

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 6511 of 2022

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SARDAR PATEL SEVA TRUST
Versus
THE REGIONAL PROVIDENT FUND COMMISSIONER II

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Appearance:

MR DG SHUKLA(1998) for the Petitioner(s) No. 1

MR AV NAIR(5602) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 06/04/2022

ORAL ORDER

1 Under challenge in this petition under Article 226 of the Constitution of India is that they apprehend the action of the department of executing the order under challenge before the Central Government Industrial Tribunal by initiating recoveries under Section 8(B) and 8(G) of the Employee's Provident Fund & Miscellaneous Provisions Act, 1952.

2 While the petition was heard on 04.04.2022, the Court passed the following order:

“ This court asked learned advocate for the petitioner to serve an advance copy to learned advocate Mr.A.V.Nair, who is appearing for the respondent authority. Learned advocate Mr.Nair is present in the Court.

Learned advocate Mr.Nair to take instructions in the matter.

Stand over to 06.04.2022. Till the next date of hearing, no coercive steps shall be taken against the petitioner.

Learned advocate Mr.Nair to communicate this order to

the concerned respondent authority.”

3 It is by virtue of the order so passed, that Mr.A.V.Nair, learned advocate, appears today for the respondent – Regional Provident Fund Commissioner.

4 Mr.D.G.Shukla, learned advocate, would submit that in absence of Presiding Officer available before the Central Government Industrial Tribunal at Ahmedabad, the appeal filed by the petitioner is not being heard and if pending the appeal the respondent – Commissioner is permitted to initiate recovery proceedings under Sec.8(B) to 8(G) of the Employee’s Provident Fund & Miscellaneous Provisions Act, the appeal would be rendered infructuous.

5 Mr.Shukla, learned advocate, would rely on a Notification of the Ministry of Labour and Employment, Government of India, dated 18.06.2018 passed in context of the non availability of the Presiding Officer at the Central Government Industrial Tribunal, Bangalore. It is in that context that the Ministry of Labour & Employment opined that if coercive steps are taken against the employers in absence of any Presiding Officer who are not in a position to hear appeals, it would cause undue hardship to the appellant.

5.1 Reliance was placed on the orders of the Hon’ble Supreme Court in the case of *M/s. Tasty Nut Industries vs. Union of India &*

Ors., rendered in **Writ Petition (C) No. 999 of 2014** dated 20.03.2015.

6 Mr.A.V.Nair, learned advocate appearing for respondent No.1, would vehemently object to passing of an order akin to the one passed by this Court on 21.12.2021.

6.1 In support of his submission that the department can proceed with coercive steps pending the appeal, Mr.Nair, learned advocate, would rely on a decision of the Division Bench of this Court rendered in Letters Patent Appeal No. 12 of 2010 in the case of **Employees Provident Fund Organization vs. Rollwell Forge Ltd & anr.**, reported in **2011 SCC online Guj 2846.**, specifically paragraph 22 of the order, wherein observation made is in sub clause I & II of the Division Bench that there is no provision prohibiting or restraining the authorities from taking any further action of recovery of the amount due and payable by the employer after the statutory period of filing the appeal has expired.

6.2 Clause II of the order, in the submission of Mr.A.V.Nair, learned advocate, also supports his case inasmuch as, the Division Bench has observed that even mere filing of the appeal without obtaining any relief from the Appellate Authority shall not preclude or prohibit the authorities to proceed further in the matter for recovery of the amount.

7 To this, Mr.D.G.Shukla, learned advocate, would submit that

at the relevant point, when the Division Bench considered this issue, the Central Government Industrial Tribunal was manned by a Presiding Officer.

8 Considering the submissions made by the learned counsels for the respective parties and particularly when keeping in mind the spirit of the Notification of the Ministry dated 18.06.2018, in light of the decision of the Hon'ble Supreme Court in the case of **M/s Tasty Nut (supra)**, in order to avoid hardship to the appellant / petitioner when there is no Presiding Officer in position at the Central Government Industrial Tribunal, Ahmedabad, I pass the following order:

The petition is disposed of in view of non availability of the Central Government Industrial Tribunal, Ahmedabad, wherein the appeal is filed by the petitioner being Appeal No.17 of 2022.

It is clarified that till the appeal of the petitioner is heard on merits, the respondents are directed not to take coercive steps against the petitioner. It is further clarified that this court has not examined the matter on merits and since the Appellate Tribunal is not available on regular basis, the matter is disposed of in the aforesaid terms.

To this, Mr.Nair, learned advocate, would submit that the Presiding Officer from Jaipur shall be presiding over on 12.04.2022 and 13.04.2022.

The Court will not want to burden the Tribunal in transition to dispose of the appeal of the petitioner by giving it priority. Hence, the Central Government Industrial Tribunal, Ahmedabad, after giving the opportunity of hearing to both the parties with regard to

interim relief, shall pass an order in accordance with law.

It is clarified that the interim relief restraining the respondents from taking coercive steps will operate till the Tribunal hears the matter on interim relief. The petition is disposed of, accordingly. Direct service is permitted.

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(BIREN VAISHNAV, J)

