

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt Pranita Mohanty

Presiding Officer

EPFA NO. 37 OF 2022

M/s. American School of Bombay ... Appellant

Vs

Regional Provident Fund Commissioner ... Respondent
Bandra

Presence:

For the Appellant : Mr.H.L.Chheda,
Authorized Legal Representative.

For the Respondent : Mr. Ravi Rattesar, Adv.

Mumbai, dated the 22nd day of July, 2022

ORDER

This order deals with the admission and a separate petition filed by the appellant praying waiver of the condition prescribed u/s 7 O of the Act

directing deposit of 75% of the assessed amount as a pre condition for filing the appeal, for the reasons stated in the petitions.

Notice of the appeal being served on the respondent, learned counsel for the respondent appeared and participated in the hearing held for admission of the appeal, though no written objection has been filed by the respondent. The record reveals that the impugned order u/s 7A was passed by the commissioner on 18/04/2022 and served on the appellant on 14/05/2022. The appeal was filed on 19/05/2022 i.e within the prescribed period of limitation.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 -O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed taking into consideration the allowances paid to the international workers. This is the second round of litigation, the first being the order passed by the Additional CPFC and challenged in ATA No 1334(9) 2015. The EPFAT by order dt 10/10/2016 had set aside the order passed by the Addl CPFC holding that the cost of living allowance not being universally paid , can not be considered as a part of the basic wage. That order of the EPFAT was never challenged by the Respondent. On the contrary, within a short interval the second round of inquiry for the period from 04/2015 to 11/2016 was started basing upon the report of the EO. Being summoned the representative of the appellant establishment appeared before the commissioner, produced all the relevant records and pleaded that the inquiry proposed is illegal since the issue for inclusion of mobility Allowance, Cost of living Allowance and Hardship Allowance has been set at rest for the order passed by the EPFAT in ATA no 1334(9)/2015. But the commissioner without going through the details

of the said records and the written submission of the establishment and in defiance of the judicial pronouncement of the Hon'ble Apex Court, passed the order, which is based upon the report of the E O only. Citing various judgments of the Hon'ble S C including the judgements rendered in the case of **Bridge & Roof Co (India) Ltd vs UOI and Manipal Academy of Higher Education vs PF Commissioner** he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success as the commissioner failed to appreciate the principle of universality . He also submitted that the commissioner while discharging a quasi judicial function had manifestly failed to deal the legal submissions of the appellant establishment. He also submitted that the special allowances paid not being universally paid, falls out side the definition of basic wage defined u/s 2 (b) of the EPF & MP Act. All these aspects if would be considered ,the appellant has a fair chance of success. Thus insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant during this difficult time when the commercial activity is encountering huge loss. He there by prayed for waiver of the condition of pre deposit on the ground that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also submitted that at the end of the hearing of the appeal, if the amount assessed is found payable it will be paid as the appellant having a large business infrastructure in the country, there is no chance of fleeing away or evading the statutory liabilities.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the

Beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. He also submitted that the salaries of the International workers have been intentionally bifurcated to avoid PF contribution and defeat the very purpose of the Act.

Considering the submission advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7-O of the Act. There is no dispute on the facts that the commercial activities in all sectors are facing a backlash on account of the outbreak of COVID-19 and the preventive shut down of the activities. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 4/2015 to 11/2016, and the amount assessed is Rs 14,94,04,820/-. The appellant has pointed out in the grounds of the appeal as to how the legal and factual aspects brought to the notice of the commissioner during the inquiry were ignored without being answered in the impugned order. Without going to the other details as pointed out by the appellant for challenging the order as arbitrary , and at this stage of admission without making a roving inquiry on the merits of the appeal , it is felt proper to extend protection to the appellant pending disposal of the appeal keeping the principle of law laid down by the Hon'ble SC in the case of *Mulchand Yadav and another* .Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the assessed amount be protected from being recovered from the appellant as has been held by the Apex court in the case of **Mulchand Yadav and Another vs Raja Buland**

Sugar Company and another reported in(1982) 3 SCC 484 that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

In view of the said principle laid down and considering the grounds taken in the appeal, the period of default ,the amount assessed, it is felt that the circumstances do not justify total waiver of the condition of pre deposit. But the ends of justice would be met by reducing the amount of the said pre deposit from 75% to 25%. Accordingly the appellant is directed to deposit 25% of the assessed amount within 8 weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by depositing the FDR for the said amount in the name of the Registrar, NIT, Mumbai initially for a period of one year with provision of auto renewal. On compliance of the above said direction, the appeal shall be admitted and there would be stay on execution of the impugned order till disposal of the appeal. There would be an interim stay on the execution of the impugned order till the next date. Call the matter on for compliance of the direction.

PRESIDING OFFICER

CGIT – 1, MUMBAI