07 RP AN 25.11.2021 Ct. No. 16

# FMA 1386 of 2017
With
IA No. CAN 1 of 2005 (Old No.: CAN 8226 of 2005)
IA No. CAN 2 of 2016 (Old No.: CAN 7817 of 2016)

Employees' Provident Fund Organisation, W.B. & ors.
vs.
The Shibpur Cooperative Bank Ltd. & ors.

Mr. Anil Kumar Gupta
… for the appellants

This intra-court mandamus appeal is directed against the order dated 01.04.2004 in W.P. 13142(W)/2001 (The Shibpur Cooperative Bank Ltd. & ors. vs. Union of India & ors.). The said writ petition was filed by the respondent bank challenging the order dated 25.06.2001 passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short 'the Act') and other consequential orders/letters dated 02.07.2001 and 24.07.2001 to the extent it directs compliance of the order/letter dated 25.06.2001. The respondent bank has also sought for other consequential reliefs. The learned writ court by the impugned order has declared that the respondent bank/Co-operative Society is entitled to establish and administer its own fund in the manner prescribed and the employees are entitled to make contribution together with the Society's contribution at the rate prescribed. Aggrieved by such order, the appellant organization has filed the present appeal.

Learned counsel appearing on behalf of the appellant submitted that the writ petition itself was not maintainable as there was an alternative remedy available to the respondent bank in terms of Section 7(I) of the Act and without exhausting the same, the respondent bank could not have approached the writ court. He further submitted that in spite of direction by the Department to the first respondent bank to file its returns, they failed to comply with the provisions of the Act and, therefore, the action was initiated and order under Section 7A of the said Act dated 25.06.2001 was rightly passed. Therefore, it is submitted that the writ petition ought to have been dismissed and there is every justification on the part of the appellant organization to bring the respondent bank within the purview of the Act. During the pendency of this appeal, the respondent bank has filed an application being CAN 7817/2016 and the prayers sought for in the said application is to direct the respondent bank to extend the coverage of the provisions of the Act to the employees of the first respondent bank. The prayers sought for in the said application is directly contrary to the prayers sought for in the writ petition. It is surprising to note that as to how the respondent bank has taken such stand at present when the appeal filed by the appellant organization is pending since 2004. On perusal of the affidavit, we find that on a wrong understanding of the factual and legal position the writ petition was filed. Such averment is found in paragraph 5 of application. In paragraph 6, the first respondent bank would state that the Board of Directors of the cooperative bank in its meeting dated 04.05.2016 have considered the issue about the suffering of the employees and resolved unanimously to take appropriate legal steps as they are not interested to operate the provident fund trustees and the entire amount would be transferred to Provident Fund Commissioner with immediate effect. The extract of such resolution has been appended as Annexure 'C'.

Thus, the respondent bank has presently taken a stand that they wish to be covered under the provisions of the Act. Therefore, we are of the view that the order passed in the writ petition is required to be set aside on concession on the submissions made by the first respondent. When the matter came up before the Hon'ble Division Bench in 2017, a direction was issued to the respondent bank to provide the names, the EPF numbers, amount of contribution and the rate of interest from time to time and other details to enable the appellant organization to proceed with the matter. No details have been furnished before us nor any affidavit has been brought on record inspite of such direction. In any event, since the respondent bank has now realized that their employees should be covered under the provisions of the Act, the prayers, therefore, made in the writ petition have to be refused and the writ petition is to be dismissed with consequential directions.

Accordingly, the order passed in the writ petition is set aside for the reasons given above. The appellant organization is directed to proceed in accordance with law in respect of the first respondent bank.

The appeal and the connected applications are accordingly disposed of.

**(T. S. Sivagnanam, J.)**

**(Hiranmay Bhattacharyya, J.)**