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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1528 OF 2000

Associated Cement Staff Union
a Trade Union registered under
the Trade Unions Act, 1926 and
having their registered office at
'Cement House', 121, Maharshi
Karve Road, Mumbai 400 020. ...Petitioner

versus

1. Regional Provident Fund Commissioner
having his office at 341, 'Bhavishya Nidhi
Bhawan', Bandra (East), Mumbai 400 052.

2. The Associated Cement Companies Limited,
a Company Registered under the Companies
Act, 1956, and having its registered office
at 'Cement House', 121, Maharshi Karve
Road, Mumbai 400 020.

3. Dr. A.K. Chatterjee

4. Mr. M.L. Narula

5. Mr. N.H. Italia

6. Mr. S.P. Mathur

Nos. 3 to 6 Trustees of the Provident Fund
of the Associated Cement Companies Ltd.,
having their Registered office at
'Cement House', Maharshi Karve Road,
Mumbai 400 020.

7. Mr. V.Y. Bedekar,
Secretary of the Provident Fund of the
Associated Companies Ltd.,
Having his office at
'Cement House', Maharshi Karve Road,
Mumbai 400 020. ...Respondents

Mr. P.M. Patel, for the Petitioner.
Ms. Shehnaz (Sheroo) Vispy Bharucha (Daruwalla), for Respondent no.1.
Mr.Vinod Tayade i/b.Mr.Piyush Shah, for Respondent Nos.2 to 7.

CORAM : A.A.SAYED AND M.S.KARNIK, JJ.

RESERVED ON : 21st JULY 2017

PRONOUNCED ON : 14th AUGUST 2017

JUDGMENT (PER M.S. KARNIK, J.) :-

The petitioner, a Trade Union registered under the Trade Unions Act, 1926 seeks a direction to respondent no.2 Company to include a member who is a member of the petitioner's Union as the employees' representative on the Board of Trustees of the Provident Fund of the Associated Cement Companies Limited, respondent no.2 herein.

2. Respondent no.2 is the Associated Cement Company registered under the Companies Act, 1946 which has its own Trust

for provident fund payable to the employees. Respondent nos.3 to 6 are the Trustees of the Trust. The Trust was created and established for deduction and accumulation of the provident fund amount of the employees of the 2nd respondent. This trust was established on 1st August, 1936. The said trust is recognised under Income Tax Act, 1922. Rules of the trust were framed when the trust was established in the year 1936 and are known as the Rules of the Provident Fund of Associated Cement Companies (hereinafter referred to as 'the said Rules' for short). Rule 6 of the Rules vested the fund in three trustees of whom two are Directors of the company and one an officer of the company in their office in Bombay. These appointments of the trustees are to be made by the Board of the Directors of the 2nd respondent.

3. It is the petitioner's case that 2nd respondent in flagrant disregard to the law laid down under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred as 'the said Act' for short) and the Scheme framed thereunder continued with their old system of having three Directors all of whom are in the managerial cadre. Presently the Trust has four trustees, two of whom are full time Directors, one a Director of Finance and the fourth Vice-

President (Personnel). Learned Counsel for the petitioner submits that the requirement of the said Act is that employees must be given adequate representation on the Trust by appointing an employee as a Trustee. He submitted that the petitioner is the only trade union functioning in the respondent no.2 at the Head Office and C.R.S., Thane, for the past several years and therefore entitled to have an employee as a representative on the Trust. The employees of the 2nd respondent are in dark as to how the operations of the trust and funds are carried on. They have no knowledge whatsoever as to how the trustees invest the funds, sanction loans to the employees, including those to executives, Vice Chairman and Managing Director of the company as also other top officers of the 2nd respondent company. Loans, which are available to members of the Trust, are sanctioned at the sole discretion of the Trustees all of whom belong to the managerial cadre and therefore, members of the petitioner Union are not represented adequately. It is averred that the loans are sanctioned in an arbitrary manner and on some occasions second loan has been sanctioned by the trustees even before earlier loan is repaid contrary to Rule 70 of said Rules. By a letter dated 25th February, 1998, the petitioner had called upon respondent no.7 i.e. the Secretary of the trust, to give adequate representation to the employees. The petitioner brought it to the notice of the respondent no.1 Regional Provident Fund Commissioner that the 6th respondent is styling himself as the employees' representative on the trust despite being in the managerial cadre. The petitioner called upon the 1st respondent to rectify this anomaly and to direct the 2nd respondent to give adequate representation to the employees on the Trust.

4. The office of the 1st respondent issued show cause notice dated 29th September, 1998 to the respondent no.2 company. It is alleged in the said show cause notice that the company had failed to submit family pension dues for some years within stipulated period. It was also stated in the said show cause notice that the company had failed to give equal representation to the employees' representatives on the Board of Trustees and to authorise atleast one employee trustee as joint signatory to sign claims, loans, cheques and that the Provident Fund Rules had not been amended on the lines of the Model Rules framed under the said Act and the Scheme. The petitioner by a letter dated 8th December, 1998 again called upon the 1st respondent to take immediate steps to see that the employees' representative is appointed as a trustee on a said trust. By a letter dated 19/4/1999, the petitioner was informed by the office of the 1st

respondent that the 2nd respondent has been directed to follow the provisions of para 79-C of the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as 'the said scheme' for short). By a letter dated 20th April, 1999, the 1st respondent informed the company that the reason given by the company for appointing two officers from the company in the capacity of the employees' representative is not acceptable and that the representation for the employees was not in accordance with the prescribed procedure. Accordingly, a show cause notice was issued by the respondent no.1 calling upon the 2nd respondent as to why exemption granted to them should not be cancelled.

5. Learned Counsel for the petitioner submits that except for issuance of the show cause notice no further action was taken by the respondent no.1 of withdrawing the exemption granted. Respondent no.2 company also did not give any representation to the employees on the said trust.

6. Learned Counsel for respondent no.1 contended that respondent no.2 is obliged to take steps in accordance with the provisions of para 79-C of the said scheme and accordingly a show

cause notice was issued to the respondent no.2 company for including representatives of the employees on the trust. In her submission, no further action was taken pursuant to the issuance of the show cause notice in view of the pendency of the Petition. She however submits that stand of the respondent no.2 is categoric in as much as in accordance with para 79-C of the said scheme, the petitioner is entitled to have employees' representative on the trust.

7. Learned Counsel for the respondent no.2 invited our attention to the affidavit filed on behalf of the respondent no.2 by Shri Vishwas Yeshwant Bedekar, Senior Manager (Finance). He pointed out that respondent no.2 is engaged in the cement industry and has eleven factories, number of branches and regional offices all over India. On 1st May, 1952, the company applied for exemption under the said Act. The company had applied for exemption under Section 17. The respondent no.1 by letter dated 25th November, 1953 granted exemption in respect of monthly rated employees covered under para 27A of the said scheme working in different factories with effect from 1st November, 1952 subject to certain conditions.

8. The Under Secretary to the Government of Maharashtra

in exercise of powers conferred by para 27-A of the scheme by his order dated 1st October, 1963 granted exemption for monthly rated employees working in company's branches and establishments with effect from 1st May, 1962 subject to certain terms and conditions. Learned Counsel contended that at the time of the filing of the affidavit there were 4,750 monthly rated employees all over India, who are exempted under the scheme out of total about 10,250 employees. The said 4,750 employees are scattered over 36 establishments, located all over India. The strength of 4,750 consists of about 1,850 management staff and 2,900 of non-management, clerical and supervisory staff. In all these establishments, there are different Unions, recognized under Code of Discipline. So far as management staff is concerned, they are not unionised. According to learned Counsel as the company is operating the said Trust from its Head Office at Mumbai it will not be practicable to nominate any of the employees as trustees on the Trust from out of Mumbai since they will not be available for attending frequent meetings for investments, signing of cheques, etc. The trustees are operating the Fund since 1952 and the interest of the members of the Fund are well protected. The said trust is run to the entire satisfaction of all concerned employees.

9. Learned Counsel for the respondents submitted that the exemption granted under Clause 27A of the Scheme of a class of employees is a power which is derived by virtue of sub-section (2) of Section 17 of the Act. Under Section 17 (1) of the Act the appropriate Government is empowered to exempt establishments from the operation of all or any of the provisions of the Scheme on such conditions as may be specified in the notification. According to the learned Counsel sub-clause (2) of Clause 27A of the Scheme provides for certain obligations on the part of the employer in respect of maintenance of accounts, filing of returns, etc. There is no obligation contemplated similar to that under Clause (b) of sub-section (1A) of Section 17 in respect of establishments of the Board of Trustees for establishment exempted under Clause 27A of the Scheme. Clause 79C deals with composition of Board of Trustees of exempted establishments and the terms and conditions of service of the trustees. The said clause provides that the Board of Trustees of the establishment granted exemption under Clause (a) of sub-section (2) of Section 17 of the Act shall consist of not less than two and not more than six representatives each of the employers and employees.

10. Learned Counsel for the Respondent did not deny that on the Board of Trustees there are two management representatives namely two Directors of the Company. From employees side there is a representation by two officers of the company. According to the learned Counsel this has been informed to all employees of the company for which there is no objection from the employees working in different units who form majority of membership. According to the learned Counsel the composition of the Trust is, therefore, proper looking to the spirit of the law.

11. Having considered the submission of the learned Counsel we find Para 79-C of the Scheme provides for composition of the Board of Trustees of the exempted establishments and the terms and conditions of service of the trustees. Admittedly the establishment of the respondent is exempted under Section 17 of the said Act. It is the respondents' case that the exemption is granted under Clause (a) of sub-section (1) of Section 17. It is obvious that the composition of the Board of Trustees of the respondent which is an exempted establishment will have to be in accordance with para 79-C of the Scheme. We find that two officers of the company in the managerial cadre from the employees side are representing the employees on the

Board of Trustees. The composition of the Board in our opinion is not in consonance with para 79C of the Scheme. Para 79C of the Scheme clearly provides the representatives of the employees of the establishment to be members of the Board of Trustees. Clause (3) of para 79-C of the Scheme provides for the manner in which the representatives of the employees, on the Board of Trustees shall be nominated or elected. Para 79-C reads thus :-

> *"**79-C. Composition of the Board of Trustees of the exempted establishments and the terms and conditions of service of the trustees.**- (1)The Board of Trustees of the establishment granted exemption under clause (a) of the sub-section (2) of section 17 of the Act shall consist of not less than two and not more than six representatives each of the employers and employees. The number of trustees shall be so fixed, as to afford, as far as possible, representation to employees of each branch or department of the establishment. In the case of common provident fund for a group of two or more establishments, there will be at least one representative each from the participating establishments :*
>
> *(2) The employer shall nominate his representatives on the Board of Trustees from amongst the officers employed in managerial or administrative capacity in the establishment.*
>
> *(3) The representatives of the employees, on the Board of Trustees shall be nominated or elected in the following manner, namely :-*
>
> *(a) wherever there is a union recognized by the employer under the Code of Discipline in industry or under any Act, such union shall nominate the representatives of the employees;*
>
> *(b) where there are more than one trade unions recognized by the employer, the representatives of employees shall be elected by the members of the union in an election to be held for the purpose of any working days ;*
>
> *(c) where there is no union recognised by the employer under the Code of Discipline in industry or under any Act but there are more than one registered unions, functioning in the establishment, the union having the largest number of members, subject to a minimum of 15 per cent. membership, shall have the right to nominate employees' representatives; and in case there is only one registered union,it shall have the right to nominate the employees' representative, provided it has a minimum of 15 per cent.*

membership.
[(4) The employer shall be the Chairman of the Board of Trustees. In the events of equality of votes, the Chairman may exercise a casting vote.]
[(5) The terms of office of the trustee shall be five years from the date of election or nomination. An outgoing trustee shall be eligible for re-election or re-nomination. A trustee elected or nominated to fill the casual vacancy shall hold office for the remaining period of the term of the trustees in whose place he is elected or nominated.
(6) A person shall be disqualified from being a trustee if he, -
(a) is declared to be of unsound mind by a competent Court ; or
(b) has been convicted of an offence involving moral turpitude ; or
(c) is an undischarged insolvent ; or
(d) is an employer of an exempted or unexempted establishment which has defaulted in payment of any dues under the Act.
(7) A person shall cease to be a Trustee of the Board if, -
(a) he ceases to be an employee of the establishment; or
(b) he ceases to be a member of the provident fund of the establishment ; or
(c) the union on whose behalf he was elected or nominated, ceases to recognised by the employer ; or
(d) he fails to attend three consecutive meetings of the Board without obtaining leave of absence from the Chairman of the Board of Trustees. The Chairman may, however, condone the absence of a trustee if he is satisfied that there were reasonable grounds for such absence.
(8) The procedure for election or nomination of trustees, the quorum at the meeting of the Board, records to be kept of the transaction of business and all other matters not specifically provided for in the Scheme shall be regulated as per the provisions of the approved provident fund rules of the establishment and the guidelines for functioning of the Board of Trustees of the exempted establishments which the Commissioner may specify from time to time.
(9) In case of any dispute or doubt, the matter shall be referred to the Regional Provident Fund Commissioner, in whose jurisdiction the Head Office of the establishment is located. The decision of the Commissioner in the matter shall be final and binding."]

12. We find that the petitioners are justified in contending that the representatives of the employees on the Board of Trustees, have not been nominated or elected in the manner provided in para

79-C of the Scheme. The Petition therefore succeeds. Hence the following order.

O R D E R

(a) The respondents are directed to nominate or elect the representatives of the employees, on the Board of Trustees in terms of Para 79-C of the Employees' Provident Funds Scheme, 1952, within a period of four months from today.

(b) Rule is made absolute on the above terms.

(c) No order as to costs.

(M.S.KARNIK, J.) **(A.A.SAYED, J.)**