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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 19.11.2024*

\+ **W.P.(C) 1443/2019, CM APPL. 40830/2022 & CM APPL. 6618/2019 (stay)**

PANCHSHILA COOPERATIVE HOUSE .....Petitioner

Through: Mr. Ashim Shridhar, Advocate.

versus

ASSISTANT PROVIDENT FUND COMMISSIONER, DELHI (SOUTH) AND ANR. .....Respondents

Through: Mr. Neeraj, Special Penal Counsel with Mr. V. Anand, Government Pleader.
Mr. Siddharth, Standing Counsel for EPFO with Mr. Harshit Manwani and Mr. Apekeshit Katra, Advocates.

CORAM: JUSTICE GIRISH KATHPALIA

J U D G M E N T (ORAL)

1. The fulcrum of this writ action is on the question as to whether the Review Application filed under Section 7B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 can be dismissed by the Competent Authority without granting a hearing to the review applicant. I have heard learned counsel for both sides.

2. Briefly stated, the circumstances leading to the present petition are as follows. The petitioner, a registered cooperative society running Panchshila Club was found allegedly in default of provisions of the Act, which led to an inspection carried out by the Enforcement Officer through Shram Suvidha

Portal to verify the compliance. The Enforcement Officer proceeded to propose an enquiry under Section 7A of the Act against the petitioner for the period from January, 2000 to March 2016. On the basis of the said enquiry, the present respondent no.1 passed order dated 18.12.2018, thereby determining the liability of the petitioner to pay Rs. 87,56,397/- as provident fund dues for the said period. Against order dated 18.12.2018, the petitioner preferred a Review Application under Section 7B of the Act. The said Review Application was dismissed by the Competent Authority by way of order dated 25.01.2019, impugned by way of the present writ action.

3. The Review Application was dismissed by the Competent Authority, observing that neither any new facts/evidences nor any supporting documents were enclosed with the Review Application, so the review was liable to be rejected under Section 7B(3) of the Act.

4. Learned counsel for petitioner argues that the impugned order is not sustainable in the eyes of law since no hearing was afforded to the petitioner before passing the same. According to learned counsel for petitioner, the impugned order is liable to be set aside and matter deserves to be remanded to the Competent Authority for fresh decision after hearing the petitioner. In support of his arguments, learned counsel for petitioner places reliance on the judgment of Jharkhand High Court in the case of ***M/s. Binod Kumar Jain, Bokaro vs Provident Fund Commissioner, EPFO, Ranchi***, 2009 SCC OnLine, Jhar 1337. Further, it is contended by learned counsel for petitioner

that the impugned order is not a reasoned order, so not sustainable in law.

5. On the other hand, learned counsel for respondents supports the impugned order and contends that the petition is devoid of merits. Learned counsel for respondents argues that not every denial of hearing vitiates the decision insofar as it is only that denial of hearing which causes prejudice vitiates the decision. In the present case, according to learned counsel for respondents, no prejudice was caused to the petitioner. In support of his arguments, learned counsel for respondents places reliance on paragraph no.30(v) of the judgment of the Supreme Court in the case of ***Managing Director, ECIL, Hyderabad and Ors. vs B. Karunakar and Ors***, (1993) 4 SCC 727.

6. At the outset, for ready reference it would be appropriate, so the provision under Section 7B of the Act is extracted below:

> *7B. Review of orders passed under section 7A.-*
> *(1) Any person aggrieved by an order made under sub-section (1) of section 7A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the Officer who passed the order:*
> *Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.*
> *(2) Every application for review under sub-section (1) shall be filed in such form and manner and within such time as may be*

specified in the Scheme.
(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.
(4) Where the officer is of opinion that the application for review should be granted, he shall grant the same:
Provided that,—

(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and
(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7A.

7. So far as the limited portion of judicial precedent relied upon by learned counsel for respondent is concerned, the same is extracted below:

"[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations

> *to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."*

As is obvious, the said case stands on completely different footing.

8. Besides, in the present case, it cannot be said that the petitioner was not prejudiced by the impugned order, dismissing his Review Application without hearing him. The impugned order shows that the concerned authority focused its attention only to the limited aspect of availability or discovery of new facts/evidence, but ignored the point of examination as to whether there was also any mistake or error apparent on the face of record or any other sufficient reason. Had the Competent Authority granted hearing to the petitioner, the above aspect would have been put forth, whatever be the ultimate decision of the authority. Therefore, I do not find it a case where the petitioner was not put to prejudice on account of denial of right to be heard.

9. The right to be heard is one of the most cherished rights flowing from not just the fundamental features of the Constitution of India, but even a

natural right component of pre constitution era of *jus naturale*. No decision to the prejudice of anyone can be taken without granting that person a fair opportunity to be heard.

10. The provision under Section 7B(3) of the Act to the effect that on account of absence of sufficient ground to review, the Review Application can be rejected cannot be overstretched to say that there is no need for the Competent Authority to grant hearing to the review applicant. The expression "where it appears to the officer" in itself signifies that it must "appear" to the Competent Authority and in order to ensure that the said appearing is complete in itself, hearing to the review applicant is must. It is only after hearing the review applicant that the concerned authority can find sufficient ground to review or absence thereof. The finding to the effect that there is no sufficient ground for review cannot be recorded by the Competent Authority without affording hearing to the review applicant.

11. I am in respectful agreement with the view taken by the coordinate bench at the Jharkhand High Court in the case of ***M/s. Binod Kumar Jain*** (supra) on this aspect, which was as follows:

> *"9. The contention of the learned counsel for the Respondents that the Reviewing authority had no obligation to offer any opportunity to the petitioners of being heard or to explain the matters, does not appeal to reason and appears to be misconceived. Merely because, the provisions under Section 7 B of the Act, specifically provides that if the application for review is granted, then before granting, the party should be given prior notice and be heard and because such corresponding requirement has not been mentioned specifically in case where the authority concerned proposes to reject the application,*

it does not lay down that the petitioner should be deprived of an opportunity of being heard. The principles of equity and natural justice do certainly apply and would demand that before passing any order, which lead to civil consequences adverse to the interest of the petitioners, a reasonable opportunity has to be given to them to explain their case before passing any such order. I am satisfied from the submissions made by the learned counsel for the petitioners that reasonable opportunity of hearing has not been given to them by the Reviewing authority before passing the impugned order on the Review application. Accordingly, both these writ applications [W.P. (C) No. 6592 of 2007 and W.P. (C) No. 6617 of 2007] are allowed. The impugned order of the Reviewing authority dated-24.09.2007 passed on the Review applications of the petitioners, are hereby set aside. Accordingly, I remand this matter to the Reviewing authority for passing a fresh order on the review applications filed by the petitioners. The petitioners shall appear before the Reviewing authority within 15 days from the date of this order, whereafter the Reviewing authority shall fix and communicate an appropriate date to enable the petitioners to submit their explanations/grounds and thereafter pass an appropriate, speaking and reasoned order in accordance with law on the Review Applications."

12. In view of above discussion, I am unable to sustain the impugned order, so the same is set aside and this petition is allowed. The matter is remanded to the Competent Authority under the Act where both sides shall appear on 02.12.2024 at 03:00pm and after hearing both sides, the Competent Authority shall pass fresh orders on the Review Application of the petitioner. Accordingly, the pending applications stand disposed of.

GIRISH KATHPALIA

Digitally signed by GIRISH KATHPALIA
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GIRISH KATHPALIA
(JUDGE)

NOVEMBER 19, 2024/*ry*