

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-1/36/2021

M/s. Bhagat Memorial Model Public School	Appellant
VS.	
APFC, Delhi (North)	Respondent

ORDER DATED:- 12/11/2021

Present:- Shri Kunal Arora, Ld. Counsel for the Appellant.
Shri Rikesh Kumar, Ld. Counsel for the Respondent.

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.

Copy of the petitions being served on the respondent, learned counsel for the respondent appeared and participated in the hearing held through video conferencing on 28.10.21, though no written objection was filed. The record reveals that the impugned order u/s 7A was passed by the commissioner on 30.7.21 and the appellant filed the appeal on 27.09.21 Hence the appeal has been filed 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 7O of the Act. The learned counsel for the appellant submitted that the impugned inquiry was initiated on the basis of the complaints made by some ex employees of the establishment engaged as MTS on contractual basis. Those employees had manipulated the documents of the appellant establishment to make out a false claim and matter was reported to police

seeking appropriate action. The respondent when served shows cause notice on the appellant establishment, a proper and detail reply was submitted. But the commissioner never considered the same. On the contrary it was observed in the impugned order that no reply to the show cause notice was ever submitted. The respondent initiated the inquiry on the basis of some photo copies submitted by the complainants and ignored the original records submitted by the establishment produced during the inquiry showing the duration of employment of those complainants. The contradiction with regard to their claim, statement recorded during inquiry and available records were pointed out to the commissioner as well. But none of the submissions were considered while passing the impugned order and the commissioner without going through the details of the said records and the order is based upon the report of the E O only. Citing various judgments of the Hon'ble SC. 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 objection raised by the appellant which is nonprofit making organization. He also submitted that the commissioner while discharging a quasi judicial function had manifestly failed to deal the legal submissions of the appellant establishment. 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. 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.

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. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 04/2001 to 08/2019 and the amount assessed is 14,39,444/- 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 said 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 30%. Accordingly the appellant is directed

to deposit 30% of the assessed amount within 6 weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by the way of FDR in the name of Registrar CGIT having auto renewal mode initially for a period of one year. 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 impugned order till the next date. Call the matter on 20.01.2022 compliance of the direction.

Presiding officer