

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt.Pranita Mohanty

M/s. Bhiwandi Nizampur Nagarpalika College Appellant

Vs

Regional Provident Fund Commissioner ... Respondent

Thane

Presence:

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

For the Respondent : Sachin Tigadi, Adv

ORDER

This order deals with the admission of the appeal and the application filed by the appellant directing the respondent not to take any action against the appellant establishment till disposal of the appeal.

It has been pleaded that the appellant is an educational institution which promotes education among the under privileged population. The APFC initiated

an enquiry under section 7-A of the EPF Act. The establishment challenged the applicability of the EPF&MP Act to the establishment by participating in the enquiry. But the Commissioner ignoring the lawful submission passed an order declaring that the provisions of the Act are applicable to the appellant establishment. The appellant approached the Hon'ble High Court of Bombay challenging the order and the Hon'ble High Court by order dated 2nd August 2018 passed in WPC No.6817 quashed the order and remanded the matter for a fresh enquiry under Section 7-A. After communication of the said order the RPFC initiated a fresh enquiry and on 27.1.2022 passed the order holding that the Act is applicable to the appellant establishment. Being aggrieved, the present appeal has been filed.

Learned counsel for the respondent Mr Sachin Tigadi, appeared for the respondent and raised objection with regard to maintainability of the appeal. The learned A.R for the appellant submitted that the Hon'ble Apex Court in the case of Yeshwant Gramin Shikshan Sanstha vs. The Assistant Provident Fund Commissioner and Ors reported in AIR 2017 SC 1430 have clearly held that the provisions of EPF&MP Act is not applicable to the employees of the establishment who are covered by the CPF scheme framed by the State Government subject to eligibility. Thus, in this appeal the appellant has stated that the Hon'ble Supreme Court ruled that once an establishment is covered under any one of the excepted category under 16 of the Central Act the official empowered by the Central Act will have no authority to proceed against such establishment and more so on the ground that some part time employees working in the establishment are not eligible for the benefit under the State's CPF Scheme. Thus, in this case the appellant argued that when the order of the Commissioner with regard to the applicability is under challenge the respondent authority should not be allowed to proceed with any enquiry under Section 7-A or other provisions of EPF & MP Act which if done would be prejudicial to the appellant. He thereby prayed for admission of the appeal and

an order prohibiting the respondent from conducting any enquiry against the appellant establishment.

To make this Tribunal believe about the proposed action of the respondent he pointed out the operative portion of the impugned order wherein the RPFC after deciding the applicability has clearly given a direction to the department to initiate fresh enquiry and assess the amount of PF and allied dues of all eligible employees.

When the appeal challenging the applicability is pending and the same is maintainable before this Tribunal it is desirable that all follow up actions pursuant to the impugned order need to be stayed pending disposal of the appeal. There being no defect in the appeal, the same is admitted. The respondent is directed not to take any action to assess the liability of the appellant establishment under the EPF&MP Act till disposal of the present appeal challenging the applicability of the Act to the establishment.

File on 05/12/2022

PRESIDING OFFICER
CGIT-1 MUMBAI