

MANU/MH/2872/2013

Equivalent Citation: 2016LLR2

IN THE HIGH COURT OF BOMBAY

CAJ W.P. No. 1564/2013

Decided On: 09.04.2013

Appellants: **Vindychal Security, Detective & Allied Services Pvt. Ltd.**
Vs.

Respondent: **Assistant Provident Fund Commissioner**

Hon'ble Judges/Coram:

K.K. Tated, J.

Counsels:

For Appellant/Petitioner/Plaintiff: S.C. Naidu, T.R. Yadav, Advocates i/b C.R. Naidu and Co.

For Respondents/Defendant: Suresh Kumar, Advocate and S. Yadagiri, Enforcement Officer

JUDGMENT

K.K. Tated, J.

- 1.** Heard the learned counsel for the petitioner. By consent, matter is taken on board for final hearing at the stage of admission.
- 2.** By this petition, under Article 226 and 227 of the Constitution of India, petitioner challenges the order under section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 dated 11th December, 2012 and the order dated 2nd January, 2013 under section 7B(1) of the said Act. By order dated 11th December, 2012 under section 7A of the said Act, Authority called upon the petitioner to pay a sum of Rs. 3,94,21,674 towards dues under the said Act.
- 3.** It is the case of the petitioner that at the time of passing order dated 11th December, 2012, the Assistant Provident Fund Commissioner relied on deposition of Enforcement Officer. He further states that copy of the said deposition was not provided by the Authority and therefore, the order passed by the Assistant Provident Fund Commissioner dated 11th December, 2012 is against justice, equity and good conscious and same is liable to be set aside.
- 4.** The learned counsel for the respondent after taking instructions from the concerned officer, Mr. S. Yadagiri who is present in the court made a statement that it is an admitted fact that copy of deposition of Enforcement Officer was not provided to the petitioner.
- 5.** In view of this fact, it is crystal clear that Authority passed impugned order dated 11th December, 2012 without providing the material facts and documents to the petitioner and therefore, same is against justice, equity and good conscious and same is liable to be set aside.

6. The learned counsel for the petitioner further pointed out that the order is passed by the Assistant Provident Fund Commissioner in Review Application under section 7B(1) of the said Act without hearing the petitioner. These facts have also been admitted by the Advocate for the respondent. Counsel for the petitioner in support of his contention states that if the order is passed without hearing, the same is liable to be set aside. He relies on the judgment of the Gujarat High Court in the matter of Cookvel Foods India Private Limited v. Assistant Provident Fund Commissioner in Civil Appeal No. 17769 of 2003 dated 25th March, 2005 in para 5 as under:

"(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order under review as if the order passed under review were the original order passed by him under section 7A.

7. The perusal of Section 7B shows that if a new ground is discovered or new matter or evidence could not be produced to the notice of the authority, the review application can be preferred. What would be the scope and ambit of review on the basis of new material or which can be said as new material etc. is not the subject matter of this petition, therefore, it would not be necessary to examine the scope and ambit of the power of review under Section 7B of the Act on the aforesaid aspects, except the only aspect as to whether the opportunity of hearing is required or not. Sub-section (3) of Section 7B provides that where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application and, therefore, the contention possibly based on the said sub-section is that there is no express provision made for giving opportunity of hearing. It is well settled that whenever the powers are to be exercised for quasi-judicial purpose or whenever the authority is acting as a quasi-judicial authority, the hearing is a must, because passing of any order is to visit with civil consequences. Such principles are in certain matters read even for administrative decision. In the present case, if the scheme of the Act, more particularly sections 7A and 7B are considered, firstly the powers under section 7A with the Provident Fund Authority are as quasi-judicial authority. Express powers are provided as per Section 7B for review on the ground mentioned in review. Even otherwise also, it is well settled that even if the statute does not provide for opportunity of hearing unless it is expressly excluded or unless there are any emergent circumstances warranting for such purpose, the section or any power under statute as that of quasi judicial authority are to be read with the principles of natural justice and such scheme of giving opportunity of hearing by observance of principles of natural justice is to be read as inbuilt mechanism of any decision-making process by a quasi judicial authority. Therefore, the contention of Mr. Mehta that hearing is required only if new material to the satisfaction of the authority is found for exercise of the power of review cannot be accepted. Whether such material is new material or whether such contention is required to be considered for attracting the power of review or not would also require that the person concerned who has preferred the review application is heard. The authority before concluding the proceedings of the review application must give an opportunity of hearing to the party concerned. Mr. Mehta made an attempt to submit that in proviso to Sub-section (4) of section 7B hearing is provided as per Clause (a) and, therefore, power under section 7B(3) may not be read with principles of natural justice. As such Clause (a) of proviso to sub-section (4) of section 7B

does make it mandatory to authority to give hearing if the application is to be allowed but thereby it cannot be read that no hearing is necessary if application is to be rejected. Since in the present case, as observed earlier, it is an admitted position that no opportunity of hearing has been given, the order passed in review application dated 26.12.2002 cannot be sustained in the eye of law and deserves to be quashed and set aside on the ground that opportunity of hearing has not been given."

7. Considering the fact that the Advocate for the respondents admits that at the time of deciding Review Petition, personal hearing was not given to the petitioner and the law laid down by the Gujarat High Court in the matter of Cookvel Foods India Private Limited v. Assistant Provident Fund Commissioner, (Supra), I am of the opinion that it is necessary to set aside the order dated 2nd January, 2013 dismissing the petitioner's Review Application.

8. The learned counsel for the respondents after taking instructions from his officer who is present in the court makes a statement that they will provide all the documents relied by them in the proceeding under section 7A of the said Act either to the petitioner or his Advocate on record within four weeks from today. Statement is accepted. Considering these facts, petition is disposed of with following directions:

- a. Order dated 11th December, 2012 passed under section 7A of the said Act and order dated 2nd January, 2013 under section 7B(1) of the said Act is set aside.
- b. Matter is remanded to the 7A Authority to decide on its own merits.
- c. Respondents to provide all documents relied by them in 7A proceeding either to petitioner or their Advocate within four weeks from today.
- d. Liberty granted to the petitioner to file additional application and/or documents before the 7A Authority within 8 weeks from today.
- e. Authority under section 7A to decide the application as early as possible after giving hearing to both the sides and allowing them to file additional documents, if any.

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