



WP(MD)No.598 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.598 of 2013

T.A.59, Karakathikkottai Primary Agricultural
Co-Operative Society Limited,
represented by its Special Officer,
Karakathikkottai – 614619,
Pudukottai District.

...Petitioner

Vs

Assistant Provident Fund Commissioner
Employees Provident Fund Organisation,
Sub-Regional Office,
18 Shree Complex,
Trichy – 8.

...Respondent

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records of the 1st respondent in his proceedings in No.SDC/CL-12/TN/TR/22791/2012 dated 14.09.2012 for Rs.3,09,299/- and quash the same.

For Petitioner : Mr.T.Ravichandran
for Mr.R.Sivamanogaran

For Respondent : Mr.I.Pinaygash



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ORDER

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The petitioner a Co-Operative Society registered under the Tamil Nadu Co-Operative Societies Act, has filed this writ petition as against the order of attachment dated 14.09.2012.

2.The petitioner society was running a fair price shop and also granting various loans to the villagers. The society is covered under the Employees Provident Fund and Miscellaneous Provident Funds Act [herein after shall be referred to as 'the Act'] and was paying its provident fund contributions regularly. There was some delay in payment of this contribution during the year 2005-2006 and 2009-2010 due to some financial crisis in the society. The government by considering their financial condition provided subsidy in the year 2008. During this financial crisis the society claims that they have paid only 50% of the salary to their employees from the year 2008 and they have not paid the provident fund contribution during the relevant period. Therefore damages under Section 14-B of the Act was levied as against the petitioner society. Challenging the same, this writ petition was filed in the year 2013 and it is taken up for hearing only in the year 2024.



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3.The learned Counsel for the petitioner submits that the order of damages passed by the respondent under Section 14-B of the Act is an ex-party order. The petitioner society is having an appeal remedy under Section 7-I of the Act as against the order of damages. The period for filing of such an appeal under the Act is 60 days from the date of the receipt of the order passed under Section 14-B of the Act and a further period of 60 days is also provided with the permission of the Tribunal. However, even before the expiry of the appeal time, the impugned order of attachment was passed on 14.09.2012. The learned Counsel further submits the respondents have passed two orders under Sections 14-B of the Act and two orders under Section 8-F of the Act for the very same period in a mechanical manner without any application of mind.

4.The learned Counsel for the respondent submits that this order of attachment impugned in this writ petition is a consequential order. The petitioner society has failed to challenge the original order dated 28.08.2012 and therefore, he cannot challenge the order of attachment. This writ petition was filed in the year 2013 and the petitioner has not taken any steps to file an appeal and therefore, the petitioner cannot take a stand that they were deprived of opportunity of filing an appeal.



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5.The learned Counsel for the petitioner submits that since the issue is pending before this Court they did not file appeal and therefore, seeks time to challenge the original order.

6.This Court considered the rival submissions made.

7.Admittedly the petitioner society failed to make the provident fund contribution in time during the year 2005-2006 and 2009-2010. Therefore an order of damages was passed on 28.08.2012 as per Section 14-B of the Act. This order dated 28.08.2012 has not been challenged by the petitioner society. The statute provides for an appeal remedy under Section 7-I of the Act as against the damages levied under Section 14-B of the Act however with a limitation of 60 days for filing such an appeal. The impugned order of attachment , consequential order was passed on 14.09.2012, even before the expiry of the limitation period for filing statutory appeal. On this ground the impugned order is set aside with liberty to the petitioner society to file an appeal within a period of sixty days from the date of receipt of a copy of this order, failing which the respondent shall proceed in accordance with law.



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8.The writ petition is allowed in the above terms. No costs.

Consequently connected miscellaneous petition is closed.

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Internet : Yes / No

Index : Yes / No

DSK

To

The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation,
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B.PUGALENDHI.J.,

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