BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.(MD)No.9208 of 2012
and
M.P.(MD)No.2 of 2012

M/s.Anna Co-operative Spinning Mills Limited,
Andipatti,
Theni - 625 512.
Represented by its Administrator. . .. Petitioner

Vs.

1. The Employees' Provident Fund Appellate Tribunal,
   Scope Minar Core-II,
   4^{th} Floor, Laxmi Nagar District Centre,
   New Delhi – 110 092.

2. The Regional Provident Fund Commissioner,
   Employees' Provident Fund Organisation,
   Sub Regional Office,
   Post Box No.1, Lady Doak College Road,
   Chokkikulam, Madurai – 625 002,
   Tamil Nadu. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records of the order passed by the first respondent herein in A.T.A.No.50(13)/2011 dated 19.04.2012 by confirming the order of the second respondent in his proceedings in No.TN/MDU/SDC/20443/1997 dated 21.07.1997.

For Petitioner	:	Mr.M.Elanchezian
For Respondents	:	R1 – Tribunal Mr.S.Anwar Sameem for R2

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the order passed by the first respondent in A.T.A.No.50(13)/2011 dated 19.04.2012 by confirming the order of the second respondent vide proceedings in No.TN/MDU/SDC/20443/1997 dated 21.07.1997.

2. The learned counsel for the petitioner submitted that the petitioner is a Co-operative Cotton Spinning Mill being run under the control of the Director of Handlooms and Textiles, Government of Tamil Nadu. It was established with a view to generate useful employment for

unemployed local youth particularly economically oppressed class and Sri Lankan Repatriates and to supply cotton yarn to Handloom sector at reasonable prices. During initial years, the petitioner Mill was working with marginal profits and in the later years, the petitioner, due to sharp and abnormal rise in the cotton price, power tariff, plant, machineries and spare parts as well as substantial increase in basic wages and dearness allowances of workmen, the financial position of the petitioner Mill has become very precarious and the accumulated loss as on date is about Rs.700 Lakhs. The petitioner Mill became a sick unit and it was unable to pay wages as well as EPF contributions for 05/1994 and from August 1995 to February 1996. The second respondent demanded a sum of Rs.2,79,759/- (Rupees Two Lakhs Seventy Nine Thousand Seven Hundred and Fifty Nine only) as damages and passed the impugned order on 21.07.1997. This order was challenged before the first respondent. The first respondent confirmed the order of the second respondent. Therefore, this Writ Petition is filed challenging the appeal order 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.139, Handlooms, Textiles and Khadi (C1) dated 05.07.1995, G.O.Ms.No.116, Handlooms, Textiles and Khadi (C1) dated 18.07.1996 and G.O.Ms.No.150, Handlooms, Textiles and Khadi (C1) dated 17.07.1997, 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.

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 second respondent 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 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. It was established for providing employment to unemployed local youth particularly economically oppressed class and Sri Lankan Repatriates. It is alleged that due to sharp and abnormal rise in the cotton price, power tariff, plant, machineries and spare parts as well as substantial increase in basic wages and dearness allowances

for workmen, the petitioner Mill incurred heavy loss and that is the reason for non-payment of EPF dues.

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 was 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. It is submitted by the learned counsel for the petitioner that already the amount was deposited. If any amount is deposited, that has to be adjusted towards 25% of the amount claimed from the petitioner.

9. In the result, this Writ Petition is allowed and the impugned orders are 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. No costs. Consequently, connected Miscellaneous Petition is closed.

03.08.2022
(1/3)

Index : Yes / No
Speaking Order : Yes / No
vji

To

1. The Employees' Provident Fund Appellate Tribunal,
   Scope Minar Core-II,
   4th Floor, Laxmi Nagar District Centre,
   New Delhi – 110 092.

2. The Regional Provident Fund Commissioner,
   Employees' Provident Fund Organisation,
   Sub Regional Office,
   Post Box No.1, Lady Doak College Road,
   Chokkikulam, Madurai – 625 002,
   Tamil Nadu.

3. The Administrator,
   M/s.Anna Co-operative Spinning Mills Limited,
   Andipatti,
   Theni - 625 512.

G.CHANDRASEKHARAN, J.

vji

W.P.(MD)No.9208 of 2012
and
M.P.(MD)No.2 of 2012

03.08.2022
(1/3)