

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 15.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE P.T.ASHA

W.A.Nos.1702 & 1703 of 2012
and M.P. No.1 of 2012

Tamilnadu Agro Engg. and Service
Co-operative Federation Limited,
represented by the Liquidator
A.Thavamani Raj
No.55, Thiru Vi.Ka.Industrial Estate,
Ekkattuthangal, Chennai-600 097.

... Appellant in both the appeals

versus

1.The Director (Recovery),
Employees' Provident Fund Organisation,
(Ministry of Labour, Government of India),
Head Office, Bhavishya Nidhi Bhavan,
No.14, Bhikaji Cama Place,
New Delhi-110 066.

... 1st respondent in W.A. No.1702 of 2012

2.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
(Ministry of Labour, Government of India),
Sub Regional Office, Tambaram,
No.3, Rajaji Salai, Tambaram,
Chennai-600 045.

3.The Enforcement Officer, ... Respondents 2 and 3 in W.A.
Sub Regional Office, Tambaram, No.1702 of 2012 and
No.3, Rajaji Salai, Tambaram, respondents 1 and 2 in W.A.
Chennai-600 045. No.1703 of 2012

3.The Presiding Officer,
E.P.F. Appellate Tribunal,
7th Floor, Skylark Building,
No.60, Nehru Place,
New Delhi 110 019.

... 3rd respondent in W.A. No.1703 of 2012

Prayer in both the Writ Appeals: Appeals filed under Clause 15 of Letters Patent to allow the writ appeals and set aside the order passed in W.P. Nos.30690 of 2007 & 6423 of 2008 on 07.06.2011.

WP.No.30690 of 2007: Petition filed under Article 226 of the constitution of India praying for the issuance of a writ of certiorari Mandamus calling for the records of the first Respondent in his proceedings RRC-11/18(10)/07/TN/35712 and quash his order dated 07.09.2007.

WP.No.6423 of 2008:

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the first respondent herein not enforce his order passed in his proceedings No.TN/PDC/8611/58/SRO/TAM-2008 dated 30.01.2008 levying damages under section 14-B of Employees Provident Funds and Miscellaneous Act, against the petitioners federation till the disposal of the appeal filed before the third respondent on 02-02-2008 against the order of the first respondent passed in his proceedings No.TN/PDC/8611/SR/SRO/TAM-2008 dated 30-01-2008.

For Appellant
in all cases : Mr.S.Balasubramanian

For Respondents : Mr.Vishnu Ramu for Mr.K.Ramu
for R2 & R3 in W.A. No.1702 of 2012
for R1 & R2 in W.A. No.1703 of 2012

R1 in W.A. No.1702 of 2012-No appearance
R3-Tribunal in W.A. No.1703 of 2012

COMMON JUDGMENT

(Judgment of this Court was delivered by T.RAJA,J.)

These two writ appeals have been filed to set aside the order dated 07.06.2011 passed in W.P. Nos.30690 of 2007 and 6423 of 2008 in and by which the learned Single Judge dismissing the writ petitions, rejected the request of the petitioner for waiver of damages under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'the EPF Act').

2.For the sake of convenience, the appellant Tamil Nadu Agro Engineering and Service Co-operative Federation Limited be referred as 'the Federation'.

3.Mr.S.Balasubramanian, learned counsel appearing for the appellant submitted that the appellant Federation was started in the year 1972 under Half Million Job Programme to provide employment opportunities to the un-employed Engineers and Technicians under the provisions of Tamil Nadu Co-operative Societies Act 1983 and Rules 1988. Since the appellant Federation has incurred heavy loss, after some time, the Government of Tamil Nadu was forced to take winding up proceedings of the Federation. In this regard, the Government of Tamil Nadu, exercising its power under the provisions of Tamil Nadu Co-operative Societies Act 1963, initiated winding up proceedings of the Federation, by passing an order in G.O. Ms. No.395 Agriculture (AE.II) Department dated 27.11.2002. Consequently, a Liquidator was appointed by an order dated 31.05.2005 to take over the charge of the assets and liabilities of the appellant Federation. Pursuant to the winding up proceedings, the Special Officer of the Federation has issued retrenchment notices to 370 employees of the Federation by terminating their services. While so, the Assistant Provident Fund Commissioner, Employees Provident Fund Organisation has taken steps for recovery of damages and for non-payment of provident fund dues under Section 14-B of the 'EPF Act'. Opposing the above, the appellant Federation has submitted its explanation dated 09.05.2007 to the Director (Recovery), Employees' Provident Fund Organisation informing that it has become sick unit and it has been closed as per the order of the State Government, hence, requested him to waive the interest and damages. On receipt of the same, the Director (Recovery), Employees' Provident Fund Organisation, without even hearing the appellant Federation, passed an order quantifying the damages for a period from April 2002 to November 2004 and has fixed Rs.1,88,49,251/- as contribution and also directed the Assistant Provident Fund Commissioner, Employees Provident Fund Organisation to ensure the remittance of the above said amount from the Federation. Aggrieved thereby, a detailed representation was made by the Federation under Section 14-B of 'the EPF Act' and Section 32-B(c) of the Employees' Provident Fund Scheme 1952 to waive the damages levelled against the Federation.

4.Learned counsel appearing for the appellant further submitted that while passing orders for winding up the appellant Federation, the Government sanctioned a sum of Rs.1.580.25 lakhs as loan from the Tamil Nadu State Renewal Fund towards payment of the closer compensation and other terminal benefits to the said retrenched employees of the appellant Federation and in the said amount, the dues towards employees provident fund of Rs.82.03 lakhs have been paid. Learned counsel for the appellant further submitted that the non-payment of provident fund dues

was not wilful or wanton, but on account of the loss sustained by the appellant Federation. Ignoring the factual aspects, the Assistant Provident Fund Commissioner passed an order under Section 14-B of 'the EPF Act' directing the appellant Federation to pay a sum of Rs.1,33,66,481/- towards damages and interest of Rs.54,82,770/-. As the Assistant Provident Fund Commissioner and the Enforcement Officer have taken steps for recovery, the appellant Federation has moved an Application to the Central Board Trust requesting for waiver of damages and interest by representation dated 26.06.2007 and also filed a petition in W.P. No.24234 of 2007 before this Court for mandamus seeking a direction to the Assistant Provident Fund Commissioner not to enforce his order passed on 19/20.06.2007 till the disposal of the application filed before the Central Board Trust and this Court, directed the Central Board Trust, New Delhi to consider the application, on merits and in accordance with law, within a period of four weeks from the date of the receipt of the copy of the order of this Court and further directed the Assistant Provident Fund Commissioner and the Enforcement Officer not to enforce the order till such time. Since the Director (Recovery), Employees' Provident Fund Organisation, New Delhi rejected the application filed by the appellant Federation for waiver of damages and interest, the appellant Federation has come to this Court with the above Writ Petitions in W.P. Nos.30690 of 2007 and 6423 of 2008 challenging the Proceedings dated 07.09.2007 issued by the Director (Recovery), Employees' Provident Fund Organisation, New Delhi and seeking a direction to the Assistant Provident Fund Commissioner, Employees' Provident Fund Organisation, Chennai not to enforce his order passed in the Proceedings dated 30.01.2008 levying damages under Section 14-B of EPF Act against the appellant Federation respectively.

5.Learned counsel appearing for the appellant further submitted that the delayed payment of provident fund dues was not wanton, but due to the winding up of the Federation and therefore, the appellant Federation is entitled to the benefit of Section 14-B of 'the EPF Act' on account of loss sustained. Without considering these aspects, the learned Single Judge of this Court, dismissed the above writ petitions. Aggrieved by the same, the appellant Federation is before this Court with the above Writ Appeals.

6.Learned counsel appearing for the appellant, placing reliance on the ratio laid down by the Division Bench of this Court reported in 2014 (2) CWC 728 in the case of RH 153, Ramanathapuram District Co-operative Spinning Mills Ltd. and others vs. Central Board of Trustees of Employees' Provident Fund Organisation, holding that the survival of the Co-operative Societies, depends upon the concessions that are extended to them, submitted that when concessions and discounts were

provided to safeguard the establishments for making profits, it is not known why the similar concession was denied to the Co-operative Societies, which is established to provide benefits to the common man. Therefore, since the Hon'ble Division Bench of this Court has already settled the issue in favour of the appellant holding that when the waiver of damages is permissible in respect of industries which were established only with profit motive, the benefit cannot be denied to Co-operative institutions, the appellant Federation, having suffered with winding up proceedings, cannot make any further payment, the appeals deserve to be allowed.

7. Opposing the above prayer, Mr. Vishnu Ramu, learned counsel for R2 & R3 in W.A. No.1702 of 2012 and R1 & R2 in W.A. No.1703 of 2012 contended that the appellant themselves have come forward on their own to make the damages and interest. Therefore 50% of the damages were recovered from the appellant's bank account. When the appellant on their own volition have come forward to pay the damages, they are not permitted to challenge the same on the ground that the Director (Recovery) and the Assistant Provident Fund Commissioner have taken coercive steps against the appellant Federation.

8. Replying to the submission made by the learned counsel for the appellant to the above ratio laid down by this Court, learned counsel for R2 & R3 in W.A. No.1702 of 2012 and R1 & R2 in W.A. No.1703 of 2012 argued that although the appellant have been declared as sick federation, no scheme whatsoever have been framed for revival. Since there is no order passed to waive the damages and consequent interest thereon, the above ratio laid down by the Division Bench of this Court cannot be made applicable to the present case.

9. It is seen from records that the appellant Federation, who is a Co-operative Society, was started during the year 1972 to provide employment opportunities to the un-employed Engineers and Technicians under the provisions of Tamil Nadu Co-operative Societies Act 1983 and Rules 1988. Since the appellant Federation has incurred loss subsequently, the Government of Tamil Nadu was forced to take winding up proceedings of the Federation. Therefore, the Government of Tamil Nadu exercised its power under the provisions of Tamil Nadu Co-operative Societies Act 1963 and initiated winding up proceedings of the Federation by passing an order in G.O. Ms. No.395 Agriculture (AE.II) Department dated 27.11.2002. In this regard, a Liquidator was appointed by an order dated 31.05.2005 to take over the charge of the assets and liabilities of the appellant Federation. Pursuant to the winding up proceedings, the Special Officer of the Federation has issued retrenchment notices to 370 employees of the Federation. While so, the Assistant Provident

Fund Commissioner, Employees Provident Fund Organisation has taken steps for recovery of damages and for non-payment of provident fund dues under Section 14-B of the 'EPF Act'. Aggrieved by the same, the appellant Federation has submitted its detailed representation dated 09.05.2007 to the Director (Recovery), Employees' Provident Fund Organisation about the sick nature of the Federation, requesting him to waive the interest and damages. However, the Director (Recovery), Employees' Provident Fund Organisation, quantifying the damages for a period from April 2002 to November 2004, has fixed Rs.1,88,49,251/- as contribution and also directed the Assistant Provident Fund Commissioner to ensure the remittance of the above said amount from the Federation. Aggrieved thereby, a detailed representation was made by the Federation under Section 14-B of 'the EPF Act' and Section 32-B(c) of the Employees' Provident Fund Scheme 1952 to waive the damages levelled against the Federation.

10.It is further seen that the Assistant Provident Fund Commissioner and the Enforcement Officer have taken steps for recovery, the appellant Federation has moved an Application to the Central Board Trust requesting for waiver of damages and interest by representation dated 26.06.2007 and also filed a petition in W.P. No.24234 of 2007 for mandamus to direct the Assistant Provident Fund Commissioner not to enforce his order passed on 19/ 20.06.2007 till the disposal of the application filed before the Central Board Trust. This Court directed the Central Board Trust, New Delhi to consider the application, on merits and in accordance with law within a period of four weeks from the date of the receipt of the copy of the order of this Court and further directed the Assistant Provident Fund Commissioner and the Enforcement Officer not to enforce the order till such time.

11.When the Government of Tamil Nadu has exercised its power under the provisions of Tamil Nadu Co-operative Societies Act 1963 and initiated winding up proceedings of the Federation by passing an order in G.O. Ms. No.395 Agriculture (AE.II) Department dated 27.11.2002 and a Liquidator was appointed by an order dated 31.05.2005 to take over the charge of the assets and liabilities of the appellant Federation and pursuant to the winding up proceedings, the Special Officer of the Federation has issued retrenchment notices to 370 employees of the Federation by terminating their services, it is quite impossible for the appellant to continue the payment of any contribution. When the Government of Tamil Nadu, after analysing the fact that the appellant Federation has incurred heavy loss, ordered winding up of the appellant Federation, we are of the view that there may not be any willful or deliberate intention on the part of the appellant Federation in making the provident fund

contribution to the Assistant Provident Fund Commissioner and the Enforcement Officer. When the appellant Federation was established in the year 1972 under Half Million Job Programme to provide employment opportunities to the un-employed Engineers and Technicians, the Assistant Provident Fund Commissioner and the Enforcement Officer, after receipt of the application from the appellant Federation and a direction issued by this Court in W.P. No.24234 of 2007, in our considered opinion, should have accepted for waiver of the damages as per Section 14-B of 'the EPF Act' which is extracted hereunder:

'14-B. Power to recover damages - Where an employer makes default in the payment of any contribution to the Fund (the (Pension) Fund or the Insurance Fund) or in the transfer of accumulations required to be transferred by him under sub-section (2) of Section 15 (or sub-section (5) of Section 17) or in the payment of any charges payable under any other provision of this Act or of (any scheme or Insurance Scheme) or under any of the conditions specified under Section 17, (the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf) may recover (from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme):
(Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:)
(Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a Scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under Section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme).'

12.A bare reading of the above two Provisos would show that the first proviso requires the Organisation to give an opportunity of personal hearing to the employer and the second proviso enables the Central Board of Trustees to reduce or waive the damages levied under the scheme. Since the contention raised by the learned counsel for the appellant Federation revolves around the second proviso to Section 14-B, which states that the Central Board may reduce or waive the damages levied under this section in relation to an establishment, in our considered opinion, the appellant Federation is a Sick Industrial Company. When the respondents have not legally

justified in invoking Section 14-B of 'the EPF Act', the rejection of the case of the appellant has been found fault with. Therefore, this crucial aspect has been overlooked by the learned Single Judge in the Writ Court.

13. Secondly, when a similar and identical issue came up before the Division Bench in the case of RH 153, Ramanathapuram District Co-operative Spinning Mills Ltd. and others vs. Central Board of Trustees of Employees' Provident Fund Organisation reported in 2014 (2) CWC 728, this Court, considering the various judgments on the similar issue, has come to the conclusion that when the waiver of damages is permissible to the industries established only with profit motive, the same concession of waiver cannot be denied to co-operative institutions which are established to help poor people without any profit motive. The relevant portion thereof is extracted hereunder:

'14. But however, that is not the end of matter. The fact that the Appellants are the Co-operative Spinning Mills is not in dispute. We do not really see any rationale as to why the Second Proviso to Section 14-B, restricted its application only to Sick Industrial Companies that come within (Special Provisions) Act, 1985. As a matter of fact, if at all, any establishment, is entitled to the benefit of waiver or reduction of damages, it should be the Co-operative Societies. If one has a look at the history of the development of the Co-operative movement, it would be clear that they are not run on profit motive as private enterprises are. Therefore, if a benefit is applicable to other establishments, which are created only with profit motives, we fail to understand why the same benefit should not be extended to Co-operative Societies merely because they do not come within the purview of Sick Industrial Companies (Special Provisions) Act, 1985.

15. In Q-793, Madathupatti Weavers' Co-operative Production and Sales Society Ltd. v. Regional Provident Fund Commissioner, Madurai and others, 2003 (3) LLN 674 (Mad.) : 2003 (3) LLJ 795, a Division Bench of this Court invited reference to the decision of the Constitutional Bench of the Supreme Court in Mohamedalli v. Union of India, AIR 1964 SC 930, and pointed out that Co-operative Societies stand on a special footing which distinguished them from other establishments. The Division Bench further pointed out that it is the settled policy of the Government to encourage Co-operative Societies with a view to their

development and growth in the interest of community at large.

16.A similar view was taken by another Division Bench, to which one of us (V.Ramasubramanian,J.) was a party in Q-1283, Kidathirukkai Primary Agricultural Co-operative Bank, Kidathirukkai Post, Ramanathapuram District v. Assistant Provident Fund Commissioner and another in W.A. (MD) No.262 of 2009, dated 25.06.2009. In the said case, the Division Bench pointed out that the Co-operative Society deserved special treatment in such cases.

18.In view of the above, we are of the considered view that the survival of the Co-operative Societies, depend upon the concessions that are extended to them. When the waiver of damages is permissible in respect of industries which were established only with profit motive, the benefit cannot be denied to Co-operative institutions.'

14.A perusal of the above judgment vividly tells us that when the waiver of damages is permissible in respect of industries which were established only with profit motive, the same benefit cannot be denied to the Co-operative institutions, which are established without any profit motive. If the benefit is applicable to other establishments, which are created only with profit motives, the same benefit may be extended to the Co-operative Societies and it is also the settled policy of the Government to encourage Co-operative Societies with a view to their development and growth in the interest of community at large. Therefore, respectfully agreeing with the ratio laid down by the Division Bench mentioned supra, we are constrained to interfere with the impugned order as it holds that the appellant Co-operative Federation failed to qualify in terms of the statutory parameters indicated in Section 14-B. The proviso to Section 14-B says that the damages levied under this Section may be waived or reduced in relation to sick establishment of which a scheme for rehabilitation has been sanctioned. But in the case on hand, the appellant herein is not sick industrial company but sick co-operative federation. When the sick industrial companies are given the benefit of waiver, as per clause (a) of paragraph 32-B of the Employees Provident Fund Scheme 1952, the appellant Co-operative Federation, having suffered winding up proceedings, is entitled to get the same benefit of waiver. This aspect was overlooked by the impugned order.

15.Therefore, in the light of the above judgment, the order passed by the learned Single Judge is set aside and the Writ Appeals stand allowed. Needless to mention that the amount

collected by the Director (Recovery) and the Assistant Provident Fund Commissioner Employees' Provident Fund Organisation shall be re-funded within a period of six weeks from the date of receipt of a copy of this order. Consequently, M.P. No.1 of 2012 stands closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vga

To

- 1.The Director (Recovery),
Employees' Provident Fund Organisation,
(Ministry of Labour, Government of India),
Head Office, Bhavishya Nidhi Bhavan,
No.14, Bhikaji Cama Place,
New Delhi-110 066.
- 2.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
(Ministry of Labour, Government of India),
Sub Regional Office, Tambaram,
No.3, Rajaji Salai, Tambaram,
Chennai-600 045.
- 3.The Enforcement Officer,
Sub Regional Office, Tambaram,
No.3, Rajaji Salai, Tambaram,
Chennai-600 045.
- 4.The Presiding Officer,
E.P.F.Appellate Tribunal,
7th Floor, Skylark Building,
No.60, Nehru Place,
New Delhi-110 019.

+1cc to Mr.K.Ramu, Advocate, S.R.No.23299
+1cc to Mr.S.BalaSubramanian, Advocate, S.R.No.22760

W.A.Nos.1702 & 1703 of 2012

RLD(CO)
CB(24/06/2021)