



W.P.(MD) Nos.13767 and 16542 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) Nos.13767 and 16542 of 2020

and

W.M.P.(MD) Nos.11416 and 13835 of 2020

and

W.M.P.(MD) No. 3734 of 2022,

and

W.M.P.(MD) No.24891 of 2023

W.P.(MD) No.13767 of 2020:

T.Petchimuthu,

... Petitioner

Vs.

1.Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, Chokkikulam,
Madurai.

2.The Enforcement Officer,
Employees Provident Fund Organisation,
District office, AKM Complex,
Virudhunagar Road, Sivakasi-626 189,
Virudhunagar District.

... Respondents



W.P.(MD) Nos.13767 and 16542 of 2020

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari, to call for the records relating to the impugned Prosecution Notice issued *vide* No.MD/MDU/DO/SVK/EO(PGS)/Q837 Muhavoor PACCS/2020 dated 06.03.2020 by the 2nd respondent and quash the same.

W.P.(MD) No.16542 of 2020:

Q.837, Muhavoor Primary Agricultural
Cooperative Credit Society Limited,
Rep., by its Secretary,
6, Seithur Main Road, Muhavoor,
Rajapalayam Taluk, Virudhunagar District.

... Petitioner

Vs.

1. Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, Chokkikulam,
Madurai.

2. The Enforcement Officer,
Employees Provident Fund Organisation,
District office, AKM Complex,
Virudhunagar Road, Sivakasi-626 189,
Virudhunagar District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari, to call for the records relating to the impugned notice issued *vide* Ref.No.TN/MD/MDU/2078914/7A/M-12/APFC/2020, dated 26.10.2020 by the 1st respondent and quash the same.



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In both W.Ps.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For RR1 & 2 : Mr.K.Muralisankar

COMMON ORDER

The issue that arises for consideration in these two writ petitions is one and the same. Hence, both the writ petitions are heard together and are being disposed of by this common order.

2. In W.P.(MD) No.16542 of 2020, the petitioner, which is a Primary Agricultural Cooperative Credit Society, questions the notice issued under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the Act, 1952”) on the ground that the provisions of the Act, 1952 have no application to the Cooperative Societies.

3. Similarly, W.P.(MD) No.13767 of 2020 is filed by the Secretary of the above Society challenging the notice issued to show cause as to why he



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should not be prosecuted under Sections 14(1A), 14(1B), 14A and 14(2) of the Act, 1952 read with Part 76(d) of the Act, 1952.

4. In W.P.(MD) No.16542 of 2020, Respondent No.1 issued the impugned notice basing upon the report of Respondent No.2-Enforcement Officer and after having *prima facie* opined that the Act, 1952 applies to the Society in question, but the Society has evaded and neglected payment of Provident Fund dues in respect of the persons employed by it during the period December, 2008 to December, 2019, required the petitioner-Society to submit its response. The petitioner, instead of submitting its response in response to the notice, approached this Court by filing the present writ petition.

5. In W.P.(MD) No.13767 of 2020, when the 2nd respondent issued a show cause notice to the petitioner therein as to why he should not be prosecuted for failure to remit contributions, the petitioner therein approached this Court by filing this writ petition raising the contentions similar to the contentions raised in W.P.(MD) No.16542 of 2020.



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6. Learned counsel for the petitioners contended that by virtue of Section 78 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter referred to as “the Act, 1983”), the provisions of Act, 1952 have no application to the Cooperative Societies and therefore, the respondents lack competence to issue the impugned notices. In support of his contention, he placed reliance on the decisions of the learned Single Judge of this Court in W.P.(MD) No.20477 of 2015, dated 01.07.2019; W.P.No.27210 of 2018, dated 25.03.2019; and W.P.No.17556 of 2018, dated 12.03.2019.

7. This Court has thoroughly gone through the orders relied on by the learned counsel for the petitioners. All the three writ petitions relied upon by the learned counsel for the petitioners were filed seeking a writ of mandamus directing the respondent-employer therein to pay the petitioners' gratuity amount along with eligible interest in terms of the order passed by the Deputy Registrar of Cooperative Societies. The said writ petitions are not dealing with the Provident Fund or arising under the provisions of the Act, 1952. But, from the perusal of the orders passed in the said writ petitions, it



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is noticed that the learned Judge, while dealing with the issue involved therein, with regard to payment of gratuity and Section 79 of the Act, 1983, has made certain observations about Section 78 of the Act, 1983 as well. As a matter of fact, none of the provisions contained in the Act, 1952 including Section 78 of the Act, 1983 has fell for consideration in the facts and circumstances of the said case, nor the same is the subject matter for consideration before the learned Single Judge. In the circumstances, any observation or discussion made, while deciding the issue that came up for consideration relating to payment of gratuity, will not have the effect of laying down a law amounting to a precedent. Therefore, the orders relied on by the learned counsel for the petitioners are of no avail to advance the case of the petitioners.

8. Be that as it may, Section 78 of the Tamil Nadu Cooperative Societies Act, 1983 reads as under:

*“78. **Provident Fund.**-(1) A registered society not being an establishment to which the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (Central Act XIX of 1952)*



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applies, may establish a Provident Fund for the benefit of its employees to which shall be credited all contributions made by the employees and the society in accordance with the by-laws.

(2) A Provident Fund established by a registered society under sub-section (1) shall be invested in the financing bank, but shall not-

(a) be used in the business of the society;

(b) form part of the assets of the society;

(c) be liable to attachment or be subject to any other process of any court or other authority.”

9. From the perusal of the above provision, it is evident that there is nothing to suggest that the provisions of the Act, 1952 have no application to the Cooperative Societies. On the other hand, the said provision suggests that the provisions of the Act, 1952 apply to a registered Society, which is an establishment within the meaning of the provisions of the Act, 1952. It is only in case, if a registered Society is not coming within the meaning of establishment under the provisions of the Act, 1952, the said Society was given liberty to establish a Provident Fund for the benefit of its employees. Thus, there is nothing in Section 78 of the Act, 1983 to suggest that the



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provisions of the Act, 1952 have no application to the petitioner-Society. On the other hand, it is an enabling provision to frame scheme to provide provident fund for the employee of a Cooperative Society.

10. In terms of Clause (b) of sub-section (2) of Section 1 of the Act, 1952, any establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf are governed by the provisions of the Act, 1952.

11. The petitioner-Society herein is admittedly having more than 20 employees working with it. Whether the petitioner-Society would fall within the meaning of an “establishment” under the provisions of the Act, 1952 is a matter to be considered by Respondent No.1, if such an issue is raised. Before this Court, no such contention is raised by the petitioners. Therefore, it cannot be said that the provisions of the Act, 1952 have no application to the petitioner-Society. Except the ground of jurisdiction by placing reliance on Section 78 of the Act, 1983, no other point is argued before this Court. In



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view of the findings recorded above, this Court is convinced that it is not a case of patent lack of jurisdiction to the respondents to issue the impugned notices.

12. As already noted above, both the writ petitions are filed questioning the notices issued calling upon the petitioners to submit their response. This Court, in normal circumstances, would not entertain writ petitions against show cause notices. No doubt, this Court while entertaining the writ petitions, having considered the grounds raised by the petitioners, granted interim order. However, in the light of the findings recorded above, this Court is also not inclined to entertain the writ petitions against the show cause notices and accordingly, both the writ petitions are dismissed. However, keeping in view the fact that this Court passed interim orders as early as in the year 2020, both the petitioners are granted six weeks time to submit their response in response to the impugned notices before Respondent No.1 and in case, if the petitioners choose to submit their response within the time stipulated above, then Respondent No.1 shall consider the same by duly affording reasonable opportunity to the petitioners and then take further



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action, in accordance with law. No costs. Consequently, connected miscellaneous petition, if any, shall stand closed.

14.02.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR



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To

1. Assistant Provident Fund Commissioner,
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2. The Enforcement Officer,
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MUMMINENI SUDHEER KUMAR, J.

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