

GAHC010184512014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1084/2014

THE ASSAM COOPERATIVE APEX BANK LTD.
A COOPERATIVE BANK REGD. UNDER THE ASSAM COOPERATIVE
SOCIETIES ACT, 1949 HAVING ITS HEAD OFFICE AT PANBAZAR, GHY-1,
ASSAM, REPRESENTED BY ITS MANAGING DIRECTOR.

VERSUS

THE EMPLOYEES PROVIDENT FUND ORGANIZATION and 6 ORS
MINISTRY OF LABOUR, GOVT. OF INDIA, REGIONAL OFFICE, NORTH
EAST REGION, BHANGAGARH, GHY-5, ASSAM

2:THE REGIONAL PROVIDENT FUND COMMISSIONER
REGIONAL OFFICE
NE REGION
BHANGAGARH
GHY-5

3:THE STATE BANK OF INDIA
HAVING ITS REGD. OFFICE AT 8TH FLOOR
NEAR VIDHAN BHAVAN
NARIMAN POINT
MUMBAI-21
REPRESENTED BY ITS CHAIRMAN

4:DY. GENERAL MANAGER and CCFO
STATE BANK OF INDIA
LOCAL HEAD OFFICE
DEPARTMENT OF GOVT. BUSINESS
NORTH EASTERN CIRCLE
G.S. ROAD
GHY-6
ASSAM

5:THE CHIEF MANAGER

STATE BANK OF INDIA
GUWAHATI BRANCH
PANBAZAR
GHY-1

6:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
GOVT. OF INDIA
DEPARTMENT OF ECONOMICS AFFAIRS
NEW DELHI-1

7:THE CHIEF CONTROLLER OF ACCOUNTS
MINISTRY OF FINANCE
GOVT. OF INDIA
DEPARTMENT OF ECONOMICS AFFAIRS
NEW DELHI-

Advocate for the Petitioner : MR.D SAIKIA

Advocate for the Respondent : C.G.C.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT (ORAL)

Date : 11-01-2024

The instant Writ Petition has been filed by the petitioner challenging the demand notice dated 30.12.2013, issued by the Regional Provident Fund Commissioner for payment of Rs.35,22,822/- (Rupees thirty five lakh twenty two thousand eight hundred twenty two) as damages under Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act of 1952') and Rs.22,66,574/- (Rupees twenty two lakh sixty six thousand five hundred seventy four) under Section 7Q of the said Act, as interest. The petitioner has also challenged the order dated 22.01.2014, issued

by the Regional Provident Fund Commissioner-II, in the said proceedings.

(2) The record reveals that the petitioner herein is a Cooperative Bank registered under the provisions of the Assam Cooperative Societies Act, 1949. The provident fund account of the employees of the Assam Cooperative Apex Bank Ltd. (hereinafter referred to as 'the Bank') was managed by a Board of Trustees of the Bank. It is the case of the petitioner that in the year 1975, with the concurrence of the Ministry of Finance, Department of Economic Affairs, Government of India, a Special Deposit Scheme was implemented through the State Bank of India. The Board of Trustees of the Bank accordingly opened and maintained a Special Deposit Scheme Account, being Account No.1 with the State Bank of India, Guwahati Branch. The interest for the calendar year, used to be released by the State Bank of India, in the first week of the month of January of the next year and from that amount, the Provident Fund dues of the employees of the Bank were disbursed.

(3) In the year 1999, an amount of Rs.1,03,17,176/- was paid by the State Bank of India through a Banker Cheque being the accrued interest for that period against the aforesaid Special Deposit Scheme Account . The Board of Trustees of the Bank, instead of crediting the same towards the principal balance, encashed the cheque and a sum of Rs.23,17,000/- and odd, was temporarily kept in its saving bank account maintained with the Guwahati Branch of the Bank, so as to settle the dues of the staff of the Bank, who had retired in the meantime. However, on 08.01.2000, the remaining balance of Rs.80,00,000/-, was reinvested in the Special Deposit Scheme Account maintained with the State Bank of India, which was duly apprised to the Provident Fund Commissioner, vide letter dated 08.01.2000. Upon receipt of the said amount of Rs.80,00,000/-which formed the part of the principal of the said

Special Deposit Scheme Account, the State Bank of India continued to release the interest accrued in the said amount.

(4) However, on 19.09.2004, the Assistant General Manager, State Bank of India, Guwahati Branch by the communication bearing No.55, informed the Board of Trustees of the Bank that the said deposit of Rs.80,00,000/- have been treated as irregular deposits, in view of objection reportedly raised by the Chief Controller of Accounts, Ministry of Finance. By the said letter, it was intimated that the State Bank of India may have to recover the interest amount of Rs.35,22,822/-, paid up in the year 2002, on the aforesaid amount of Rs.80,00,000/-, if the Government of India does not accede to their request.

(5) On receipt of the said communication, the Chairman of the Board of Trustees of the Bank on 24.11.2004 wrote a letter to the State Bank of India, Guwahati Branch requesting for re-examination of the matter and also stated that any action of the State Bank of India towards realizing the aforesaid amount i.e. Rs.35,22,822/-, would adversely affect the interest of the Trust for no fault of its own. The State Bank of India authority despite receiving the said letter, had allegedly, stopped calculating interest on the above deposit of Rs.80,00,000/- with effect from 01.01.2003 and sat over the matter despite raising objection by the petitioner Bank.

(6) The record further reveals that on 19.09.2006, the Assistant General Manager of the State Bank of India, Guwahati Branch wrote another letter to the Board of Trustees of the Bank, thereby making a claim of refund of Rs.35,22,822/-, already paid to the petitioner Bank claiming the said to be ineligible interest. By the said letter, the petitioner Bank was also, inter alia, directed to forego the claim of any interest on the said Special Deposit Scheme Account, w.e.f. 01.04.1999. The Board of Trustees of the petitioner Bank in its

meeting thereupon held on 09.10.2006, resolved to request the State Bank of India authorities to release the said amount of Rs.80,00,000/- and also to release the pending interest on the said amount, besides requesting not to deduct any amount already credited in the Special Deposit Scheme Account. Accordingly, a communication was issued on 25.10.2006.

(7) In the meantime, the Board of Directors of the petitioner Bank decided that the Provident Fund account of the Bank be transferred to the Central Board Trustees, Employees Provident Fund Organization and accordingly the Board of Trustees of the Bank stood defunct w.e.f. 30.11.2006. In view of the above, the Chairman of the Board of Trustees of the Bank on 30.11.2006 intimated about the said decision of the Bank and requested to transfer the balance amount to the account of the Central Board of Trustees with up to date interest.

(8) On 04.11.2006, the Deputy General Manager of the State Bank of India, Local Head Office, Guwahati in response to the communication dated 25.10.2006, intimated the petitioner Bank that the matter regarding release of the pending arrear interest on Rs.80,00,000/- w.e.f. 01.10.2003 and refund of the principal amount had already been taken up with the Controller of Guwahati Branch and the petitioner would be shortly advised. Nothing thereupon happened, as alleged, in the Writ Petition till 16.01.2007, when the State Bank of India authorities intimated the petitioner Bank that the Government of India had refused to accept their request and accordingly, the ineligible interest amount shall have to be recovered and the remaining balance shall be transferred to the account of the Central Board of Trustees. It is also seen that there were various correspondences exchanged between the petitioner Bank as well as the State Bank of India.

(9) On 09.06.2007, the Corporate Center of the State Bank of India had

communicated with the petitioner Bank that the issue was taken up with the Ministry of Finance, Government of India and the decisions are still awaited. Subsequently on 31.03.2008, the State Bank of India authorities intimated the petitioner Bank that the Special Deposit Scheme Account being transferred also informed that it has been instructed to make a lien on the disputed amount of Rs.80,00,000/- until receipt of the final decision from the Government of India as well as the Controller. However, the Special Deposit Scheme Account of the petitioner Bank was not transferred to the account of the Central Board of Trustees, as has been alleged in the Writ Petition. It was on 15.09.2008, the State Bank of India informed that the controlling Office had agreed to transfer the said account on completion of some formalities and accordingly requested the petitioner Bank to send some suitable official for that purpose. The petitioner Bank duly deputed a personnel to visit the State Bank of India and upon visit, it could be learnt that the State Bank of India authorities were seeking a undertaking/indemnity to the effect that in the event of the Ministry of Finance makes any claim for refund of the interest paid, the same shall be paid by the petitioner Bank.

(10) Upon getting the said information, the Board of Directors of the Bank in its meeting dated 23.10.2008, resolved that the opinion of the Reserve Bank of India would be taken in the said aspect, for which the Reserve Bank of India was duly communicated. On 01.12.2008, the General Manager, Reserve Bank of India expressed that the interest accrued in the petitioner's Bank deposit after 01.07.2003, should have been paid to the petitioner Bank by the State Bank of India instead of re-depositing the same in the Special Deposit Scheme Account. Regarding executing of the indemnity bond, it was stated that the Board of Trustees of the Bank may take any appropriate decision.

(11) Upon receipt of the said opinion, the petitioner Bank on 02.12.2008, wrote a letter to the Chief Manager, State Bank of India, Guwahati Branch intimating about the opinion of the Reserve Bank of India and also requested for transferring the amount maintained in the Special Deposit Scheme Account to the account of Employees' Provident Fund Organization, excluding the amount of Rs.35,22,822/-, which according to the Petitioner Bank was to be retained in the Special Deposit Scheme Account, till the issue is settled. Such a request of the petitioner Bank was accepted by the respondent State Bank of India and accordingly, the remaining amount was finally transferred to the account of the Central Board of Trustees and the amount of Rs.35,22,822/- continued to be in the Special Deposit Scheme Account of the petitioner Bank maintained with the State Bank of India.

(12) While the aforementioned proceedings were ongoing, on 21.05.2009, the Assistant Provident Fund Commissioner asked the Chief Manager of the State Bank of India to transfer the amount of Rs.35,22,822/- to the Central Board of Trustees, Employees' Provident Fund Organization. The petitioner Bank had also by the communication dated 18.07.2009, requested the State Bank of India to make necessary arrangement for transferring the aforesaid amount as desired by the Assistant Provident Fund Commissioner vide communication dated 21.05.2009. To the said communication, the Chief Manager of the State Bank of India informed on 18.08.2009 that the decision of transferring the remaining amount i.e. Rs.35,22,822/- is still under consideration of the Ministry of Finance, Government of India and accordingly requested the petitioner Bank to await for some more time. It is also alleged that on account of the amount being not transferred to the Provident Fund authorities, the employees of the petitioner Bank have been duly affected for which the Registrar of Cooperative Societies

have requested the Chief Controller of Accounts, Ministry of Finance, Government of India about the difficulties and also release of the amount at the earliest.

(13) It is also seen that there have been various other correspondences issued by the petitioner Bank to the State Bank of India as well as also a communication to the Chief Controller of Accounts, Ministry of Finance, Government of India. However, nothing was done for which the petitioner Bank had filed a Writ Petition before this Court which was registered and numbered as WP(C) No.1987/2013, seeking a direction from this Court towards release of the aforesaid amount along with the interest accrued thereon. While the aforementioned aspects were pending, a notice was issued on 30.12.2013, by the Employees' Provident Fund Organization stating, *inter alia*, that during the period from 01.04.2009 to 30.10.2013, there were certain payments which were made after the respective due dates and the total amount by way of penalty and the amount on interest on such belated payments were Rs.37,26,087/- towards damages and Rs.27,54,403/- towards interest. The petitioners were given an opportunity vide the said notice dated 30.12.2013, as to why the said damages and interest should not be levied. This notice has been impugned in the instant proceeding.

(14) The record further reveals that the petitioner Bank, thereupon duly submitted their reply on 17.01.2014, stating *inter alia* that it was on the ground of mistake of the State Bank of India, in not transferring the amount for which the petitioner Bank could not deposit the said amount within time. It was mentioned that an amount of Rs.35,22,822/- was duly deposited by the petitioner on 25.05.2012. Thereupon a hearing had taken place on 22.01.2014, wherein the Regional Provident Fund Commissioner-II had duly observed that

the liability to pay by the petitioner Bank to the Provident Fund authorities within the stipulated time is the mandate of law and as such the amount having not been received from the State Bank of India i.e. Rs.35,22,822/-, which is the subject matter of the WP(C) No.1987/2013, cannot be a justified ground. However, an opportunity was granted to the petitioner Bank to represent their case on 21.02.2014, at 12:30 P.M. This order has also been put to challenge by way of the instant Writ Petition.

(15) The record reveals that both the State Bank of India as well as the Provident Fund authorities have filed their affidavit-in-opposition.

(16) It is relevant to take note of that it was the specific stand taken by the State Bank of India that in terms of the notification issued by the Ministry of Finance, Government of India dated 17.03.1997, fresh deposits under the Special Deposits under the Special Scheme was not permissible w.e.f. 01.04.1997. This was however relaxed upto 31.03.1999, as a special relaxation. The petitioner Bank had deposited the amount of Rs.80,00,000/- on 10.01.2000 in the Special Deposit Scheme Account, maintained by them in the respondent State Bank of India. Therefore, the interest of Rs.35,22,822/-, which accrued by applying the special relief and already released to the petitioner Bank was liable to be recovered. It was mentioned that the Ministry of Finance, Government of India have not given a decision as regards relaxation to be given to the petitioner Bank.

(17) This Court have also perused the affidavit-in-opposition filed by the Provident Fund authorities, where in it has been categorically mentioned that there being a delay of 1957 days in depositing the amount, a notice was issued thereby granting the petitioner an opportunity of hearing. This Court also have taken note of the submission made by Mr. S.K. Chakraborty, the learned counsel

appearing for the Provident Fund authorities, who submitted that the impugned notice was issued only granting an opportunity of hearing to the petitioner and the impugned order dated 22.01.2014 had granted an adjournment, thereby enabling the petitioner a reasonable opportunity.

(18) This Court had also taken note of the submission made by the learned counsel appearing on behalf of the petitioner to the effect that on account of the fault on the part of the State Bank of India, to release the amount of Rs.35,22,822/- which have been kept on hold, the petitioner Bank could not make the payment in time and under compulsion had to pay it from its own account.

(19) Having heard the learned counsel for the parties and having perused the materials on record, the question therefore arises as to whether the instant case is a fit case for exercising judicial review taking into account that this Court is not sitting as an Appellate Authority over any decision made by the respondent authorities. This Court also duly takes note that vide the impugned notice 30.12.2013, the Provident Fund Authorities had granted an opportunity to the petitioner Bank of hearing as to whether the imposition of damages and interest should be made by the Provident Fund authorities concerned. The impugned order dated 22.01.2014, nowhere decides against the petitioner. Rather it grants an additional opportunity to the petitioner to represent their case.

(20) Under such circumstances, this Court finds no error apparent in issuing of the impugned notice dated 30.12.2013, as well as the order dated 22.01.2014, for exercising the writ jurisdiction for issuance of a writ in the nature of certiorari. It is also relevant herein to observe that the petitioner Bank could not show that the respondent authorities, more particularly the Provident Fund Authorities had violated any tenets of law in issuing the impugned notice dated

30.12.2013 and the impugned order dated 22.01.2014. Under such circumstances, the question of interference with the impugned notice dated 30.12.2013 as well as the impugned order dated 22.01.2014 do not arise.

(21) Be that as it may, as the matter has been pending since long, this Court grants an opportunity to the petitioner to submit a representation within 30 (thirty) days from today explaining their grievances and on such representation being submitted, the Provident Fund Authorities shall decide the same on the basis of the applicable law without being influenced by the observations made hereinabove.

(22) Under such circumstances, the instant Writ Petition therefore stands dismissed, however, subject to the observations and directions made in the penultimate paragraph. No costs.

JUDGE

Comparing Assistant