WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.(MD).Nos.102 and 103 of 2023
and
C.M.P.(MD).Nos.1416, 1418 & 1419 of 2023

W.A.(MD).No.102 of 2023

Thiruchirappalli District Central Cooperative Bank,
Staff Provident Fund Trust,
Represented by its Trustee / General Manager,
No.1, Fort Station Road,
Thiruchirappalli. ... Appellant/Petitioner

Vs.

1.The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office, Sree Complex, D-Block,
No.18, Madurai Road, Thiruchirappalli.

2.The Assistant Provident Fund Commissioner (Exemption),
Employees Provident Fund Organization,
Regional Office, Sree Complex, D-Block,
No.18, Madurai Road,
Thiruchirappalli.

3.The Branch Manager,
IDBI Bank,
No.120, Dukes Compex,
Bharathiyar Salai, Cantonment,
Thiruchirappalli - 620 001. ... Respondents/ Respondents

https://www.mhc.tn.gov.in/judis

WEB COPY

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed by the Hon'ble Judge in W.P.(MD).No.20220 of 2021 dated 02.12.2022 and allow the Writ Petition.

W.A.(MD).No.103 of 2023

Thiruchirappalli District Central Cooperative Bank,
Staff Provident Fund Trust,
Represented by its Trustee / General Manager,
No.1, Fort Station Road,
Thiruchirappalli. ... Appellant/Petitioner

Vs.

1.The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
Sree Complex, D-Block,
No.18, Madurai Road,
Thiruchirappalli.

2.The Assistant Provident Fund Commissioner (Exemption),
Employees Provident Fund Organization,
Regional Office, Sree Complex, D-Block,
No.18, Madurai Road,
Thiruchirappalli.

3.The Branch Manager,
IDBI Bank,
No.120, Dukes Compex,
Bharathiyar Salai, Cantonment,
Thiruchirappalli - 620 001. ... Respondents/ Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed by the Hon'ble Judge in W.P.(MD).No.20221 of 2021 dated 02.12.2022 and allow the Writ Petition.

https://www.mhc.tn.gov.in/judis

WEB COPY

For Appellant : Mr.D.Shanmugaraja Sethupathi

For R-1 & R-2 : Mr.N.Dilip Kumar
Standing Counsel
(In both cases)

COMMON JUDGMENT

(Judgment of the Court was made by G.R.SWAMINATHAN, J.)

Heard both sides.

2. Tiruchirappalli District Central Cooperative Bank was a covered establishment. It enjoyed exemption under Section 17 of Employees Provident Fund and Miscellaneous Provisions Act, 1952 with effect from 04.08.1969. When the EPF authority grants such exemption, the exempted establishment will have to comply with certain conditions. One of the conditions is regarding the pattern of investment of the Trust funds. Since the trustees of the appellant trust had not adhered to the prescribed pattern of investment, show cause notice was issued to its Branch Manager and surcharge orders were passed. A sum of Rs.6,46,956/- was recovered from the Trust.

3. The case on hand pertains to two assessment years i.e., 2017-2018 and 2018-2019. Challenging the orders issued by the Employees' Provident Fund

https://www.mhc.tn.gov.in/judis

WEB COPY

Organisation (EPFO), the appellant Trust filed W.P.(MD).Nos.20220 and 20221 of 2021. The learned Single Judge, vide order dated 02.12.2022, dismissed the Writ Petitions. Aggrieved by the same, these appeals have been filed.

4. Para 27AA(17) of the Employees' Provident Funds Scheme, 1952 reads as follows:

> *"17. The Board of Trustees shall invest the monies of the provident fund as per the directions of the government from time to time. Failure to make investments as per directions of the Government shall made the Board of Trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative."*

A bare look at the aforesaid provision indicates that where there has been a failure to make investments as per the Government directions, the trustees would be separately and jointly liable to surcharge. It obviously means that the persons, who are guilty of any lapse, are liable to be proceeded against personally. It is axiomatic that the trustees alone who will be liable jointly and individually and not the Trust. But, in the case on hand, EPFO had erroneously recovered the surcharge amount from the Trust funds. When the statutory provision fastens liability only on the trustees, the authority can proceed only against them. The provision nowhere states that the penalty can be levied on the

https://www.mhc.tn.gov.in/judis

WEB COPY

trust. The object of the provision is to safeguard the interests of the employees. If the surcharge amount is recovered from the trust fund, the whole object is frustrated and defeated. The trustees who had breached the directions regarding investment go scot-free. The authority cannot do something that is not envisaged by the aforesaid provision. The trust is not at fault; the trustees alone are. Only those at fault have to be proceeded against.

5. We have to take note of certain subsequent developments. Tiruchirappalli Central Cooperative Bank Limited had decided to forego their exemption. The surrender was made on 23.12.2024. The EPFO had also accepted the surrender subject to conditions. Whether the conditions are complied with by the Board or not, the EPFO is bound to take over the Trust. The EPFO has written to the General Manager, Tiruchirappalli Central Cooperative Bank Limited on 04.07.2025 to transfer the balance amount of Rs. 2,67,51,242/-. The amount already recovered from the Trust funds will have to be given credit. EPFO will have to take action against the individual members of the Trust Board, who were then at the helm of affairs, in terms of para 27AA (17) of the EPF Scheme, 1952.

https://www.mhc.tn.gov.in/judis

WEB COPY

6. These Writ Appeals are disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S.,J.) (K.R.S.,J.)
16.07.2025

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

https://www.mhc.tn.gov.in/judis

WEB COPY

G.R.SWAMINATHAN, J.
and
K.RAJASEKAR, J.

Lm

W.A.(MD).Nos.102 and 103 of 2023

16.07.2025

https://www.mhc.tn.gov.in/judis