

CGIT-1/EPFA/50 OF 2022

08.9.2022

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present
Smt.Pranita Mohanty
Presiding Officer

M/s. Fitness Point Health Care Pvt. Ltd. ... Appellant
Vs

Assistant Provident Fund Commissioner ... Respondent
Nashik

Presence:

For the Appellant : Mr. H.L.Chheda,
Authorized representative

For the Respondent : Absent.

ORDER

This order deals with the admission of the appeal and a separate application filed by the appellant praying an interim order of stay on the action to be taken by the Respondent pursuant to the said order.

Copy of the appeal and the application being served the learned counsel for the respondent appeared and participated in the hearing held on 07/09/2022.

The facts necessary to deal the prayer are that the appellant is a private Ltd Company doing business in providing fitness care and consultancy. Earlier in the year 2006, on the basis of the report submitted made by the EO an inquiry was conducted by the respondent and by order dt 23/06/2010 the commissioner passed the order holding that the provisions of the Act applies to the appellant establishment under the schedule Society, Club, Association. Being aggrieved the appellant preferred an appeal before this Tribunal. But the tribunal by order dt 15/10/2010 decided the appeal against the appellant holding that the provisions of the Act applies to the appellant establishment for the activities undertaken. Being aggrieved the appellant approached the Hon'ble High Court of Bombay and the Hon'ble court by order dt 21/06/2012 set aside the orders passed by the commissioner as well as the Tribunal. Thereafter a fresh notice was issued for inquiry and the commissioner again passed the order on 28/01/2019 holding that the Act is applicable to the establishment under the schedule Society Club Association. Being aggrieved the appeal has been filed. It is submitted by the appellant that the order with regard to the applicability has been passed without considering the documents placed by the appellant and without proper interpretation of law. On account of the said order impugned in this appeal, the Respondent is proceeding with other inquiries with regard to the PF liability of the establishment to the prejudice of the appellant. Hence it has been prayed that an interim order pending disposal of the appeal be passed directing the respondent not take any action on the basis of the impugned order.

In her reply the learned counsel for the Respondent submitted that the Hon'ble High Court in the order dt 21/10/12 while setting aside the orders had given liberty to the respondent to initiate fresh inquiry. Accordingly a fresh inquiry was held and the appellant establishment was found covered under the Act. No illegality was committed in the action taken by the Respondent. The legality of the order can not be challenged independently in appeal for the word 'and ' used between sub section 1 and 2 of sec 7A of the Act.

The appellant submitted that the Respondent after passing of the impugned order has also decided the liability of the establishment for PF remittance without waiting for the result of the present appeal, though the same is within their knowledge. Hence a prayer for interim stay has been made. Appellant has relied upon the judgment of the Hon'ble High Court of Patna in which it has been held that that "once a dispute with regard to the applicability of the Act is raised and pending for adjudication, such a dispute is to be decided first and before any order determining the amount due from the employer is passed.

Here is a case that the dispute with regard to the applicability is pending before the Tribunal and it is not disputed that the same is within the knowledge of the Respondent Authorities. Despite that the Respondent is proceeding with the action of determining the PF dues payable by the appellant, which no doubt is prejudicial to the interest of the appellant. Hence it is felt proper to pass an interim order restricting the action of the Respondent pending disposal of the Appeal.

In this appeal filed challenging the order passed u/s 7A(1) of the Act, the provisions of sec 70 need not be complied. There being no other defect, the appeal is admitted. The respondent is directed not to take any action against the Appellant pursuant to the order deciding applicability including determination of dues under the Act pending disposal of the appeal.

List the matter on 9/12/22 for filing of reply by the Respondent.

Presiding Officer