

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22826 & 29129 of 2019

&

W.M.P.No.22421 of 2019

W.P.No.22826 of 2019

Oriental Bank of Commerce,
Rep by its Chief Manager-Law,
Mr.A.Ramesh Babu,
Spencer Plaza, 2nd Floor,
769, Anna Salai, Mount Road,
Chennai - 600 002.

...Petitioner

..Vs..

1. The Assistant PF Commissioner,
Employees Provident Fund Organization,
Bhavishya Nidhi Bhavan,
P.B.No.3875,
Dr.Balasundaram Road,
Coimbatore - 641 018.
2. The Sub-Registrar,
Office of the Sub-Registrar,
No.15/117, Coimbatore to Pollachi Road,
Kinathukadavu - 642 109.

...Respondents

W.P.No.29129 of 2019

M/s.Nivaa Casting India Pvt. Ltd.,
Rep by its Managing Director,
T.Bharath, No.12B, Natesa Goundar Layout - II,
Rathinapuri, Coimbatore - 641 027.

..Vs..

- 1.The Provident Fund Commissioner,
Employees Provident Fund Organization,
Dr.Balasundaram Road,
Coimbatore - 641 018.

2. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Dr.Balasundaram Road,
Coimbatore - 641 018.
3. The Regional PF Commissioner - II & Recovery Officer,
Bhavishya Nidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore - 641 018.
4. The Senior Manager,
M/s.Oriental Bank of Commerce,
No.434, Oppanakkara Street,
Coimbatore - 641 001.

...Respondents

Prayer in W.P.No.22826 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, directing to call for the records bearing No.TN/RO/CBE/CC-24/45359/2019 pertaining to the show cause notice dated 25.04.2019 of the first respondent and to quash the same and consequently (i) to direct the first respondent not to take any coercive action whatsoever against the petitioner or its Officers and (ii) to remove attachment dated 13.05.2014 made by the second respondent under D.No.5 of 2014.

Prayer in W.P.No.29129 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to consider the petitioner's representation dated 14.02.2018 and to take action against the fourth respondent in accordance with law.

W.P.No.22826 of 2019

For Petitioner :Mr.S.K.Srinivasan

For Respondents :Mr.J.Sathyanarayana Prasad (for R.1)
Mr.P.P.Purushothaman, GA (for R.2)

W.P.No.29129 of 2019

For Petitioner : Mr.K.Kannan
for Mr.S.Sugendran

For Respondents: Mr.J.Sathyanarayana Prasad
(for R.1 to R.3)
Mr.K.Srinivasan (for R.4)

COMMON ORDER

The show cause notice issued by the Assistant Provident Fund Commissioner and Recovery Officer in proceedings dated 25.04.2019 under the provisions of the Employees Provident Fund Act is under challenge in the present writ petition.

2.The writ petitioner is the Oriental Bank of Commerce. The first respondent Assistant PF Commissioner declared the writ petitioner Bank as a deemed defaulter with reference to the dues paid under the provisions of the Employees Provident Fund Act. Challenging the said show cause notice declaring the writ petitioner Bank as a deemed defaulter, the present writ petition is filed.

3.The learned counsel appearing on behalf of the writ petitioner bank vehemently contended that the Bank holds the first charge in respect of properties belonging to the defaulted company and therefore, they are not directly liable to pay the dues to the PF Commissioner. Contrarily, all these claims are to be raised by the PF Organization by way of claim petition before the competent authorities under the provisions of SARFAESI Act or under the relevant statute. He further states that credit facility to one M/s.Nivaa Casting Pvt. Ltd., to the tune of Rs.6 Crores was granted and the Company has mortgaged their property with the petitioner Bank. The mortgaged property has been purchased by M/s.Sanees Alloys Pvt. Ltd., and committed default in clearing the loan liability availed by them to State Bank of Hyderabad (now merged with State Bank of India).

4.The Encumbrance obtained by M/s.Nivaa Casting Pvt. Ltd., and the petitioner/Bank do not reveal any encumbrances/attachment over the property. The borrower defaulted in payment of the loan liability and therefore, the petitioner Bank has taken action under the SARFAESI Act and Rules and issued first E-auction sale notice dated 17.05.2017. On seeing the above action, the Sales Tax Department has written a letter dated 06.06.2017 to M/s.Nivaa Casting India Limited and letter dated 20.06.2017 to the petitioner branch with reference to the property pertaining to the factory land and building in SF No.155/155-1. The writ petitioner Bank sent a reply on 05.08.2017 stating that the Bank holds the first charge over the property and by invoking Section 31B of Recovery of Debts and Bankruptcy Act, 1993. The petitioner Bank has sold the property which is mortgaged to the Bank for a sum of Rs.93.50 Lakhs under E-auction on 30.03.2019.

5. In these circumstances, the first respondent Assistant PF Commissioner issued a notice to the petitioner Bank for payment of dues for a sum of Rs.12,05,810/- vide their letter dated 03.04.2019. In this regard, the order of attachment has been made by the first respondent on 13.05.2014, which is admittedly subsequent to the charge dated 25.05.2010 created by the State Bank of Hyderabad in Doc.No.4096/2010.

6. The learned counsel appearing on behalf of the petitioner Bank submitted that the petitioner derived title from the above charge created by State Bank of Hyderabad and it is pertinent to mention that the Encumbrance Certificate taken by the borrowers and the petitioner Bank did not reveal any subsisting encumbrance and the charge over the property was not sold by M/s.Sanees Alloys Pvt. Ltd., and the sale was done by a financial institution as part of a process for recovery of money due to them and the borrower is an innocent Auction purchaser, who is not aware of any existing assets. It is contended that the borrower created a charge over the property in favour of the Bank, neither the petitioner nor the Auction purchaser were aware of any pre-existing charge over the property.

7. Narrating the said facts, the learned counsel appearing on behalf of the writ petitioner contended that the impugned show cause notice is without jurisdiction and the first respondent cannot have any authority to issue such a show cause notice to the writ petitioner Bank, as the writ petitioner has proceeded against the mortgaged property only by invoking the provisions of the SARFAESI Act and there is no infirmity as such.

8. The learned counsel appearing on behalf of the first respondent disputed the contentions of the writ petitioner by stating that the amount regarding the EPF contributions were already deposited by the Company viz., M/s.Nivaa Castings India Pvt. Ltd., to the tune of Rs.35.50 Lakhs. M/s.Nivaa Castings Pvt. Ltd., subsequently deposited the said amount to the account of Provident Fund to be disbursed to the workmen and therefore the Bank cannot have any authority to deal with the above amount which was deposited for the purpose of settling the Provident Fund amount. The learned counsel appearing on behalf of the first respondent is of an opinion that M/s.Nivaa Casting Pvt. Ltd., deposited PF dues of Rs.33.50 Lakhs as a fixed deposit with the writ petitioner Oriental Bank of Commerce. There is no reason to withhold the amount by the Bank and they are liable to release the said amount for the purpose of settling the PF amount to the employees who were retrenched by the Government on account of the closure of the company.

9. The learned counsel appearing on behalf of the petitioner

disputed the contentions by stating that the amount was not deposited in the accounts of the PF and it was deposited as contingent liability and the Bank is contesting the issues with the Authorities concerned and therefore, the said amount cannot be construed as PF amount and the said deposit cannot be construed as admitted liability as far as the payment of PF dues are concerned. It is contended that the PF Authorities are empowered to initiate action against the company and not against the Bank and the Bank is proceeding by invoking the provisions of the SARFAESI Act and therefore, the first respondent has no authority to issue the impugned notice against the writ petitioner Bank.

10. At the outset, the dispute between the Bank and the Company in respect of sanctioning of loan and the recovery of dues are in no way connected with the settlement of PF dues by the PF Commissioner under the provisions of the EPF Act. The Bank is of the opinion that they hold the first charge towards the property and the other settlements are to be made thereafter. In other words, it is contended that the PF Authorities are empowered to submit claim petitions before the competent authorities for releasing the PF dues. Contrarily, the PF Authorities cannot initiate action directly against the Bank, by invoking the provisions of the SARFAESI Act and such an illegal action cannot be empowered by the Authorities of the PF and consequently the impugned order is untenable.

11. Considering the facts and circumstances, this Court is of the considered opinion that on account of the disputes between the Bank as well as the Companies, the rights of the poor workmen are sandwiched. These workmen were working in the erstwhile Company namely M/s. Sanees Alloys Pvt. Ltd. Their entitlement of PF is yet to be settled and therefore, this Court has to adopt a pragmatic approach in order to settle these issues.

12. The legal principles on the similar issue was elaborately considered by this Court in the case of The Authorised Officer, India Overseas Bank Vs. The EPF Organisation & others in W.P.No.2718 of 2018 decided on 21.10.2019. The facts in that case also similar, wherein Indian Overseas Bank sanctioned loan in favour of the Uma Maheshwari Mills Limited and the Company was closed. The employees were retrenched and the Bank has taken over the mortgaged property and admitted to sell the same by way of an auction. The EPF Commissioner in that case also initiated the similar notice declaring the company namely Uma Maheshwari Mills Limited has deemed defaulter under the provisions of the EPF Act. Thus, the facts and circumstances as well as the nature of the impugned order challenged in W.P.No.2718 of 2011 is also similar to that of the order now impugned in the present writ

petition issued against the writ petitioner Bank declaring the Bank as deemed defaulter under the provisions of the EPF Act.

13. Thus, it would be relevant to extract principles laid down in the above writ petition for the purpose of considering the present writ petition.

"24. In support of the contention, the Judgment of the Hon'ble Supreme Court of India in the case of Maharashtra State Co-operative Bank Limited Vs. Employees Provident Fund and Others reported in (2009) 10 SCC Page 123 was also referred and the relevant portions of the judgment are extracted hereunder:-

"Para 31:

We shall now consider the question whether the provision contained in Section 11(2) of this Act operates against other debts like mortgage, pledge, etc. Answer to this question is clearly discernible from the plain language of Section 11. The priority given to the dues of provident fund, etc., in section 11 is not hedged with any limitation or condition. Rather, a bare reading of the Section makes it clear that the amount due is required to be paid in priority to all other debts. Any doubt on the width; and scope of Section 11 over other debts is removed by the use of expression "all other debt" in both the sub sections. This would mean that the priority clause enshrined in Section 11 will operate against statutory as well as non-statutory and secured as well as unsecured debts including a mortgage or pledge. Subsection (2) was designedly inserted in the Act for ensuring that the provident fund dues of the workers are not defeated by prior claims of secured or unsecured creditors. This is the reason why the legislature took care to declare that irrespective of time when a debt is created in respect of the assets of the establishment, the dues payable under the Act would always remain first charge and shall be paid first out of the assets of the establishment notwithstanding anything contained in any other law for the time being in force. It is therefore, reasonable to take the view that the statutory first charge created on the assets of the establishment by subsection (2) of Section 11 and priority given to the

payment of any amount due from an employer will operate against all type of debts.

Page 67:-

The expression "any amount due from the employer" appearing in subsection (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including subsection (1) of Section 11 and Section 7-A, 14-B and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund. If any amount payable by the employer is required to pay interest in terms of the mandate of Section 7-Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages.

Para 69:-

If interest payable by the employer under Section 7-Q and damages leviable under Section 14 (sic Section 14-B) are excluded from the ambit of expression "any amount due from an employer", every employer will conveniently refrain from paying contribution to the Fund and other dues and resist the efforts of the authorities concerned to recover the dues as arrears of land revenue by contending that the movable or immovable property of the establishment is subject to other debts. Any such interpretation would frustrate of object of introducing the deeming provision and non obstante clause in Section 11(2). Therefore, it is not possible to agree with the learned Senior Counsel for the Appellant Bank that the amount of Interest payable under Section 7Q and damages leviable under section 14B do not form part of the amount due from an employer for the purpose of Section 11(2) of the Act."

29. The learned counsel appearing on behalf of the Respondents in nutshell contended that the issue had already been settled by the Hon'ble Apex Court of India as well as the High Court of Madras. The rights of the employees are to be protected and on account of the dispute between the Bank as well as the company in

liquidation with reference to the provisions of the SARFAESI Act, should not affect the settlement of dues to the workmen, who all are longing and struggling to get their dues and to lead their livelihood. The priority must be based on these criterias and in the absence of considering these basic aspect, the plight of the poor employees will be in peril. Thus, the protection of these employees, who all are out of employment or otherwise are to be considered at the first instance and in respect of other dues the Bank as well as the company in liquidation has to settle with reference to the provisions of the SARFAESI Act. In other words an account of the legal battle between the Nationalized Bank and the Company in liquidation, the rights of the employees to get their settlement cannot be denied and they cannot be deprived of their livelihood which is the fundamental right ensured under the Constitution of India.

30. The Central Enactment EPF & PF is a welfare legislation. The Act was enacted in order to provide social protection, more specifically, for the livelihood of these class of employees working in various companies, industries, factories and establishments. Thus, a constructive interpretation is to be adopted so as to adopt a pragmatic view to safe guard the interest of these employees, who all are out of employment on account of the liquidation of the company. In the event of not providing such a social protection, the Constitutional Courts are also failing in its duty to protect the Social Justice, as adopted as a resolution, by "We the People of India" in the Preamble of our Constitution. Thus, providing "social justice" is of paramount important to these class of employees, who all are already deprived on account of liquidation of these companies. Such social and financial protection is to be extended as expeditiously as possible in order to save the livelihood of family of these employees, who all are made to suffer on account of the legal battle between the Nationalized Banks as well as the companies in liquidation. Liberal interpretations are also required, regarding which Act will prevail over in the interest of justice. However, welfare legislation, which was enacted to protect the livelihood and the interest of the employees must be held as prevail over the other legislations, as it involves the fundamental rights of the workers including right to life.

31. This exactly is the view taken by this Court in a case of Central Bank of India Vs. The Authorized Officer, Employees Provident Fund Organization in W.P.No. 1209 of 2016 dated 05.09.2018 and the relevant paragraphs are extracted hereunder:-

"4.This Court has tested the similar issue in the case of Phoenix ARC Pvt Ltd., .Vs. The Asst. Provident fund Commissioner & Recovery Officer in WMP Nos.5236 & 5237 of 2018 in W.P.No.4259 of 2018 dated 04.04.2018, and the relevant paragraphs of the order are extracted here under:

"13.The two separate writ petitions are filed, challenging the actions initiated by the 1st respondent/Assistant Provident Fund Commissioner. However, the fact remains that the present writ petitions are filed in respect of the actions initiated by the 1st respondent/ Assistant Provident Fund Commissioner under the provisions of the Provident Fund Act. The other related provisions are to be considered at the time of final adjudication of the present writ petitions. However, Section 11(2) of the Employee's Provident Fund and the Miscellaneous Provisions Act, 1952 unambiguously states that the amount so due, shall be deemed to be the first charge on the assets of the establishment and shall, notwithstanding anything contained in any other law for the time being force, be paid in priority to all other debts. Thus, the very purpose of Section 11(2) of the Act is unambiguous that notwithstanding anything contained in any other law for the time being force, the provident fund contributions are to be given priority to all other debts. The Act being a welfare legislation, the very purpose of settling the provident fund dues to the labourers are ensured and therefore, the same is to be achieved in all respects. Because of certain disputes between the management and the financial institutions, the plight of the poor labourers cannot be stalled. The Court has to ensure that the grievances of the labourers in respect of the provident fund dues are settled in all respects without any undue delay.

14. Therefore, the prima facie opinion of this Court is that the first charge shall be of the provident fund claims and all the debts are to be treated as secondary, because the said provision unambiguously stipulates that notwithstanding anything contained in any other law for the time being in force. When such a phraseology is used in the provision itself, then the Court has to interpret the same in a constructive manner.

15. After all, the Employee's Provident Fund and Miscellaneous Provisions Act, is a welfare legislation. In a welfare legislation, when certain benefits are extended to the labourers/employees, the same cannot be denied on certain technical grounds. It is the constitutional obligation on the part of the Court to see that the poor families struggling to meet out their day-to-day expenditure are saved.

16. The Constitution makers were highly influenced by the feeling of social equality and welfare of the common man. On principle, they agreed that this sacrosanct work could only be done by State. For this reason, they incorporated such provisions in the Constitution of India which made the role of state important and went towards social welfare and ideal state.

17. The Concept of government in which the state plays a key role in protecting and promoting the economic and social well-being of its citizens, is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those who lack the minimal provisions for the good life. The term may be applied to a variety of forms of economic and social organization. A basic feature of the welfare state is social insurance, intended to provide benefit during periods of greatest need (Example:

old age, illness, unemployment). The welfare State also usually includes public provision for education, health services, and housing.

18. A welfare state strives to achieve many ideals, some of them are -

- ◆ Removal of inequalities in distribution of economic resources
- ◆ Equality of opportunity for employment
- ◆ Equal pay for equal work.
- ◆ Elimination of exploitation of labourers
- ◆ Establishment of a welfare state
- ◆ Initiation of schemes relating to health, education, social security, and other such essential matters.

19. The Constitution Bench of the Hon'ble Supreme Court of India in the case of *D. S. Nakara v. Union of India*, reported in (1983) 1 SCC 305, held that the principal aim of a Socialist State is to eliminate inequality in income, status and standards of life. The basic frame work of socialism is to provide a proper standard of life to the people, especially, security from cradle to grave. Amongst there, it envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism, leaning heavily on Gandhian socialism. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society reveals a long march, but, during this journey, every state action, whenever taken, must be so directed and interpreted so as to take the society one step towards the goal.

20. The Apex Court in the case of *Excel Wear v Union of India*, reported in AIR (1979) SC 25 held that the addition of the word "socialist" might enable the courts to learn more in favour of nationalisation and State ownership of an industry. But, so long as private ownership of industries is recognized which governs an overwhelming large principles of socialism and social justice can not be pushed to such an extent so as to ignore completely, or to a very large extent, the interest of another section of the public, namely the private

owners of the undertaking.

21.The Indian Constitution set certain values which struck happy balance between individualism and socialism. It eliminates the vices of unbridled private enterprises, and protects interests by social control and welfare measures. The value system structured by our Constitution finds its expression in its various provisions and, more particularly, in Part III, Part IV and the Preamble of the Constitution.

22.In *Meneka Gandhi v. Union of India*, reported in AIR 1978 SC 597, the Hon'ble Supreme Court of India gave a new dimension to Article 21.It held that the right to "live" is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Article 38 of the Indian Constitution provides State to secure a social order for the promotion of welfare of the people. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life. The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

23.Employee's Provident Fund Act is one such Act enacted for the purpose of achieving constitutional perceptions. Therefore, this Court is of an opinion that the the provisions contained in such Act to be given paramount importance, more specifically, in the matter of settlement of provident fund to the employees/labourers".

5.The said judgment of this Court was taken by way of an Appeal by Phoenix ARC Private Limited in W.A.Nos.998 and 999 of 2018, and the Hon'ble Division Bench also confirmed the order of this Court on 28.04.2018. The said orders were taken by way of a

SLP before the Hon'ble Supreme Court of India in Special Leave to Appeal (C) Nos.14005-14006/2018, and the Hon'ble Supreme Court also dismissed the SLP filed by the Company on 01.06.2018. Thus, the order passed by this Court on 04.04.2018, has been confirmed. The legal principles followed in the said order is to be followed in the present case also, in view of the similarity in facts and the legal questions raised. In view of the afore mentioned judgments, the 2nd respondent-Recovery Officer is entitled to proceed in accordance with law, if necessary by issuing fresh orders to recover the amount and settle the same to the employees of the Company."

32.The view taken by this Court was upheld by the Hon'ble Supreme Court of India.

33.....

34. In Queen v. London County Council [(1893) 2 QB 454], Bowen, L.J. lucidly explained the difference between a General Act and a Special Act.

"Now, a general Act, prima facie, is that which applies to the whole community. In the natural meaning of the term it means an Act of Parliament which is unlimited both in its area and, as regards the individual, in its effects; and as opposed to that you get statutes which may well be public because of the importance of the subjects with which they deal and their general interest to the community, but which are limited in respect of area - a limitation which makes them local - or limited in respect of individuals or persons - a limitation which makes them personal."

35. In LIC v. D.J. Bahadur [(1981) 1 SCC 315], this Court held that the ID Act is a special act vis-a-vis the Life Insurance Corporation Act, 1956. Krishna Iyer, J. was of the view that in determining whether a legislation is a general or a special legislation, focus should be on the principal subject matter and the particular perspective.

36. There can be a situation in law where the same statute is treated as a special statute vis-a-vis one legislation and as a general statute vis-a-vis

another legislation. (see Allahabad Bank v. Canara Bank [(2000) 4 SCC 406].

37. Yet another perspective to the problem that can arise in a conflict between provisions of two different statutes has been dealt with in Ashoka Marketing v. Punjab National Bank [(1990) 4 SCC 406]. The question before this Court was whether the Public Premises Act (Eviction of Unauthorised Occupants) was a special legislation vis-a-vis the Delhi Rent Control Act, 1958. After examining object of both the legislations carefully, this Court was of the opinion that both the Rent Control Act and the Public Premises Act are special statutes.

38. In the present case, the EPF and MP Act is also a Special Enactment as far as the Provident Fund is concerned. The SURFAESI Act is also a Special Act with reference to the context. However, when the matter of priority comes before the Courts, all mitigating factors are to be adjudicated, so as to arrive a conclusion, which would be in the interest of justice as far as the respective parties are concerned. While considering the mitigating factors, as well as for providing complete justice, the very object, purpose and spirit of the respective Statutes are to be considered, more specifically, in consonance with the Constitutional mandates and perspectives. Thus, a pragmatic approach is required, so as to hold that where exactly the priority would lie. Under these circumstances, the Constitutional perspectives are the helpful elements, which all are to be considered to arrive a conclusion. Examining under this perspective, this Court has no hesitation in coming to the conclusion that the dues to the workers are to be settled on priority basis and on account of the legal battle between the Bank and the Company, the workers cannot made to suffer for an unspecified period, compromising their livelihood and the other social implications.

39. When the EPF and MP Act itself provides a mechanism for recovery. The learned counsel for the respondents reiterated that they need not depend upon the actions to be initiated by the petitioner Bank with the company in liquidation. There is a possibility of irregularity or otherwise or other disputes in respect of loan transactions, mortgage transactions etc., However, the EPF and MP Act is

concerned, it is a Welfare legislation and therefore, the benefits due to the labourers cannot be stalled on account of these disputes between the petitioner Bank and the company. The solidarity and the independence of the EPF and MP Act is to be protected, so as to ensure that the dues to the labourers are settled at the first instance without reference to the disputes raised by the company in liquidation and other authorities or persons.

40. This Court would like to remind that the social and economic justice as well as the equality of status and opportunity has resolved by "We, the People of India" in the Preamble of Constitution cannot be forgotten. The social justice or justice, economic and political as well as equality of status has to be achieved, as they being the philosophy of the Constitution. The various Enactments of the Central or the State are to be interpreted with reference to the concepts and the goals as resolved by "We, the People of India" in the Constitution. Therefore, the constructive interpretation of the statutes, so as to minimize the injustice to be adopted. The balancing attitude by weighing the facts and circumstances are of paramount importance. Thus, the persons who all are disadvantageous, economically weak as well as status wise are to be taken care of by the Constitutional Courts, keeping in mind, the Constitutional perspectives and the goals. Any Enactment or Enactments, if creates a conflict in between and two mechanisms are provided in two different Acts, then the Constitutional Courts are bound to consider and arrive a conclusion, which should have the priority over the other Act and such a decision is to be taken keeping in mind the Constitutional Ethos and the principles. Thus, it is not as if the petitioner can say that the remedy is available under the SURFAESI Act. Equally, the respondent can say that the respondents are empowered to invoke the provisions of the EPF and MP Act for the purpose of declaring the writ petitioner as a "Deemed Defaulter". It is not as if that the provisions are there to recover the amount from the writ petitioner by the respondent. It is not as if the petitioner Bank can retain the entire money and deal with the money as per their own priorities and as per the SURFAESI Act. These mechanisms, which all are provided in order to maintain the Constitutional principles, equalities and other perspectives.

41. Part III of the Constitution can never be compromised by the Constitutional Courts. Equality Clause as well as Protection of life and personal liberty enunciated in Article 21 of the Constitution cannot be diluted under any circumstances. Right to Life includes a decent life as the Constitutional Courts repeatedly declared that life does not mean a mere animal life and it is a decent life, which is to be ensured for the citizen of this great Nation. Protection of life can never be compromised. On account of certain disputes between the Nationalized Bank and the company, the poor labourers, who served for number of years and now on the streets, cannot be left in lurch, but to be protected by the Constitutional Courts. Thus, the priority in settlement must be to the labourers as the provisions of the EPF and MP Act also contemplates that the respondents are empowered to recover from the persons concerned and settle the dues to the workers without causing any undue delay. The Court cannot shut its eyes in respect of the plight of these poor labourers, who all are left without employment and their dues are not settled for many number of years. Thus, the delay, and inaction in settling the dues to the labourers amount to violation of Article 21 of the Constitution of India and in the event of any further delay, the Courts have to declare that such actions are unconstitutional and in violation of the fundamental rights of the labour Class, who all are suffering on account of the wounding up of the Company.

42. Article 38 of the Constitution also contemplates State to secure a social order for the promotion of welfare of the people. Sub Clause 2 to Article 38 enumerates that "The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." Undoubtedly, it is a Directive principle of State Policy. However, the Article 38(2) has to be read harmoniously with Article 14, 21 and the Preamble of the Constitution. In the Preamble of the Constitution, "We, the People of India" have resolved justice, social, economic and equality in Status. Article 14 ensures Equality. Article 21 provides Protection of Life and Article 38(2) enumerates that the State should strive to minimise inequalities in income. Thus, one cannot brush aside the spirit of Article 38

(2) by simply stating that it is a Directive principle of State policy and therefore, High Court cannot direct for implementation. However, the Article 38(2) has got certain importance and relevance with reference to Article 14 and Article 21. Thus, these Articles are to be read cogently and accordingly, the 'State' is bound to minimize the inequalities in income and endeavour to eliminate inequalities in Status, facilities and opportunities.

43. Applying the said principles, this Court is of an opinion that the writ petitioner Nationalised Bank is in a safe position. The company in liquidation is not worried about the plight of the labourers. The shareholders and the higher officials of the company, who all are well off and they are leading a safe, secured and luxurious life. However, the poor labourers, who served in the company for many number of years are left on the streets and they are struggling even for livelihood. If the Constitutional Courts are not prepared to protect the plight of these class, then the Constitutional Courts are also failing in its duty to uphold the Constitutional perspectives, Philosophies and Ethos. Under these circumstances, which Act will prevail, may not be a relevant question as the prevalence of the statute is to be read along with the Constitutional principles, so as to ensure that the weaker section is protected and the people in the safer zone are given an opportunity to enter into the legal battle for the purpose of resolving the issues.

44. In the present case, the question is regarding priority. Thus, the priority must be given to the labourers in respect of their Provident Fund and other dues to be settled for the services rendered by these labourers in the company in liquidation.

14. These being the facts adjudicated in the aforementioned paragraphs, this Court is inclined to pass following orders;

(i) The relief as such sought for in the present writ petition by the writ petitioner stands rejected.

(ii) The writ petitioner is directed to pay the PF due amount of Rs.33.50 Lakhs to the first respondent Employees Provident Fund Organization within a period of four weeks from the date of receipt of copy of this Order.

(iii) The first respondent on receipt of the said PF amount from the writ petitioner is directed to identify the workman and settle the amounts to all the eligible workman within a period of eight weeks from the date of

receipt of said amount from the writ petitioner and by following procedures contemplated under the Acts and Rules.

15. Accordingly, the Writ Petition No.22826 of 2019 is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

W.P.No.29129 of 2019

16. The relief sought for in this writ petition is to direct the first respondent to consider the representation submitted by the writ petitioner on 14.02.2018. In view of the elaborate adjudication made by this Court in W.P.No.22826 of 2019 and in view of the directions issued in the said writ petition, no further consideration or orders are required in this writ petition and accordingly W.P.No.29129 of 2019 stands dismissed. No costs.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

To

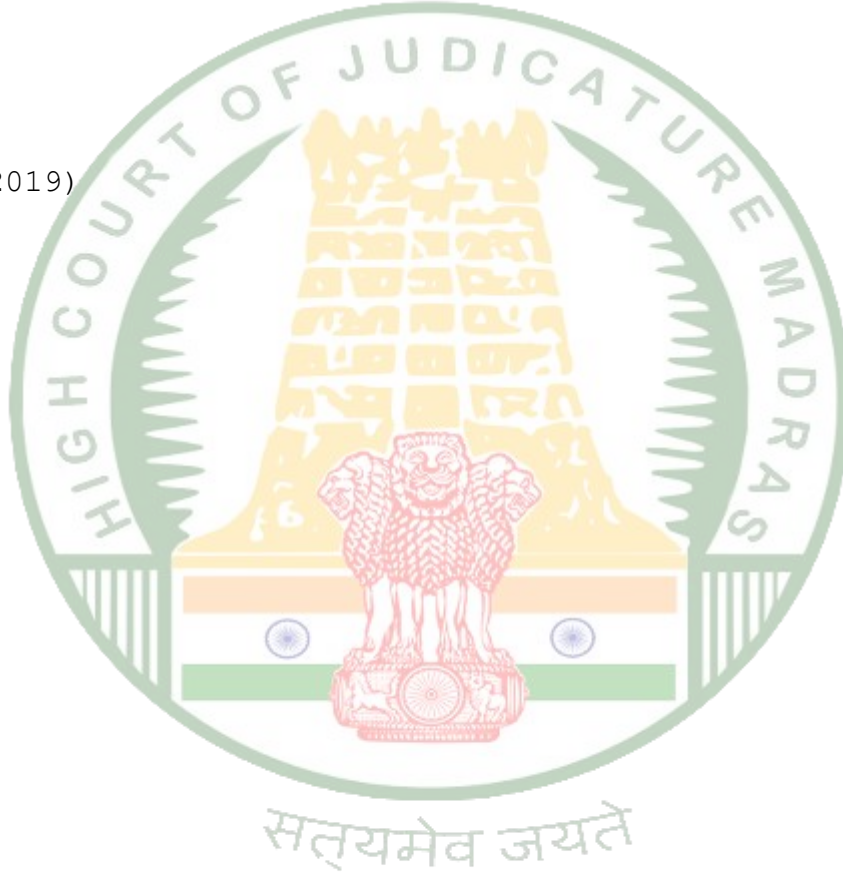
1. The Provident Fund Commissioner,
Employees Provident Fund Organization,
Dr. Balasundaram Road,
Coimbatore - 641 018.
2. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Dr. Balasundaram Road,
Coimbatore - 641 018.
3. The Regional PF Commissioner - II & Recovery Officer,
Bhavishya Nidhi Bhavan,
Dr. Balasundaram Road,
Coimbatore - 641 018.
4. The Sub-Registrar,
Office of the Sub-Registrar,
No.15/117, Coimbatore to Pollachi Road,
Kinathukadavu - 642 109.

5. The Senior Manager,
M/s.Oriental Bank of Commerce,
No.434, Oppanakkara Street,
Coimbatore - 641 001.

+1 CC to Mr.S.K. Srinivasan, Advocate sr 90658.
+2 Ccs to Mr.J. Sathya Narayana Prasad,Advocate sr 90753
+1 CC to The Govt. Pleader sr 91547.

W.P.Nos.22826 & 29129 of 2019

GP(CO)
SP(06/12/2019)



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