

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14324 OF 2016

The Central Board Of Trustees,
Employees Provident Fund Organization.

... Petitioner

Vs.

1. Jagadamba Anusuchit Jati Shetakari
Vinkari Sahakari Soot Girni Niyamit and Ors.

... Respondents

Mr. Suresh Kumar for the Petitioner.

Ms. Janhavi Karnik I/by Aumkar Joshi for Respondent no. 1.

Ms. Shraddha Pawar I/by Dilip Bodake for Intervener.

CORAM : NITIN W. SAMBRE, J.

DATE : 3rd June, 2019.

P.C. :

This Petition is filed by The Central Board Of Trustees, Employees Provident Fund Organization, questioning the impugned order dated July 13, 2010 passed by the Presiding Officer, Employees' Provident Fund Appellate Tribunal, New Delhi.

2. The facts necessary for deciding the petition are as under-

The Respondent, the registered co-operative society engaged in the business of Yarn making claimed to be not covered under the provisions of Employees' Provident Fund & Miscellaneous Provisions Act,

1952.

3. According to Petitioner, the said co-operative society started functioning from December 31, 1989 and it being establishment under the aforesaid Act, tendered its PF contribution till September 1997 and thereafter committed a default.

4. Pursuant to an enquiry u/sec. 7-A of the Act, the Assessing Officer recorded the finding that the aforesaid act is made applicable to respondent no.1 and accordingly dues were assessed for October 1997 to June 1998 to the tune of Rs. 22,16,959/- vide order dated February 23, 2001.

5. In the aforesaid enquiry, the very applicability of the Act was disputed by the Respondent and against the order of fastening liability preferred an Appeal before the Appellate Authority, who has recorded the finding vide impugned order dated 13/07/2010 observing that respondent no.1 came into existence under a State statute and the by-laws shows framing of Pension or Contributory Provident Fund Scheme. Accordingly, it was held that pursuant to the provisions of Section 16(c) of Contributory Provident Fund, any other establishment set up under any Central, Provincial or State Act will not be applicable to the respondent no.1, as such this Petition.

6. The learned Counsel for Petitioner Shri. Suresh Kumar would urge that since 1989 till 1997, the respondent-society has deposited the

contribution, consented for the settlement of claims of the employees and as such, acquiescence itself under the Act. According to him, though there is a delay of more than six years in challenging the order impugned, the same is a bonafide. He submits that the order impugned which is cryptic in nature and is not sustainable.

7. *Per Contra*, the learned Counsel for Respondent supported the order impugned and sought dismissal based on scheme of Section 16-c of the Act.

8. Having considered rival submissions, what is to be noticed is, the petitioner has come with an explanation vide affidavit dated 02/03/2017, that initially it was felt that the order impugned need not to be challenged. Para 2 of the said Affidavit reads thus -

“ 2. By the time the decision was received by the office of the Petitioner that is on 29.08.2012 the said establishment was already closed and therefore, challenging the decision of the Hon'ble Employees Provident Fund Appellation Tribunal, New Delhi was not felt necessary.”

9. No substantial ground or material could be noticed in the Additional Affidavit filed in support of alleged bonafide delay. Apart from above, the order impugned in categorically terms records that since respondent no.1-Society, came in existence under a statute and is having its own Pension and Contributory Provident Fund Scheme as could be interfered from the by-laws, in my opinion, it was rightly held by the Appellate Authority that pursuant to the provisions of 16(c) of the Act, the

Act will not apply to the Respondent no.1-establishment.

10. In view of above, in my opinion, no case for interference is made out. The Petition fails, dismissed.

(N. W. SAMBRE, J.)