
(2004) 03 AP CK 0069

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1739 of 2004

Employees Provident Fund Organisation

APPELLANT

Vs

The Government of A.P.

RESPONDENT

Date of Decision : 15-03-2004

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 11(2)

Citation : (2004) 3 ALT 176

Hon'ble Judges : M. Narayana Reddy, J; Bilal Nazki, J

Bench : Division Bench

Advocate : R.N. Reddy, for the Appellant; Additional Advocate General, for the Respondent

Judgement

Bilal Nazki

1. Heard learned counsel for the parties. The Writ Petition is disposed of at this stage with the consent of learned counsel appearing for the parties. Counter has also been filed and the reply affidavit has also been filed.

2. The Writ Petition has been filed seeking a declaration that Sub-Section (9) of Section 2 of Act 16 of 2003 is illegal and arbitrary and unjust and should be struck down as such. The Writ Petitioner is the Employees Provident Fund Organisation. It is aggrieved of particular provision of Act No. 16 of 2003 which is an Act amending the Andhra Pradesh Co-operative Societies Act, 1964. The grievance of the petitioner is that the Provident Fund Organisation has a first charge on the assets of an organization and by making the impugned amendment, the respondents have relegated it to a position at the bottom. The learned counsel for petitioner further submits that the amendment is even ultra virus to Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

3. The learned Additional Advocate-General who appears on behalf of the State Government, submits that there is a misapprehension and misreading of the amendment. The Provident Fund continues to remain first charge even after

amendment and there is nothing in the amendment which can be called as ultra virus to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. In this context, it would be necessary to examine Sub-Section 9 of Section 2, which is reproduced below ;

"(9) The proceeds realized from the transfer of assets or assets and liabilities, in whole or in part, of the society concerned, shall be applied in discharge of the liabilities of such society in the following order of priority, namely :-

- (i) all expenses incurred for preservation and protection of the assets;
- (ii)(a) dues payable to workmen and employees;
- (b) debts payable to secured creditors according to their rights and priorities interse;
- (c) dues payable to provident fund or other authorities which are protected under a statue by a charge on the assets;
- (iii) debts payable to ordinary creditors;
- (iv) share capital contributed by the members of the society; Provided that the cases covered under Category (i) shall have precedence over all other Categories, Category (ii) shall have precedence over Category (iii) and (iv) and Category (iii) shall have precedence over Category (iv);

Provided further that the debts specified in each of the Categories shall rank equally and be paid in full, but in the event of the amount being insufficient to meet such debts, they shall abate in equal proportions and be paid accordingly;

Provided also that the question of discharging any liability with regard to a debt specified in a lower Category shall arise only if a surplus fund is left after meeting all the liabilities specified in the immediately higher Category."

4. According to the learned counsel for petitioner, the last proviso lays down that the question of discharging any liability with regard to a debt specified in a lower category should arise only after surplus fund is left after meeting all the liabilities specified in the higher categories therefore, he would contend that after all the debts mentioned in Section 9 are discharged, then the liability with regard to the Provident Fund would be discharged.

5. The learned Additional Advocate-General submits that, that is not the correct interpretation of the provision. He submits that this Section creates four categories which is clear from the first proviso. First category comprises of (i) All expenses incurred for preservation and protection of the assets, (ii)(a) dues payable to workmen and employees, then (b) and (c). This (c) relates to Provident Fund and some other funds. He submits that category (i) comprises of (a), (b) and (c) and category (i) has the priority over all other categories. Therefore even after the amendment, the Provident Fund continues to be first charge.

6. On bare perusal of Sub-Section 9 of Section 2, we find ourselves in agreement with this contention of the learned Additional Advocate-General that category (i) comprises of three classes of debts including a debt which is on account of Provident Fund. Even in (ii)(a), dues payable to workmen and employees are also mentioned. Even dues payable to workmen and employees would include Provident Fund, although it has been shown separately under (c). But it does not make a difference because (c) is also in category one. The learned counsel for petitioner further submits that u/s 11(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 it has been laid down ;

"Without prejudice to the provisions of the sub-section (1), if any amount is due from an employer [whether in respect of the employees' contribution (deducted from the wages of the employee) or the employees' contribution] the amount so due shall be deemed to be the first charge on the assets of the establishment and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts."

7. We do not find there is any conflict between Sub-Section 9 of Section 2 of the Amended Act with Section 11(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. With these observations, the Writ Petition is disposed of.