

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-2, MUMBAI**

APPEAL NO. CGIT- 2 / EPFA /26 /2022

M/s. Bhagwan V. Patil, Nashik - Appellant

V/s.

The Regional Provident Fund Commissioner,

EPFO, Nashik. - Respondent

ORDER
(Delivered on 18-11-2024)

M/s. Bhagwan V. Patil / appellant-, has challenged the legality of the order dated 17.11.2022, u/s. 14-B & 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (hereinafter referred to as "the EPF Act") passed by the Regional Provident Commissioner Nashik/ respondent-opponent in the present appeal and by this application, the applicant prays for stay to the effect and operation of the order under appeal during pendency of lis.

2. The applicant is a labour contractor, engaged in sweeping services, covered under the EPF & MP Act since 26.04.2005 and complying the provisions of the EPF & MP Act without any default. He was generating E.C.R. from E.P.F.O. Software. There was a mistake in uploading E.C.R. after formatting laptop since February 2016 incorrect payment was made in pension Account i.e., (A/c. 10) to (A/c. 01). On paying contributions the opponent

rejected the E.C.R., returned the money deposited from February 2016 on 22.12.2017, May 2016 on 15.01.2018 & June 2016 on 12.01.2018 and the same was paid on 02.01.2018, 15.01.2018 & 15.01.2018, still the opponent issued summons dated 17.10.2018 for the period from August 2015 to October 2018 for Damages & Interest and passed the orders under appeal. In fact, there was delay due to technical reasons however without considering the same, the Authority has passed the order in respect of damages and interest as such the orders under appeal are ex-facie, illegal and improper.

3. The opponent resisted the application by reply. The opponent contended that, on filing an appeal the applicant has to deposit 75% of the amount due as well as also to deposit some amount of damages however the applicant has not deposited that amount before the Tribunal therefore the applicant is not entitled for interim relief as prayed and ultimately requested to reject the application.

4. I have heard Mr. Chheda representative for the applicant and Mr. M.N. Rajput Advocate for the opponent.

5. I have given anxious considerations to the oral submissions advance on behalf of the parties. There appears no dispute that, the amount of contribution for the period from 01.04.2015 to 11.10.2018 was delayed and the applicant came up with the specific case that, he was generating E.C.R. from E.P.F.O. Software, in 2016 the laptop was formatted, before formatting the backup of E-return was taken and after repairing the software was installed however after formatting the laptop, the software was changed and due to that, the error resulting incorrect payment in

pension A/c. i.e., different A/c. as such there was a mistake in making the contributions and the said payment was returned to the applicant on 02.01.2018, 15.01.2018 & 15.01.2018 and thereafter that contribution was deposited in proper E.C.R. It goes to show that, due to installation of wrong of E.C.R. there was a late payment of contribution during the relevant period. The facts needs to be considered while deciding the appeal on merit, however it can be safely said that, the applicant has made out a prima-facie case at the stage, considering the facts and circumstances of the case more particularly the fact of depositing the contribution on wrong E.C.R., which was subsequently returned by the opponent, in my opinion the balance of convenience lies in favor of the applicant and considering the comparative hardships, the applicant is entitled for interim stay to the effect and operation of the order under appeal.

6. The counsel for the applicant fairly stated during the course of arguments that, as per order under appeal the amount of Rs. 07,03,272/- has been levied towards damages and Rs. 03,64,667/- towards interest in such circumstances, I am directing the applicant to deposit the amount of interest of Rs. 03,64,667/- with the opponent immediately within a period of four weeks from the date of this order if not deposited earlier.

7. As regards the amount of interest towards damages, as per Sec. 7-O it is obligatory on the part of the applicant to pre-deposit 75% of amount in case of appeal u/s. 7-A of the EPF & MP Act however, the said provision is certainly not applicable in respect of appeal against the order in respect of damages

u/s. 14-B of the EPF & MP Act in short in respect of damages, there is no compulsion to pre-deposit any amount at the time of filing appeal as well as pendency of stay application, in such circumstances the request made on behalf of the opponent in respect of direction to deposit 75% amount in respect of damages cannot be accepted.

In the result, the application is allowed. The effect and operation of the orders under appeal will be stayed only after depositing the amount of Rs. 03,64,667/- towards interest within a period of four weeks from the date of this order if not deposited earlier.

Sd/-

Date: 18-11-2024

(Shrikant K. Deshpande)
Presiding Officer
CGIT -2, Mumbai

