

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/11/2015

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.37104 of 2015

The Singanallur Consumer Co-operative
Stores Ltd

No.CC 2333

rep. By its Secretary P.Vadivambal

23 Krishna Harden

Uppilipalayam

Coimbatore 15.

...

Petitioner

Vs

1. The Assistant Provident Fund Commissioner
Employees' Provident Fund Organisation
Bhavishya Nidhi Bhavan
P.B.No.3875
Dr.Balasundaram Road
Coimbatore 18.

2. The Recovery Officer
Employees' Provident Fund Organisation
Bhavishya Nidhi Bhavan
P.B.No.3875
Dr.Balasundaram Road
Coimbatore 18.

...

Respondents

Prayer -Petition filed under Article 226 of the Constitution of India
praying for the issuance of a Writ of certiorari to call for the
records relating to the impugned order in TN/RO/CBE/77967/ENF/CC-
17/2013 dated 21/8/2014 issued by the first respondent and the
consequential order of recovery made in TN/RO-CBE/Recovery/CC-
17/77967/2015 dated 30/10/2015 issued by the second respondent and
quash the same.

For petitioner

... Mr.N.Manokaran

For respondents

... Mr.K.Gunasekar

Sr.Central Government Standing Counsel

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O R D E R

With the consent of the learned counsel appearing for the parties, the writ petition is taken up for final disposal.

2. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.K.Gunasekaran, learned Senior Central Government Standing Counsel for the respondents 1 and 2.

3. This writ petition has been filed praying to call for the records relating to the impugned order in TN/RO/CBE/77967/ENF/CC-17/2013 dated 21/8/2014 issued by the first respondent and the consequential order of recovery made in TN/RO-CBE/Recovery/CC-17/77967/2015 dated 30/10/2015 issued by the second respondent and quash the same.

4. The petitioner is a Co-operative Society, functioning under the control of the elected Board and the challenge in this writ petition is to an order passed by the first respondent under Section 7 A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 dated 21/8/2014.

5. At the very outset, it has to be pointed out that the writ petition has been filed after a period of more than one year. There is no explanation as to why the petitioner Society did not approach the Appellate Tribunal under the provisions of the Act and has challenged the order passed under Section 7 A of the Act before this Court.

6. The learned counsel appearing for the petitioner would submit that they are the Co-operative Society, running a fair price shops and finding it very difficult to carry out their day-to-day business and the Society has not disbursed the salary to the employees till August 2015 and for want of funds, the Society could not disburse the salary to its employees.

7. The learned counsel for the petitioner submits that none of the procedure contemplated under the said provision have been followed and the first respondent has passed the impugned order dated 21/8/2014.

8. The learned counsel appearing for the petitioner, relying on the decision reported in 2012 (1) CWC 794 (M.Karuppannan Vs. The Deputy Registrar (Dairying), Erode and 3 others, submitted that the case arose out of the proceedings initiated under Section 87 of the Co-operative Societies Act, 1383 and analogous provisions is contained therein as under Section 7 of the said Act and this Court in the said decision has held that if an adjudication is to be made, without evidence, it is out of surmises and findings are perverse, the same cannot be sustained. Therefore, it is submitted that by applying the said decision to the present case, the impugned order has to be set

aside.

9. This Court is not inclined to accept the submission of the learned counsel for the petitioner for more than one reason.

(i). Firstly, the decision in the case cited supra, arose out of the proceedings initiated under Section 87 of the Tamil Nadu Co-operative Societies Act, 1383, which is a surcharge proceedings and testing the correctness of the order passed under Section 87 of the Act.

(a). The Court held that on facts, there was no proper adjudication and a finding based on surmise and perverse cannot be sustained. The said decision cannot be applied to the facts of the present case, since the present proceeding is a proceeding under the statute, which has been enacted for the welfare of the Employees.

(b). There is no necessity for any notice being issued for remitting the monthly contribution on the part of the employer and in the event of default, automatically, the provisions of the Act provides for action being initiated on the employee. Therefore the contention raised by the petitioner deserves to be out rightly rejected.

(ii). One more reason for rejecting the contention of the petitioner is that though the hearing was fixed on 20/8/2014, there was no representation made on behalf of the petitioner society, stating that they require time to produce the records or any request was made for adjournment, so as to enable them, to produce the records. But on the contrary, the Secretary of the Society appeared before the first respondent along with an authorisation letter and admitted the default.

Hence on the above grounds, the writ petition is liable to be dismissed.

10. As rightly pointed out by the learned counsel for the respondents, the writ petition is liable to be dismissed, for unexplained delay and laches and for non-filing the statutory appellate remedy.

11. Faced with this situation, the learned counsel appearing for the petitioner submitted that this Court may consider the plight of the petitioner Society and afford an opportunity to the petitioner Society to remit the dues in easy instalments, since already the petitioner has paid more than Rs.1,50,000/- and if instalments are granted, the petitioner would be able to clear the dues, which are actually due and payable by the employer. In this regard, there is a representation given by the petitioner to the first respondent on 2/11/2015 and the same is pending before the first respondent.

12. In the light of the above discussion, the writ petition is dismissed. However, this Court does not propose to foreclose the rights of the petitioner and therefore, directs the first respondent to consider the petitioner's representation dated 2/11/2015 and if any records have been produced by the petitioner, the same may be verified for reconciliation/rectification of any mistake which might have cropped up and after conducting such an exercise, the first respondent shall permit the petitioner Society to remit the dues in ten equal monthly instalments.

13. The learned counsel appearing for the petitioner submitted that pursuant to the notice issued by the first respondent, the Bank account of the petitioner Society has been attached and the petitioner is unable to operate the Bank account.

14. In this regard, the petitioner is directed to make a request to the first respondent to lift the attachment, so that the funds can be remitted, subject to the undertaking that current dues towards the employers contribution will be settled at the first instance.

No costs. Consequently, the connected Miscellaneous Petition is closed.

-sd/-

ASSISTANT REGISTRAR

/ TRUE COPY /

Sub-Assistant Registrar

mvs.

To

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Employees' Provident Fund Organisation
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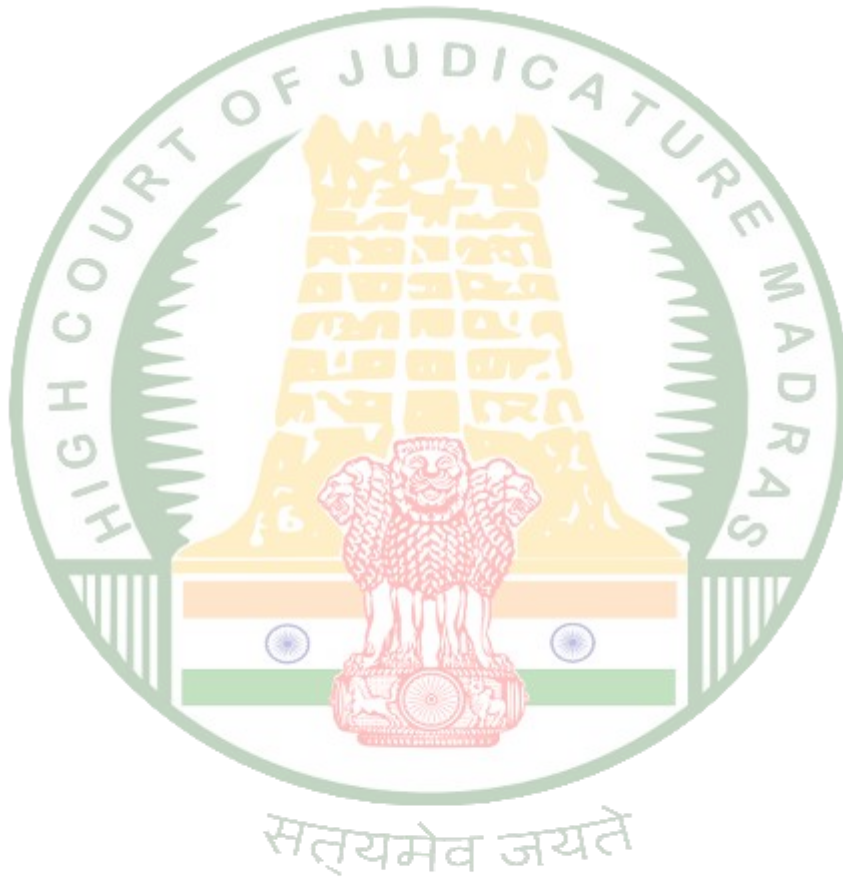
+1 cc MR.K.GUNASEKAR ADVOCATE SR.NO. 62989

+1 CC TO MR.N.MANOKARAN ADVOCATE SR.NO. 63143

W.P.No.37104 of 2015

KSJ[CO]

SD 10/12/2015



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