

18. 06.03.2024
Court No.6
(Tanmoy)

MAT 1692 of 2023

**North 24 Parganas Cooperative Agricultural and Rural
Development Bank Limited
-Versus-
The Union of India & Anr.**

**With
IA No: CAN/1/2023
With
IA No: CAN/2/2023**

Mr. Srijan Nayak, Adv.,
Mrs. Rituparna Maitra, Adv.

...for the appellant.

Mr. Satyendra Agrawal, Adv.,
Mr. Bijoy Bag, Adv.,
Mr. Goutam Malik, Adv.

...for the UOI/EPFO.

In Re: IA No: CAN/1/2023

This is an application for condonation of delay of ten (10) days in presenting the appeal, as noted by the Stamp Reporter. Causes shown being sufficient, the delay is condoned. The application being IA No: CAN/1/2023 is accordingly disposed of.

In Re: MAT 1692 of 2023

**With
IA No: CAN/2/2023**

By consent of the parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated July 19, 2023, whereby the appellant's writ petition being WPA 10557 of 2016, was dismissed by a learned Judge of this Court,

is under challenge in this appeal at the instance of the writ petitioner.

The writ petitioner (in short, 'the Bank') approached the learned Single Judge challenging an order dated June 1, 2016, passed by the Regional Provident Fund Commissioner (in short, 'RPFC'), Barrackpore. By the said order, the Bank was directed to pay a sum of Rs.1,45,97,661/- (Rupees one crore forty five lakh ninety seven thousand six hundred sixty one) on account of provident fund contribution.

Proceedings were initiated under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, 'the EPF Act'), against the Bank alleging default on its part in payment of employees' provident fund and allied dues for the period from September, 1979 till July, 2009. After granting due opportunity of hearing, the RPFC passed an order dated December 31, 2014, determining the dues on account of provident fund contribution at Rs.1,70,49,681/- (Rupees one crore seventy lakh forty nine thousand six hundred eighty one). Giving credit for the sum of Rs.24,52,020/- (Rupees twenty four lakh fifty two thousand twenty) which was already deposited by the Bank, the RPFC, by the order dated June 1, 2016, directed the Bank to pay the sum of Rs.1,45,97,661/-. The Bank's application for review of the order dated December 31, 2014 failed.

It was argued before the learned Single Judge, as has been argued before us by Mr. Nayak, learned Advocate appearing for the appellant/Bank, that the EPF Act is not applicable to the Bank. This is because Section 16(1)(a) of the EPF Act provides that the Act shall not apply to any establishment registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State relating to Co-operative Societies, employing less than fifty persons and working without the aid of power. Mr. Nayak submitted that at no point of time the number of employees of the Bank exceeded thirty eight. In fact, at the time when proceedings under Section 7A of the EPF Act were initiated, the Bank had twenty six employees. Further, the phrase “working without the aid of power”, has not been defined anywhere in the EPF Act or elsewhere. No specific meaning can be attributed to that phrase. Since admittedly the Bank employs less than fifty persons, the provisions of the EPF Act would not apply to the Bank.

Alternatively, Mr. Nayak argued that under Section 17 of the EPF Act, the appropriate Government has the power to exempt, subject to such conditions as may be specified, any establishment from the operation of all or any of the provisions of any scheme framed under the Act. The Bank has established its own Employees Contributory Provident Fund under Section 83 of the

West Bengal Co-operative Societies Act, 2006, read with Rule 122 of the West Bengal Co-operative Societies Rules, 2011. The said Section and the said Rule read as follows:-

“83. Employees’ Provident Fund. – *Employees’ Provident Fund Co-operative Societies, which are not coverable under the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), may establish provident fund for the benefit of its employees with the contribution of such employees and may make contribution to the fund at the prescribed rate and the fund shall be administered in such manner as may be prescribed.*

122. Employees’ Provident Fund. – *A co-operative society establishing Employees’ Contributory Provident Fund under section 83 shall make regulations for its management, particularly with regard to–*

- (i) authority to administer the fund;*
- (ii) amount of employee’s contribution to be deducted from the employee’s salary;*
- (iii) mode of nomination for payment of the amount of the fund in case of the employee’s death;*
- (iv) the purpose for which, extent to which, and the period after which advance may be made from such fund, and the number of monthly instalments in which the advance is to be repaid;*
- (v) final payment of the amount standing in the fund on the employee’s retirement, resignation or otherwise;*
- (vi) maintenance of accounts of such fund.*

(2) An employee’s contribution to the fund in a month shall be eight and one-third per cent of his basic pay.

(3) the co-operative society may make such contribution every year to the Employees’ Contributory Provident Fund, as may be approved by the board, but such contribution shall not be less than the annual contribution made by the employee concerned.

(4) Such provident fund shall not be used in the business of the society, but shall be invested or deposited in one or more of the following ways–

- (a) In Government Savings Bank;*

(b) In any of the securities mentioned in section 20 of the Indian Trusts Act, 1882, other than those specified in clause (e) of that section; or

(c) In any co-operative bank or any other bank approved by the General Body.”

Learned Advocate submits that since the Bank has created its own provident fund and all the employees have received benefit thereunder, the appropriate Government should exempt the Bank from operation of the provisions of the EPF Act in exercise of power under Section 17 of the EPF Act.

Mr. Nayak submits that approximately a sum of Rs.1.89 crore has been paid by the Bank from the provident fund established by it to its employees, as per particulars mentioned in a chart annexed at pages 36A and 36B of the stay petition. None of the employees of the Bank has ever lodged any complaint on account of non-receipt of provident fund dues.

Mr. Nayak complains that suddenly the Provident Fund Authorities froze the Bank's accounts and subsequently encashed the term deposits maintained by the Bank. The monies actually belong to the depositors who keep the money invested with the Bank. Such monies should not be appropriated by the Provident Fund Authorities. Further, no effective opportunity of hearing or showing cause was granted by the Provident Fund Authorities to the Bank prior to taking such step.

Mr. Agrawal, learned Advocate appearing for the Provident Fund Authorities, disputes each and all the

submission made on behalf of the appellant Bank. He says that Section 16 exclusion does not apply to the Bank. The Bank has not produced anything to show that it operates without the aid of power. On the contrary, there is a report of the Area Enforcement Officer which is referred to in the RPFC's order dated December 31, 2014, to the effect that the Bank takes the aid of power for operation. Therefore, although the employees of the Bank may be less than fifty in number, the other condition specified in Section 16(1)(a) of the EPF Act, is not satisfied.

Learned Advocate further says that there is nothing on record to show that any application for exemption under Section 17 of the EPF Act has been made by the Bank.

Mr. Agrawal, learned Advocate for the respondents, further says that it is of no consequence that the Bank may have created its own provident fund scheme. That *per se*, will not take the Bank outside the purview of the EPF Act. The RPFC rightly passed the orders dated December 31, 2014 and June 1, 2016, in view of the default on the part of the Bank to deposit the provident fund contribution.

We have considered the rival contentions of the parties and have gone through the order of the learned Single Judge carefully.

The learned Judge, in our opinion, rightly came to the conclusion that Section 16(1)(a) of the EPF Act does not apply to the Bank. The learned Judge referred to the report of the Area Enforcement Officer which is to the effect that the Bank takes the aid of power for working. There is no challenge by the Bank to the factual finding. Therefore, Section 16(1)(a) of the EPF Act does not exclude the operation of the provisions of the said Act insofar as the Bank is concerned.

The learned Judge further noted that the Bank paid a sum of Rs.24,52,020/- towards provident fund contribution to the Employees' Provident Fund Organization from January, 2007 up to 2008. Having made such payment, the Bank cannot thereafter contend that the provisions of the EPF Act do not apply to the Bank.

The learned Judge also referred to an order dated May 3, 2012, passed by a learned Single Judge of this Court in a previous writ petition filed by the Bank being WP No. 4097(W) of 2011. The learned Judge in that order observed that there is nothing to show that the writ petitioner/Bank ever disputed the applicability of the EPF Act and the schemes framed thereunder to the Bank. The learned Judge further noted that since the Bank stopped compliance after some time and did not deposit the contributions from September 1, 1979, the

Provident Fund Authorities issued summons under Section 7A of the EPF Act.

The learned Single Judge, in the present case, also observed that the RPFC has rightly held that *“the prayer of the establishment to be excluded from the purview of the 1952 Act simultaneously with the prayer for exemption under section 17 of the 1952 Act is patently self-contradictory as exemption under section 17 can be sought only by the establishment already covered by the 1952 Act.”*

The learned Judge dismissed the writ petition with the following observations:-

“The orders passed by the Regional Provident Fund Commissioner dated December 31, 2014 are reasoned orders. It is well-settled that judicial review is not a review against the decision but a review of the decision making process. This Court is of the considered view that there is no infirmity in the decision making process warranting interference under Article 226 of the Constitution of India.”

We agree with the observation of the learned Single Judge that the prayer for exemption under Section 17 of the EPF Act and the contention that the provisions of the said Act are excluded under Section 16(1)(a) of the said Act insofar as the Bank is concerned, are mutually inconsistent. If the Bank is excluded under Section 16(1)(a) of the EPF Act, no question of exemption arises. The very fact that exemption is sought for, indicates that the Bank accepts the applicability of the EPF Act to its establishment.

We see no such infirmity in the order under appeal as would warrant our interference. We also agree with the learned Single Judge's observation that Writ Court does not operate as an Appeal Court. Judicial review is not an appeal in disguise. Judicial review of administrative decisions is concerned not with the merits of a decision but with the manner in which the decision has been arrived at. In the present case, the impugned order of the RPFC is a reasoned order and passed after observing the principles of natural justice. There is no apparent defect or shortcoming in the decision making process.

Accordingly, the appeal being MAT 1692 of 2023 and the connected application being IA No: CAN/2/2023 fail and are dismissed.

Mr. Nayak says that the manner, in which the Provident Fund Authorities have encashed and appropriated the term deposits of the Bank, is wholly illegal. In any event, since nothing is due to any of the employees of the Bank on account of provident fund dues, there could be no occasion for the Provident Fund Authorities to take such action, particularly when such money belongs to the poor investors and is not even the Bank's money. Mr. Agrawal, learned Advocate for the respondent Authorities, disputes such contention.

The aforesaid disputed facts cannot be adjudicated in the writ jurisdiction. This order will not prevent the

Bank from taking recourse to such other remedy it may have in law, including filing of civil suit, against the Provident Fund Authorities, if it is so advised. If any such legal proceeding is initiated by the Bank, the same shall be decided by the relevant forum, in accordance with law, without being influenced by any observation in this order or in the order of the learned Single Judge impugned in this appeal.

Since we have not called for affidavits, the allegations made in the stay petition shall be deemed not to have been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)