

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6097 OF 2016.

(Yavatmal Zilla Sahakari Soot Wa Kapad Girni, Pusad
.vs. The Regional Provident Fund Commissioner, Nagpur & others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. S.D. Chopde, Advocate for petitioner,

**CORAM : DR. MANJULA CHELLUR, C.J. &
B.P. DHARMADHIKARI, J.**

DATED : OCTOBER 18, 2016.

P.C.

Heard the learned Counsel for the petitioner.

It is not in dispute that the petitioner is represented by a Liquidator appointed in pursuance of the statutory provisions and the proceedings. The facts reveal that the earlier Liquidator entered into hire-purchase agreement with the respondent No.3 to run the Mills. When third respondent was in-charge of running the mills, certain amounts contributable to the provident fund became due and there was a demand for such contributions. The petitioner represented by the earlier Liquidator seems to have undertaken to pay the provident fund contribution to the Provident Fund Commission and accordingly, said to have paid Rupees Ninety Lakhs from out of sale consideration of properties of society.

The present Liquidator is before us contending that third respondent though in existence is not running the mills. Therefore, the provident fund contributions stated above contributed by the petitioner though it was not legally liable to contribute, has to be refunded from the Provident Fund Commissioner.

On going through the contents of the Writ Petition, we find that there was no direction by any authority wrongly directing the writ petitioner's office to contribute the provident fund amount. Even if there was such a direction, it was the responsibility of the office of the petitioner to challenge the same contending that they were not liable to pay such contributions. But in the present case, having voluntarily contributed or undertaken to absolve the liability of the third respondent in so far as their liability to pay contributions to the Provident Fund Commissioner was concerned, the recourse by the Writ Petitioner is to recover the amounts paid to Provident Fund Commissioner on behalf of third respondent. But from whom ? Virtually, the liability of the third respondent was undertaken by the Writ Petitioner. So far as the employees' contributions is concerned, there is no denial that third respondent was liable to pay those contributions at the relevant point of time. If said contributions were not liable to be paid by third respondent, it is altogether a different situation. Since the employees' contributions, to be contributed by the third respondent, were undertaken to be contributed by the petitioner, remedy open to the petitioner is to recover the said amounts from third respondent M/s. Vee Kay Cotsyn Limited for whom they stood almost like guarantor or surety.

We are of the opinion that there cannot be any direction to Provident Fund Commissioner to refund the said amounts to the Writ Petitioner in the facts and circumstances of the present case.

Accordingly, the Writ Petition is dismissed.

CHIEF JUSTICE

(B.P. DHARMADHIKARI J.)

J.