

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4343 OF 2004

Satyanarayan Rameshwar Mantri,
age : 52 years, Occ : Service,
R/o Block No.9, People's Bank
Colony, Ramnagar, Jalna. ...PETITIONER

VERSUS

1. The Union of India,
Through its Secretary,
Department Ministry of Labour,
New Delhi.
2. Assistant Provident Fund
Commissioner & Recovery Officer,
Employees Provident Fund
Organisation,
Sub Regional Office, Aurangabad ...RESPONDENTS

WITH
WRIT PETITION NO. 4602 of 2004

The Jalna Peoples' Cooperative
Bank Ltd., Jalna, through its
Acting Chief Executive Officer,
Shri Chandrashekharan A.,
age : 52 years, R/o Peoples'
Bank Colony, Ramnagar, Jalna. ...PETITIONER

VERSUS

1. The Union of India,
Through its Secretary,
Department Ministry of Labour,
New Delhi.

2. Assistant Provident Fund
Commissioner & Recovery Officer,
Employees Provident Fund
Organisation,
Sub Regional Office, Aurangabad

3. The Maharashtra State
Cooperative Bank Ltd.,
9, Maharashtra Chamber of
Commerce Lane, Fort,
Mumbai – 400 001.

...RESPONDENTS

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Advocate for the Petitioner : Shri A. S. Bajaj
Advocate for Respondent Nos. 1 and 2 : Shri K. B. Choudhari
Advocate for Respondent No. 3 : Shri S. B. Gorde Patil (in WP
No. 4602/2004)

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 11th OCTOBER, 2018.

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ORAL JUDGMENT :

1. In both these petitions, this Court had heard the learned
Advocates for the respective sides and had passed an order on
17/08/2004 as under :-

*"Heard Mr. Bajaj, learned counsel for the
petitioner and Mr. K. B. Choudhari, learned
Additional Standing Counsel for respondent Nos.
1 and 2.*

2. The issue for consideration in these

petitions is as to whether the recovery officer, who has auctioned the property in exercise of his powers under section 156 of the Maharashtra Cooperative Societies Act, 1960 can be said to be liable for payment of Provident Fund dues of the defaulting unit, properties of which are mortgaged in favour of a Cooperative Bank. Admittedly notices under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 are issued to the Recovery Officer calling upon him to make good the payment of Provident Fund dues of the employees of the defaulting unit. Hence Rule.

2. Interim order in terms of prayer clauses "c" and "d".

3. However, it is clarified that this order will not in any manner prevent the Provident Fund Authorities from recovering the Provident Fund dues in accordance with law from either the defaulter or auction purchaser.

4. Considering the controversy liberty to apply for fixed date of hearing after the returns are filed. Office to place the petitions for hearing together."

2. Having considered the submissions of the learned Advocates for the respective sides and in view of the provisions

of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, I have no doubt as regards the provisions of the Act which would empower the Provident Fund Authorities to recover all the P.F. contributions/subscriptions as regards the share of the employer and the employee, only from the employer. Such delayed payments or outstanding subscriptions, inclusive of interest/damages/penalty, could only be recovered from the employer. This Court had, therefore, observed in paragraph 3 of the order dated 17/08/2004 reproduced above that the P.F. Authorities would be at liberty to recover the P.F. dues in accordance with law either from the defaulter or the auction purchaser.

3. The petitioner bank, from whom the PF authorities seek to recover the dues, is merely a financier of the industry.

4. The learned Advocate for the P.F. Department places on record a compilation of documents (four pages) and submits that the outstanding dues in respect of the Factory/Management M/s. Vyankateshwar Re Rolling Mills, Jalna, have been recovered, except an amount of Rs. 5532/-.

5. The said compilation dated 04/10/2018 is placed on record and marked as 'X' collectively, for identification.

6. Since the law would not permit the P.F. Authorities to recover P. F. dues from any financier or financial institution, these petitions need not be kept pending. Both these petitions are, therefore, allowed in terms of prayer clauses B keeping in view the interim order in terms of prayer clause C and D. Prayer Clause B reads as under :-

"B] The Honourable Court be pleased to quash and set aside the impugned notices dated 31/10/2003 No.MH/AB/80205/OF/ ENF/REC/03/ 8/1/94, and dated 25/05/2004 No. MH/AB/80205/ENF/2004/480, issued by the Assistant Provident Fund Commissioner, Sub Regional Provident Fund Office, Aurangabad, and the communication dated 01/06/2004 issued by the Maharashtra State Cooperative Bank, Mumbai, by issuing writ, order or direction in the nature of writ of certiorari."

7. Needless to state, the P.F. Authorities are at liberty to recover the residual amount of Rs. 5532/- either from the employer or the auction purchaser, as the case may be, in view

of the earlier directions of this Court dated 17/08/2004.

8. Rule is, therefore, made absolute accordingly.

(RAVINDRA V. GHUGE, J.)

shp/-