders of the Appellate Tribunal and particularly delivered by this Presiding Officer. It has been repeatedly pointed out by me that being an appellate authority, he has definite duties to perform in law. It is not to merely put a stamp of approval without application of mind, that

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the Appellate Tribunal has been set up. The appellate authority has to consider the matter independently and it has very wide powers in law. In these circumstances, passing of such orders as a matter of routine and in a casual manner, defeats the very purpose of the enactment. It is not the Assessee who has to challenge the order in a higher court, but it is ultimately the workmen who suffer because of delay. All remittances to the workmen depend upon outcome of the proceedings. If the proceedings do not reach a finality in expeditiously, then, the concerned beneficiaries have to await the disbursement of the contribution that is made by the workmen and their employer. Sometimes for no fault of the beneficiary and assessee, the penalties are being levied.

8. In such circumstances, I had requested the learned Additional Solicitor-General to remain present in order to impress the authorities through him that such orders are challenged before this Court in number of Writ Petitions. In all these matters, this Court was compelled to remand the proceedings back to the Appellate Tribunal. It has come to notice of this Court, in all matters, that the assessment proceedings are fairly old. In some cases, already more than 10 years have lapsed from 7A inquiry. Such being the nature of the proceedings and the manner in which the orders have been made, that I was compelled to request the learned Additional Solicitor General to convey this Court''s displeasure to the authorities and particularly, the Appellate Tribunal and if the matters are not set right at the end of the Department, this Court''s intervention would become necessary. If the matters are being decided in such manner repeatedly, then, this Court will have to pass drastic order in its extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

9. In these circumstances and finding that the impugned order is one more instance of an error apparent on the face of record and total non application of mind, it is quashed and set aside. The appeal will now be heard by the Appellate Tribunal afresh on merits and in accordance with law. All contentions of both sides are kept open. The Appellate Tribunal shall make an endeavour to decide the appeal as expeditiously as possible and within a period of three months from the date of communication of this order.

10. The Writ Petition is, accordingly, disposed of. No costs.

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