

(2022) 04 GUJ CK 0002

In the Gujarat High Court

Case No : R/Special Civil Application No. 19772 Of 2007

Ashokkumar Budhalal Shah

APPELLANT

Vs

State Of Gujarat & 2 Other(S)

RESPONDENT

Date of Decision : 01-04-2022

Acts Referred:

Gujarat Cooperative Societies Act, 1961 — Section 93
Indian Penal Code, 1860 — Section 406, 420, 467, 468, 471

Citation : (2022) 04 GUJ CK 0002

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : G.M.Joshi, Rohan N. Shah, Nishith P Thakkar, Asha D Tiwari

Final Decision : Allowed

Judgement

A.S. Supehia, J

(1) The present petition has been filed seeking a direction upon the respondent No.3-The Cooperative Bank of Rajkot Limited to release the amount of Provident Fund lying to the credit of the petitioner.

(2) The brief facts of the case are that the petitioner retired on the post of Manager on 01.07.2006.

(3) The cause of action to file the present petition has arisen because of the refusal on the part of the respondent-Bank to make payment of amount of Provident Fund lying with the respondent-Bank. The petitioner states that as on 31.03.2007, the amount of Provident Fund lying with the respondent-Bank is Rs.19,71,628=95. When the petitioner retired on 01.07.2006, there was an amount of loan is Rs.2,78,992/-. As the petitioner was told that the petitioner's amount of Provident Fund is not released because of the inquiry under Section 93 of the Gujarat Cooperative Societies Act, 1961, (the Act), the petitioner approached the District Registrar of Cooperative Societies inquiring from him as to the authority of the Registrar to advise / approve/ sanction the payment of

gratuity / provident fund. The District Registrar of Cooperative Societies addressed a letter to the Chairman / Manager of the respondent-Bank on 13.07.2006 calling upon the respondent-Bank to inform about the rules relating to the Provident Fund and gratuity, which suggests of obtaining any permission of the District Registrar of Cooperative Societies. The respondent-Bank was informed to take a decision on its own in absence of any such provision.

(4) The Registrar of Cooperative Societies, by a communication dated 21.12.2006 informed the petitioner that no such prohibitory order or instruction is given to the respondent-Bank. The petitioner again approached the respondent-Bank to release the amount of provident fund. However, vide a communication dated 03.07.2007, the respondent-Bank has informed the petitioner that the amounts payable to him as a part of retrial benefits are forfeited by the respondent-Bank till the inquiry under section 93 of Act is pending against him and the inquiry is handed over to the Economic Cell as per the orders passed by this Court in Special Civil Application No.20515 of 2006.

(5) Learned Senior Advocate Mr.G.M.Joshi appearing for the petitioner has submitted that the scope of the inquiry initiated under section 93 of the Act is determined by the first show-cause notice issued for the purpose. The notice recites the role of the Board of Directors and it is issued to the members of the Board of Directors at the relevant time. It is submitted that as a matter of fact, because of the delay in initiation and completion of the inquiry, most of the Directors have passed away, whereas the petitioner, who is not at all concerned with any of the actions of the Board of Directors, is denied the amount of Provident Fund on the pretext that the inquiry under section 93 of the Act is pending against him. It is submitted that the respondent-Bank has not covered itself under the provisions of the Employees' Provident Fund and Misc. Provisions Act, 1952 but has its own Provident Fund Rules, wherein the petitioner has contributed and on the basis of which the amount has been accumulated to this extent. It is submitted that there is no provision of law, which empowers the respondent-Bank from forfeiting or withholding the amount of Provident Fund, hence such action of the respondents is required to be quashed. Learned Senior Advocate Mr.Joshi has placed reliance on the Staff Rules of the respondent-Bank, which are approved by the Registrar. He has submitted that the Rules do not contemplate any authority or power with the respondent-Bank to withhold or forfeit the Provident Fund amount.

(6) Learned advocate Mr.Nishith Thakkar appearing on behalf of the respondent No.3-Bank relying upon the affidavit filed on behalf of the respondent No.3 has submitted that the originally petitioner was working under the Dakor Nagrik Sahakari Bank Limited. It is submitted that the Registrar of Cooperative Societies has registered an FIR being C.R. No.I-75 of 2004 before Dakor Police Station for the offence under sections 406, 420, 467, 468, 471 of the Indian Penal Code, 1860. It is submitted that the petitioner, being the Manager, was aware about the jurisdiction of extending loan facility to the borrower. It is submitted that

knowing fully well, such kind of limitation, the petitioner and other office-bearers have transgressed their limit and sanctioned a loan of Rs.1,50,00,000/-, which was credited in favour of one Shri Vipulbhai Vora, who is the Director of Baroda Electro Engineering Private Limited and the said company is situated at Vadodara. It is submitted that the above is clear breach of law that the office-bearers have sanctioned loan outside the territory of Dakor and handed over public money to the private party, who is situated at Vadodara.

6.1) Learned advocate Mr.Thakkar appearing on behalf of the respondent No.3-Bank has further submitted that as per Rules of the Cooperative Society, no loan can be sanctioned in favour of a person who is not a member of Cooperative Society. It is submitted that the recovery proceedings were initiated and a lavad suit was instituted and it was finally resolved that the borrower is required to pay an amount of Rs.1,79,06,554/- with 12% simple interest from 01.10.2002. It is submitted that the said order was passed by the competent court and as on 31.01.2022 total amount receivable is Rs.2,56,06,259=47, which is more than Rs.2,50,00,000/- approx.

6.2) Learned Advocate Mr.Thakker has submitted that the proceedings under section 93 of the Act is initiated and the same are pending before the Board of Nominees Court at Nadiad and the petitioner cannot take disadvantage of pendency of the said proceedings. It is submitted that the respondent-Bank has paid gratuity of Rs.3,90,122/- as per the order of this Court dated 25.09.2007 and the said amount is credited in the account of the petitioner.

6.3) Learned advocate Mr.Thakkar appearing on behalf of the respondent No.3-Bank also submitted that this Court vide order dated 30.06.2010 directed the respondent-Bank to deposit the Provident Fund amount with the Registry of this Court and the Registry was further directed to deposit the said amount in a nationalized bank by way of a fixed deposit for a period of five years. It is submitted that the amount of Rs.22,73,128=95 is deposited with the Registry on 23.07.2010. It is submitted that the petitioner and others have caused loss to the respondent-Bank by creating illegal association and by sanctioning loan illegally against the settled principle of law of the Cooperative Society and, therefore, they cannot claim benefit out of their own wrong. Thus, it is submitted that the petitioner cannot claim the Provident Fund in view of his misconduct and the misuse of his authority.

(7) I have heard the learned advocates appearing for the respective parties at length.

(8) The respondent-Bank has not paid the Provident Fund of the petitioner, who has retired on 01.07.2006 as a Manager of the respondent-Bank. By an interim order dated 30.06.2010, this Court had directed the respondent-Bank to deposit the amount of Provident Fund of the petitioner before the Registry of this Court. Accordingly, the respondent has deposited an amount of Rs.22,73,128=95 before the Registry on 23.07.2010.

(9) It is the case of the petitioner that there is no provision of law which can empower the respondent-Bank from withholding the amount of Provident Fund. The amount of the Provident Fund of the petitioner has been withheld on account of the aforementioned proceedings. Learned Advocate Mr.Thakkar is unable to dispute that the Staff Rules, which are produced along with the affidavit-in-rejoinder dated 16.07.2009, are applicable to the respondent-Bank. Rule 10 and 11 of the Rules reads as under:

"10. Any employee who is relieved from the Bank shall be entitled to his provident fund subject to the below stated section.

11. Any Bank employee who has completed five years from the date of his regularization shall be entitled to provident fund with interest. A previously relieved employee shall be entitled to the amount of his deduction with interest at the rate fixed by the Bank on savings account. However, in such circumstances, the Board of Directors of the Bank after considering the satisfactory and honest service of the employee, shall take appropriate decision with regard to the total amount of provident fund with bank's contribution and interest."

(10) Thus, the aforesaid Rule contemplates of paying the amount of Provident Fund to those employees who have completed five years of service after their regularization. Indubitably, the petitioner will fall under the said parameter since he has completed more than five years of service and was also a regular employee. The second appendage to Rule 11 stipulates of curtailing the payment of Provident Fund amount of those employees who are relieved before five years. A close reading of Rule 11 will suggest that in case an employee is relieved prior to the prescribed period of five years, he will be entitled to his contribution and not of the Bank's. The rule further reserves discretion in favour of the Board of Directors of the Bank to take appropriate decision of paying the Bank's contribution towards the Provident Fund with accrued interest after considering his satisfactory service. Thus, Rule 11 is divided in two parts - (i) the payment of Provident Fund of 'employees contribution', and (ii), the payment of Provident Fund of 'Bank's Contribution' which depends on discretion of the Board of Directors. Interestingly, there is no provision stipulated of withholding or forfeiting the amount of contribution of those employees who have completed more than five years of service and are regular employees. Thus, the respondent-Bank cannot withhold or forfeit the Provident Fund of the petitioner whose case does not fall within the restriction of Rule

11. The petitioner is neither relieved before five years nor he is treated as a temporary or ad hoc employee. Rule 11 only restricts the payment of Provident Fund of such employee who is relieved before completion of five years of service after his regularization. There is no embargo of payment of Provident Fund to a permanent or regular employee, who has completed more than five years. In any case there is no prohibition stipulated in the Rules to withhold the contribution of an employee towards Provident Fund.

(11) Thus, the writ petition succeeds. Registry is directed to disburse the amount with accrued interest to the petitioner, after proper verification, which is deposited pursuant to the order dated 30.06.2010.