

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WA.No. 1977 of 2010 () IN WP(C).12692/2005

AGAINST THE ORDER/JUDGMENT IN WP(C) 12692/2005 of HIGH COURT OF KERALA
DATED 27.07.2010

1ST APPELLANT/RESPONDENT:

THE REGIONAL PROVIDENT FUND COMMISSIONR
EMPLOYEES PROVIDENT FUND ORGANISATION
SUB REGIONAL OFFICE, CHALAKKUZHY BUILDING
C.M.S.COLLEGE ROAD, KOTTAYAM.

BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SMT.T.N.GIRIJA, SC,EPF ORGANISATION

RESPONDENT(S)/PETITIONER & 2ND RESPONDENT:

1. IDUKKI DISTRICT WHOLESALE
CO-OPERATIVE CONSUMER STORES LTD.NO.K.444
KATTAPPANA, REPRESENTED BY ITS MANAGING, DIRECTOR
KATTAPPANA, IDUKKI DISTRICT.

2. THE COMPLYEES PROVIDENT FUND
APPELLATE TRIBUNAL 9TH FLOOR, MAYUR BHAVAN
CANNAUGHT - CIRCLE, NEW DELHI - 600001.

R1 AND R2 BY ADV. SRI.JOICE GEORGE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

BABU MATHEW P JOSEPH, JJ.

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W.A. No. 1977 of 2010

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Dated, this the 1st day of June, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

Verdict passed by the learned single Judge whereby damages ordered by the Appellate Tribunal to an extent of 60 % of penal charges demanded vide Ext. P5, modified in exercise of the discretion in terms of the Statute, is under challenge in this writ appeal preferred at the instance of the Provident Fund Department.

2. The sequence of events as revealed from the pleadings shows that the first respondent society was under coverage of the appellant from 01.04.1981 onwards. While so, the workers of the society went on a strike from September 1991 and ultimately, the unit had to close down. Admittedly, no wages were being paid to the employees of the society. In the course of further proceedings, notice was issued and assessment was completed; pursuant to which, contribution was effected also satisfying the interest under Section 7Q

of the Act. The damages fixed under Section 14B of the Act, vide Ext. P5 order dated 19.10.2004 to an extent of Rs. 2,30,355/- was sought to be challenged by the society before the Tribunal. After considering the facts and circumstances, the second respondent Tribunal reduced 40% of damages and thus confined it to an extent of 60%. This was sought to be challenged by filing W.P.(C) No.12692 of 2005. When the matter came up for admission, interim stay was granted subject to satisfaction of 50% of the amount quantified by the Tribunal. It is stated that said amount has already been satisfied. When the matter came up for final hearing, sequence of events was narrated and on considering the facts and circumstances, the said interim order was made absolute and the liability fixed under Section 14B of the Act was confined to the said extent i.e. 30% of the total. This made the appellant to approach this Court seeking for interference with regard to the course and proceedings pursued at different levels.

3. Heard the learned standing counsel appearing for the appellant in detail.

4. After going through the facts and figures this Court finds that there is no dispute as to the factual position that there was

strike of workers from September 1991 to August 1995. Admittedly no wages were paid to the employees and in turn, no contribution was effected. The case of the appellant is that, in so far as there was delay in payment of contribution, the first respondent is liable to pay damages in terms of the Scheme. All the factual aspects have been considered by the learned single Judge as mentioned above and extent of damages confined/reduced to an extent of 30 %. The main case put up by the appellant is that the verdict sought to be relied on by the learned single Judge while passing the judgment in Writ Petition, has been taken up in appeal at the instance of the Provident Fund Commissioner by way of W.A. 2182 of 2006 and that it stands intercepted. We have gone through the said judgment as well. The factual position considered by the Division Bench was with reference to the 'absolute exclusion/relief' granted by the learned Single Judge to the establishment, which was already a sick unit, holding that no damage was liable to be imposed, it being a sick unit. The Division Bench observed that the matter was considered by an incompetent authority and that the writ Court ought to have directed the competent authority to pass appropriate orders. It

was in the said circumstances that the verdict passed by the learned single Judge was intercepted giving appropriate directions. As such, the verdict dated 28.08.2008 in W.A. 2182 of 2006 will not come to the rescue of the appellant, in so far as the present case is concerned.

6. There is no dispute as to the closure of the establishment and non payment of wages for the relevant period. The said situation is of course a circumstance which ought to have been considered by the concerned authority while fixing the liability towards damages payable under Section 14B of the Act. The power, competence and authority of the concerned officer/Tribunal in this regard has been explained by a Division Bench of this Court as per the decision in **Employees Provident Fund Organization Vs. Sreekamakshy Agency (Pvt.) Ltd. [2013 (2) KLT 996]** which states in unequivocal terms that discretion is available to the authorities/Tribunal to fix the quantum of damages payable, depending upon the particular facts and circumstances of each case. Strike by the workers from September 1991 to August 1995, non payment of wages during the said period and closure of unit having been admitted from the part of the appellant, the

verdict passed by the learned single Judge confining the damages to the extent as ordered is well within the four walls of law. This Court also finds support from the verdict passed by another Bench in **Employees Provident Fund Organizations** (cited supra). In the said circumstances interference is declined and the appeal stands dismissed.

sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

sd/-

**BABU MATHEW P. JOSEPH,
(JUDGE)**

kmd