BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED: 23.08.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.9192 of 2012
and
M.P(MD)No.1 of 2012

Srivilliputhur Co-operative Spinning Mill Limited,
Srivilliputhur,
Virudhunagar District,
Represented through its Administrator (In-charge).
... Petitioner

Vs

1.The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
Scope Minor, Core - II - 4th Floor,
Lakshmi Nagar, New Delhi - 110 092.

2.The Regional Provident Fund Commissioner,
Employees' Provident Fund Organization,
Regional Office,
Lady Doak College Road,
Chokkikulam,
Madurai - 625 002.

3.The Recovery Officer,
Employees' Provident Fund Organization,
Regional Office,
Madurai - 2. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, to call for the records from the file of the first respondent herein in ATA.No.133(13) of 2010, dated 19.04.2012 and to quash the same.

For Petitioner : Mr.P.Chandra Bose

For RR 2 & 3 : Mr.K.Murali Sankar

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the order passed by the first respondent in ATA.No.133(13) of 2010, dated 19.04.2012.

2. Learned counsel for the petitioner submitted that the petitioner Mill is a Textile Mill in the backward rural area of Srivilliputhur, Virudhunagar District and the petitioner Mill is a Co-operative Institution registered under the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder. The petitioner Mill was closed down with effect from 30.06.2003. Due to the draught prevailed during the period from 1998 to 2004, the cotton production was not up to the level of expected target which resulted in heavy cost for cotton, but at the same time, yarn price did not commensurate with that of the cotton price. The petitioner Mill which faced the market difficulties, production and technical problems, financial problems, lack of adequate infrastructure and shortage of raw materials resulted the non-functioning of the petitioner Mill and also for the delayed remittance of the E.P.F amount. The Government of Tamil Nadu through its G.O.Ms.No.58,

dated 07.04.2005 extended and declared 18 Co-operative Spinning Mills, including the petitioner Mill as "Relief Undertakings" under the provisions of the Tamil Nadu Relief Undertaking (Special Provisions) Act, 1969 and the above notification was extended in the earlier Notification G.O.Ms.No.101, published in the Tamil Nadu Government Gazette on 16.09.2002. Inspite of many efforts made by the petitioner Mill, the loss cannot be reduced and lastly on 30.06.2003, the petitioner Mill was permanently closed down. The petitioner Mill, due to several various factors, remitted the contribution belatedly from April 1996 onwards. Subsequently, for the delayed payment 14B proceeding was initiated by the second respondent. The second respondent through proceedings in TN/MDU/Circle 10/Damages/TN/3115/CA, dated 24.12.2003 fixed the damages to the tune of Rs. 1,01,96,974/- for the period from 09/1998 to 06/2003. Since the appeal period was over, challenging the said order, the petitioner preferred a Writ Petition in W.P.No.8028 of 2004. This Court, by order dated 08.10.2009, set aside the impugned order passed by the second respondent and remanded the matter back to the second respondent. Subsequent to the order passed in W.P.No.8028 of 2004, the second respondent through proceedings in No.TN/MDU/RO/3115/Circle, 12/PDC/LD/2009, dated 06.04.2010, confirmed the earlier order by imposing damages to the tune of Rs. 1,01,96,974/- for the belated remittance of the EPF contribution for the period from 09/1998 to 06/2003. Aggrieved over the order passed by the second respondent, the petitioner preferred an appeal before the first respondent in ATA.No.433(13) of 2010. The first respondent confirmed the order of the second respondent. Therefore, this Writ Petition is filed challenging the appeal order passed by the first respondent confirming the order of the second respondent.

3. The learned counsel for the petitioner further submitted that the petitioner Mill is a sick relief undertaking vide G.O.Ms.No.58, Handlooms, Handicrafts, Textiles and Khadi (C1) dated 07.04.2005, which declared certain Co-operative Spinning Mills in the State of Tamil Nadu as relief undertakings for a period of one year. The petitioner could not pay the EPF dues and damages for the reasons stated above. Similar issue came up before this Court in the case of ***RH 153, Ramanathapuram District Co-operative Spinning Mills Limited vs. Central Board of Trustees of Employees' Provident Fund Organization*** in ***W.A(MD)Nos.228 of 2011 etc., batch***. It was also one of the sick units declared under the Government Orders. This Court, after

considering the relevant provisions and the precedents, in the case of ***RH 153, Ramanathapuram District Co-operative Spinning Mills Limited vs. Central Board of Trustees of Employees' Provident Fund Organization*** in ***W.A(MD)Nos.228 of 2011 etc., batch*** has passed the following order. The relevant portion is extracted hereunder:

> *"12. But the difficulty with the above contention is that a Scheme such as the Employees' Provident Funds Scheme, 1952, framed by the Central Government in exercise of the powers conferred by Section 5 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, cannot over reach or override the statutory provisions. If a concession as per the statute can be applied only to certain categories of establishments, the same cannot be extended to other establishments by a subordinate legislation. Therefore, the said contention cannot be accepted.*
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> *13. 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 wavier 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.

14. 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.

15. 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 25.6.2009. In the said case, the Division

Bench pointed out that the Co-operative Society deserved Special treatment in such cases.

16. In Regional Provident Fund Commission-II v. Shrine Velankanni Senior Secondary School, LNIND 2009 MAD 484 : (2009) 4 MLJ 647, another Division Bench of this Court, permitted a school to make a request to the Central Board of Trustees in terms of paragraph 32-B of the Scheme for reduction or waiver of penalty. Therefore, it is not as though the Court is powerless to direct the respondents to waive the damages.

17. 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.

18. The appellants have already been declared as Relief Undertakings. Therefore, it is but proper that the responds show concession. In view of the above, the Writ Appeals are allowed, the impugned orders are aside and the damages levied under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 upon the appellants is reduced to the extent of 25% of the ordered amount. No costs. Consequently, connected miscellaneous petitions are closed."

4. Relying on this judgment, the learned counsel for the petitioner submitted that the petitioner is a similarly placed sick unit and therefore, the same benefit may be extended to the petitioner.

5. In response, the learned counsel for the respondents 2 and 3 submitted that it is duty of the petitioner Mill to pay the EPF dues in time and failure to pay the EPF dues would result in levying damages and the order passed is within the four corners of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and therefore, the petitioner is liable to pay the amount.

6. I have considered the rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

7. From the above narrated facts and the submissions of the learned counsel appearing for the parties, it is made clear that the petitioner is a Co-operative Spinning Mill Limited. The petitioner Mill faced the market difficulties, production and technical problems, financial problems, lack of adequate infrastructure and shortage of raw materials which resulted in non-functioning of the petitioner Mill

and also served as a reason for the delayed remittance of the E.P.F amount.

8. On going through the aforesaid judgment, it is seen that this Court after considering Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 raised a question as to why the second proviso to Section 14-B of the Act, restricted its application only to Sick Industrial Companies that come within (Special Provisions) Act, 1985. It was also observed that, if at all, any establishment is entitled to the benefit of waiver or reduction of damages, it should be the Co-operative Societies for the reason that the Co-operative Societies are not run on profit motive as private enterprises. Finally, the damages were reduced to the extent of 25% of the amount claimed. Therefore, this Court finds that the aforesaid judgment squarely applies to the facts and circumstances of this case. The first reason is that the Society is a Co-operative Society and it is in a better footing to claim the benefit under second proviso to Section 14-B of the Act. The next reason is that along with the petitioner Mill, RH 153, Ramanathapuram District Co-operative Spinning Mills Limited, which is an appellant in W.A.(MD)Nos.228 of 2011 etc., batch, was also declared as sick unit. Thus, following the judgment in ***RH 153, Ramanathapuram***

District Co-operative Spinning Mills Limited vs. Central Board of Trustees of Employees' Provident Fund Organization in ***W.A.MD)Nos.228 of 2011 etc., batch,*** this Court directs the petitioner to pay 25% of the ordered amount.

9. It is submitted by the learned counsel for the petitioner that already the outstanding due amount has been deposited before the second respondent. Therefore, he further submitted that after adjusting 25% of the ordered amount, the remaining amount shall be refunded back to the petitioner.

10. In the result, this Writ Petition is allowed and the impugned order is set aside and the damages levied under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 upon the petitioner is reduced to the extent of 25% of the ordered amount. Since the outstanding due amount has already been deposited by the petitioner, after adjusting 25% of the ordered amount, the remaining amount shall be refunded to the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

23.08.2022

Internet :Yes
Index :Yes / No
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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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Regional Office,
Madurai - 2.

G.CHANDRASEKHARAN, J.

ps

Order made in
W.P(MD)No.9192 of 2012

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