

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt.Pranita Mohanty

M/s. S.S.Engineers & Consultants ... Appellant

Vs

Assistant Provident Fund Commissioner ... Respondent

Thane

Presence:

For the Appellant : Mr.Sachin D.Rege, Adv.

For the Respondent : Ms. Krunali Satra, Adv.

ORDER

1. The matter came up today for hearing on the admission of the appeal, con donation of delay and an order praying interim stay on the execution the impugned order.
2. Heard the learned counsels for both the parties.
3. Perused the note of the Registry. It appears that the impugned orders were was passed on 11.12.2015 under section14-B and 7-Q by the EPFC Thane assessing 3,45,386 and 1,72,181 as damage and interest respectively against the establishment. But the appeal was presented on 18.5.2018. Thus, the registry has pointed out the inordinate delay in filing of

the appeal. The learned counsel for the appellant while pointing out to the impugned order submitted that the establishment had closed its business w.e.f.13.6.2011 and prior to that there was an industrial unrest. This fact was within the knowledge of the respondent. However, the respondent issued notice to showcause in the address where the establishment was no more functioning. As such, the establishment could not participate in the hearing and could not set up a proper defence against the proposed damage and interest. They could know about the impugned order only when the respondent started recovery proceeding and soon thereafter they filed this appeal. Hence, there was no intentional delay on the part of the appellant. The appeal involves valuable right of the appellant. Unless the delay would be condoned for admission of the appeal serious prejudice shall be caused.

In his reply, the learned counsel for the respondent argued that the notice of the enquiry was sent on the last known address of the establishment. Since the same was returned unserved, the matter was adjourned time and again giving opportunity to the establishment to participate. For the non-appearance of the establishment the Commissioner was left with no other option than passing the order on the available documents. While supporting the impugned order he argued that the Tribunal cannot admit the appeal by condoning the delay beyond the period of 120 days as has been pronounced by the Hon'ble High Court in several judgments. He thereby argued for the appeal to be dismissed.

Perusal of the record and the impugned order shows that the notice of the enquiry was sent in the address of the establishment available in the portal of the respondent. The impugned order further shows that the said summon dated 23.3.2014 was returned by the postal authority with the remark that the addressee has left the address. But it is not understood why the commissioner went on granting adjournment instead of taking steps for service of the summon on the appellant adopting alternate mode of service. Ours being an adversary system of adjudication, the commissioner, a quasi judicial authority should have taken steps for service of the summons on the establishment. But in this case, instead of adhering to the alternate mode for service of summon, he, in a whimsical manner proceeded to decide the matter notwithstanding the fact that the establishment is absent. The only inference which can be drawn is that the commissioner while passing the impugned order had failed to follow the basic tenets of the principle of Audi alteram partem. The Hon'ble High Court

of Delhi recently in the case of *M/s. United News of India vs. RPFC* have issued a direction on the procedure to be followed with regard to the service of summons on the establishment to ensure adherence to the principles of natural justice. In this case, it is observed that the commissioner discharging a quasi judicial function had totally ignored the principles of natural justice and while observing in the impugned order that the notice could not be served for the absence of the addressee, in fanciful manner proceeded to decide and conclude the enquiry which speaks upon the impartial adjudication of the matter.

The learned counsel for the appellant argued on the merit and submitted that the respondent oblivious of the present position of the appellant have started recovery action. A copy of the recovery notice has been placed on record. From these circumstances, it clearly appears that the assessment under Section 14-B was made by the Commissioner without letting the appellant a proper chance of setting up a defence. In the circumstances, it is felt proper to remand the matter at this stage to the commissioner for re-assessment of the damage. Further perusal of the record shows that the appeal has been filed in respect of two separate order passed under Section 14-B and 7-Q of the Act. Under the provisions of section 7-I of the EPF and MP Act, the order passed under section is not appellable. Keeping that position in view it is held that the order passed under section 14-B assessing Rs.3,45,386/- is not sustainable in the eye of law for non-service of the notice. The said impugned order need to be set aside at this stage of admission and the matter be remanded back for re-consideration. Hence, the Order.

ORDER.

The appeal be and the same is disposed of at this stage of admission. The order dated 11.12.2015 passed under section 14-B by the Commissioner is hereby set aside on account of non-service of the notice of enquiry. The commissioner is directed to make the enquiry afresh and give a finding on the liability of the appellant establishment with regard to the damage. No opinion is formed at this stage in respect of the order passed under Section 7-Q of the Act since the same is not appellable. The appellant is directed to appear within 15 days of passing of this order before the commissioner for participation in the enquiry and the commissioner is directed to give proper opportunity to the appellant for participation and pass the order under section 14-B of the Act. It is made clear that

this order is in respect of the earlier order passed under Section 14-B only since at this stage, no opinion can be formed whether both the orders were composite in nature or not. The commissioner is also directed to conclude the enquiry within 3 months from the date of receipt of this order.



PRESIDING OFFICER

CGIT-1, MUMBAI