

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1,

MUMBAI

PRESENT

SMT.PRANITA MOHANTY

EPFA-84 OF 2021

Parties:

M/s. Rahuri Municipal Council : Appellant

Vs.

Regional Provident Fund Commissioner

Ahmednagar : Respondent

Appearance:

For the Respondent : Ms.Krunali Satra, Adv

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

Mumbai, dated the 22nd day of July 2022.

ORDER

This order deals with two separate petitions filed by the appellant praying condonation of delay for admission of the appeal and 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 both the petitions being served on the respondent, learned counsel for the Respondent appeared and participated in the hearing

though no written objection has been filed . Perusal of the record reveals that the impugned order u/s 7 A of EPF &MP Act was passed by the commissioner on 20/05/2021 and the appeal has been filed after the prescribed period of limitation. Thus the office has pointed out about the delay in filing of the appeal. The learned counsel for the appellant submitted that the appeal , though has been filed within the prescribed period of 60 days the delay should be condoned in view of the relaxation of limitation allowed by the Hon'ble SC in suo motto wpc no 3/2020. The learned counsel for the respondent fairly conceded on the relaxation allowed by the Hon'ble SC for the out break of Covid 19 and the effect of the same on different activities. Hence the delay is condoned held that the appeal has been filed within the period of limitation. The petition for condonation of delay is accordingly allowed.

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 by the commissioner without considering the submission made and solely basing on the report of the E O. Being called by the commissioner though all the documents were made available and the establishment had extended all necessary co-operation and submitted that the contractors having separate code no were engaged for execution of the work and the said contractors need to be summoned, the commissioner without considering any of the submissions passed the impugned order. He also submitted that the inquiry was conducted on the basis of some unverified facts in gross violation of the department circular. Though the authorized representative of the establishment had raised objection with regard to non identification of

beneficiaries, the same was never considered. While passing the order the commissioner thus never made any effort of identifying the beneficiaries. Citing various judgments of the Hon'ble S C, including the case of Builder association, Food corporation and Himachal Forest Corp, he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. 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 also submitted that the appellant is a municipal council engaged in maintenance of public places and other social welfare activities. Insistence for deposit in compliance of the provisions of sec 7O would impact the said activities. He there by prayed for waiver of the condition of pre deposit canvassing that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also argued that the matter may be remanded for fresh inquiry after identification of beneficiaries.

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. She also submitted that the calculation was made on the basis of the wage paid. In the order passed the commissioner has clearly observed that the wage register was not produced nor the details of the contractor was produced before the EO for verification. Hence the computation was made by the EO on the available records and it can not be said that the impugned order suffer from any illegality for non identification of the beneficiaries.

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. The appellant has raised various points touching the legality of the order impugned in the appeal including the action of the commissioner in accepting the report of the E O in toto. The appellant has pointed out that the commissioner never made any effort of identifying the beneficiaries.

Without going to the other detail pointed out by the appellant challenging the order as arbitrary and when detail reply to the appeal has not been filed by the Respondent, it is not felt proper to remand the matter for reconsideration by the commissioner. However considering the period for which the inquiry was initiated and the amount assessed which is more than one crore, and keeping the plea of undue hardship which is likely to be caused to the functioning of the appellant, it felt proper to reduce the condition of pre deposit contemplated u/s 7O of the Act from 75% to 20% which would serve the ends of justice. Accordingly it is directed that the appellant shall deposit 20% of the assessed amount towards compliance of the provisions of sec 7O of the Act .

it was submitted by the counsel for the appellant that the appeal was filed on 20/10/2021 and proper notice of the same was served on the respondent. But the respondent having knowledge of the same in a vindicated action, recovered the entire amount from the Bank account of the appellant. Describing the activities undertaken by the appellant a municipal council in discharging the civic responsibility, he prayed for a

direction for refund of the amount recovered. The learned counsel for the respondent admitted about the recovery of the entire amount , but with the explanation that it was done after expiry of the appeal period and for the reason that there was no order of stay. Considering the submission it is felt proper to issue a direction to the Respondent to refund 70% of the recovered assessed amount to the appellant after retaining 30% of the same towards compliance of the mandatory provision of sec 7-O of the Act. The appeal is thus admitted.

The respondent is directed to make the refund as directed in this order within two months without interest failing which the respondent shall be liable to refund the directed amount with interest @ 9% from the date of recovery and till the refund is made.

Call on.....for compliance of the direction and filing of reply by the Respondent.

PRESIDING OFFICER
CGIT-1 MUMBAI