IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WP(C).No. 25243 of 2015 (E)

PETITIONER:

KERALA STATE CASHEW WORKERS
APEX INDUSTRIAL CO-OP. SOCIETY LTD. (CAPEX),
P.B.NO.262, R.R BUILDING, CANTONMENT WARD,
KOLLAM - 691 001,
REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADV. SRI.C.Y.VINOD KUMAR

RESPONDENT(S):
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1. THE REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM - 695 004.

2. ASSISTANT PROVIDENT FUND COMMISSIONER &
RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM - 695 004

BY SMT.T.N.GIRIJA, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-11-2015 ALONG WITH WPC. 25260/2015 & CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 25243 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1. **TRUE COPY OF THE NOTICE DATED 3.6.15 ISSUED TO THE NAVAIKULAM CASHEW WORKERS INDUSTRIAL CO-OPERATIVE SOCIETY LTD NO.IS.IND.T.391 BY THE 2ND RESPONDENT FOR RS.2,70,987 AS DAMAGES UNDER SECTION 14B FOR THE PERIOD FROM 2/2003 TO 1/2009.**

EXHIBIT P2. **TRUE COPY OF THE JUDGMENT DATED 20.12.13 OF THIS HONOURABLE COURT IN WPC 15187/13.**

EXHIBIT P3. **TRUE COPY OF THE JUDGMENT DATED 25.5.15 OF THIS HONOURABLE COURT IN WA 1703/14.**

RESPONDENT(S)' EXHIBITS: **NIL**

//TRUE COPY//

P.S. TO JUDGE

mbr/

K. HARILAL, J.

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W.P. (C) Nos.25243,25260,25261,
25262 & 25277 of 2015

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Dated this the 25th day of November, 2015

J U D G M E N T

In all these Writ Petitions, the petitioners and respondents are one and the same and the matter in issue is also the same. Therefore, these Writ Petitions are heard together and disposed of accordingly.

2. The petitioner, Kerala State Cashew Workers' Apex Industrial Co-operative Society Ltd. (*for short, "the CAPEX"*) is an Apex Society of 10 primary societies and the same is registered under the Kerala Co-Operative Societies Act, 1969 and the Kerala Co-Operative Societies Rules, 1969 made thereunder. The Managing Director of the CAPEX is the employer in respect of the employees of the head office of the CAPEX as well as those 10 primary societies coming under the CAPEX, for

the purpose of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the EPF Act'*).* The CAPEX which is engaged in procuring raw cashew nuts and processing the same through its primary societies with the main objective of giving employment to the workers in Cashew Industry, has been going through a period of acute financial crisis over the last five years. Very often, the CAPEX survived mainly on the grants given by the Government of Kerala. In such an acute financial position the CAPEX could not make prompt remittance of contribution to the Provident Fund in respect of its employees working in the primary co-operative societies. But from July, 2007 onwards, the CAPEX has been making regular remittance in this regard, which includes both the employer's and employees' contribution.

3. While so, the 2nd respondent issued Ext.P1 notice, in all the Writ Petitions to the respective primary

societies stated in Ext.P1, demanding interest and damage for the non-remittance of the contribution for different periods under Sections 14B and 7Q of the EPF Act and huge amounts are quantified as damages and interest to be paid by those primary co-operative societies. According to the petitioner, there was no willful default in not remitting the contributions within the time and it was so happened, as the societies were suffering from acute financial crisis.

4. In short, non-remittance of the payment was beyond the control of the respective societies and in such a circumstance, the 2nd respondent is liable to exercise its discretionary power by exempting those societies from payment of interest and damages. Further, it is the case of the petitioner that the issue whether the primary societies are liable to pay interest and damages under Sections 7Q and 14B of the EPF Act was considered by a learned Single Judge of this Court

in Ext.P2 judgment and the same was affirmed by the Division Bench of this Court by Ext.P3 judgment. As per Ext.P2 judgment, the primary societies are liable to pay interest, as prescribed in Section 7Q. But, considering the fact that the primary societies are suffering from acute financial crisis and shortage of funds, the rate of damage was reduced to 10% of the total damages claimed for the impugned period. It was also held that the 2nd respondent has discretionary jurisdiction to fix the extent of liability, considering the facts and circumstances of each case. So, in the above view of the matter, the petitioner, the CAPEX has filed these Writ Petitions on the ground that in view of Exts.P2 and P3 judgments of this Court, the respondents are not entitled to claim any amount from the primary societies as interest and damages under Section 14B and 7Q of the EPF Act. The petitioner has prayed for issuing a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to Ext.P1 demand notice in all the cases and quash the same.

5. The respondents have filed a counter affidavit and contended thus: According to Section 7-I of the EPF Act, any person aggrieved by an order under Section 14B may at the first instance, file an appeal before the EPF Appellate Tribunal and not before the High Court. The petitioner, at first, has to exhaust the remedy before the Tribunal, prior to seeking relief from this Court. As such, these Writ Petitions are premature and liable to be dismissed at the threshold. Moreover, a grievance can only be preferred against an order; as the enquiry under Section 14B was not finalised in these cases and an order in the matter is yet to be issued. Since the petitioner has challenged only an enquiry notice for appearance and not an order, these Writ Petitions are liable to be dismissed on the said ground as premature.

6. Heard the learned counsel for the petitioner

and learned Standing Counsel appearing for the respondents.

7. The sum and substance of the arguments advanced by the learned counsel for the petitioner is that the matter in issue involved in these Writ Petitions is covered by Exts.P2 and P3 judgments of this Court. According to the learned counsel, another primary co-operative society under the petitioner against whom final orders were passed quantifying interest and damages under Sections 7Q and 14B of the EPF Act, filed W.P.(C) No.15187 of 2013 and that Writ Petition culminated in Ext.P2 judgment, wherein this Court found that the reason for default in making payment of contribution was beyond the control of that society and the primary societies involved in these cases were also suffering from financial crisis, as stated in Ext.P3 judgment and thereby, the issue stands covered by Ext.P2 judgment and affirmed by Ext.P3 judgment

passed in appeal.

8. Per contra, the learned counsel appearing for the respondents contended that in the case of societies referred to in Ext.P2 judgment, those societies were served with final orders passed by the competent authority and those final orders were challenged in that Writ Petition. But in the instant cases, demand notice alone was issued and the concerned primary societies have not filed any objection to the demand notice, which is referred to as Ext.P1 in all the Writ Petitions. Thus, all the Writ Petitions are premature and it was obligatory on the part of the concerned primary societies to file their objections stating their reasons for not remitting the contribution without default. Unless and until, the respondents were given an opportunity to address and pass orders on the reasons by which the primary societies defaulted payment, those societies have no right to approach this Court directly, challenging Ext.P1

demand notice. Ext.P1 demand notice was issued in compliance with the provisions contemplated under the EPF Act and no illegality or impropriety can be attributed against the issuance of Ext.P1 demand notice, in all the Writ Petitions. Therefore, there is no reason or extraordinary circumstance warranting interference of this Court in exercise of the jurisdiction under Article 226 of the Constitution of India.

9. I have given my anxious consideration to the rival submissions at the Bar. Apparently, I find that in all the Writ Petitions, Ext.P1 is only a demand notice issued in exercise of the provisions under the EPF Act and so long as the petitioner has no case that those societies will not come under the purview of the EPF Act, no kind of illegality or impropriety can be attributed against the issuance of Ext.P1 demand notice in all the Writ Petitions. It is the case of the petitioner that the primary societies referred to in the demand notices are

not liable to pay damages above 10% of the total amount, for the impugned period, to be quantified by the respondents, in view of Exts.P2 and P3 judgment of this Court. Therefore, the question to be considered is, whether the issue involved in these Writ Petitions is covered by those judgments.

10. I have carefully gone through Exts.P2 and P3 judgments passed by this Court. Going by Ext.P2 judgment, it is seen that the learned Single Judge of this Court found that nothing wrong claiming interest from the primary societies under Section 7Q of the EPF Act. But, found that those primary societies were suffering from acute financial crisis and there was no willful default in not making the payment within the time. On that premises, the learned Single Judge reduced the rate of damages to 10% of the amount quantified by the respondents and no proposition was laid down to the effect that all primary societies under the petitioners are

not liable to pay damages, more than 10%. But, at the same time, the court upheld the reason, for default as one beyond the control of the societies. I am of the view that if the primary societies against whom the demand are issued, in the instant case are also suffering from financial crisis, as that of the primary society involved in Ext.P2 judgment, it was obligatory on the part of those societies to file an objection before the 2nd respondent, stating that they were also suffering from financial crisis and thereby, they are entitled to get the rate of damages reduced to 10%, as held in Ext.P2 judgment. In the instant case, the primary societies have not filed an objection and on receipt of the notice, they immediately rushed this Court and filed all these Writ Petitions.

11. Certainly, if these primary societies are also suffering from acute financial crisis, due to shortage of fund and there was no willful non-remittance, or latches

from their part, they are also entitled to get the same benefit, as that of the society in Ext.P3 judgment. Therefore, it is for the respondents to consider at first, whether reasons for default, in remittance of contribution, within the time, is due to financial crisis or not. In short, all these Writ Petitions are premature and no positive order can be passed as prayed for at this stage.

12. In the above view, all the primary societies in all these writ petitions are directed to file objections to the respective demand notices and produce sufficient materials to show that these societies were also suffering from acute financial crisis caused by the shortage of fund and in that event the respondents shall pass order in the light of Ext.P2 judgment, which stands affirmed by Ext.P3 judgment. It is made clear that the primary societies shall file objections within one month from the date of receipt of a copy of this judgment and

in that event the respondents shall consider the objections and pass orders in the light of Exts.P2 and P3 judgments, within a further period of two months from the date of receipt of the objections. While considering the objections, the respondents shall take note that the primary societies have remitted 30% of the interest claimed and the same shall be given credit to.

These Writ Petitions are disposed of accordingly.

Sd/-
K. HARILAL,
JUDGE

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//True copy//

P.A. To Judge