

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

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WA.No. 811 of 2015 () IN WP(C).17988/2013

(AGAINST THE ORDER/JUDGMENT IN WP(C) 17988/2013 of HIGH COURT OF
KERALA DATED 02-03-2015)

APPELLANT(S)/RESPONDENTS:

1. THE DIRECTOR OF HANDLOOM AND TEXTILES,
OFFICE OF THE HANDLOOM DIRECTORATE, VIKAS BHAVAN
THIRUVANANTHAPURAM - 695 001.

2. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, VELLAYAMBALAM
THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER MR. JOE KALLIYATH

RESPONDENT(S)/PETITIONER:

PUROGAMANA HANDLOOM WEAVERS CO-OPERATIVE SOCIETY
LIMITED NO. 3450, REPRESENTED BY SECRETARY
MANGALATHUKONAM, KATTACHAIKUZHI P.O
THIRUVANANTHAPURAM - 695 001.

BY ADV. MR. P.N. MOHANAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

.....
W.A.No.811 OF 2015
.....

Dated this the 21st May, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

The appeal arises from the judgment dated 02.03.2015 passed by the learned single Judge in W.P(C)No.17988 of 2013, whereby the interim order passed on 14.08.2013 was virtually made absolute holding that there was no serious dispute with regard to the entitlement of the petitioner Society for rebate as recommended by the Inspector of Handlooms. The writ petitioner/Society filed the writ petition with the following prayers:

"i) issue a writ of mandamus or any other appropriate writ order or direction directing the second respondent to consider Exhibit P1 to P13 and to grant rebate as recommended by inspector of handlooms.

ii) call for the records leading to issue Ext.P14 and quash the same by issuing a writ of certiorari or any appropriate writ order or direction.

iii) declare that petitioner is entitled to get rebate as recommended by the inspector of handlooms in Ext.P1 to P13 amounting to Rs.46,66,013/-

iv) Grant such other relief as this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. When the writ petition came up for consideration on 14.08.2013, the following interim order was passed by the learned Single Judge:

"The complaint of the petitioner is that though they had conducted rebate sales, the amount of rebate has not been sanctioned and disbursed to the society so far. The reason alleged is that the rebate amount for the previous year had been credited in the S.B. Account of the petitioner instead of the C.C. Account. However, Ext.P15 shows that relaxation has been granted to other similar societies. In view of the above, there is no justification for discriminating the petitioner.

There shall therefor be an interim direction to the second respondent to consider Ext.P1 to P13 and to grant the rebates, as recommended by the inspector of Handlooms, therein to the petitioner within a month."

3. The matter was finally considered by the learned single Judge on 02.03.2015, when it was observed that the eligibility was not seriously disputed and that the only snag pointed out was that the impugned directions should have been issued to the first respondent (therein)/Director of Handlooms and not to the second respondent(therein)/General Manager. It was accordingly, that the writ petition was disposed of giving directions to both the respondents to extend the benefit of rebate to the petitioner as recommended by the Inspector of Handlooms within the time as stipulated therein. This in turn is under challenge in this appeal, pointing out that the nature of contentions raised from the part of the respondents, who are the appellants herein was not properly adverted to.

4. The learned Government Pleader points out that the competent authority to consider the claim for rebate, particularly the eligibility, is the first respondent/Director of Handlooms and not the second respondent/General Manager. In fact, I.A.No.193 of 2015 was filed to recall the interim order dated 14.08.2013. The learned Government Pleader also points out that the

observation of the learned single Judge that eligibility was not seriously disputed is not correct and that the petitioner society was not entitled for the benefit of rebate, which was explained in crystal clear terms in the counter affidavit filed before the Court . As a matter of fact, pursuant to the interim order, the first respondent who is stated as the competent authority heard the petitioner and rejected the claim, giving proper reasons as per order dated 25.01.2014, a copy of which has been produced as Annexure.IV.

5. It is brought to the notice of this Court that a copy of the said order was produced before the learned single Judge. Despite filing a counter affidavit and production of a copy of the order as aforesaid, the writ petitioner did not find it fit and proper to challenge the said order or to amend the writ petition in any manner. This being the position, no relief could have been granted because of serious dispute. For this reason itself, the observation made by the learned single Judge that the eligibility of the petitioner to claim the rebate as recommended by the Inspector of Handlooms was not seriously disputed, is not

correct and requires to be interfered by this Court, submits the learned Government Pleader.

6. If this be the grievance of the appellants, it was for them to have pursued appropriate remedy before the learned Judge at the first instance. Appeal is not a substitute for the same, as the factual position has to be looked into with reference to the materials on record; more so, when we do not know what actually transpired before the Court on 02.03.2005, when the writ petition was disposed of.

In the said circumstance, without prejudice to the rights and liberties of the appellants to pursue appropriate remedy, interference is declined and the writ appeal is dismissed.

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

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