(2004) 05 KL CK 0010

In the High Court Of Kerala

Case No : O.P. No. 17521 of 1999

Pallipuram Service Co-operative Bank Ltd. APPELLANT

Vs

Labour Welfare Fund Inspector RESPONDENT

Date of Decision : 19-05-2004

Acts Referred:

Kerala Labour Welfare Fund Act, 1975 — Section 2
Payment of Wages Act, 1936 — Section 9

Citation : (2004) 102 FLR 958 : (2004) 2 KLT 616 : (2004) 3 LLJ 956

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : T.A. Shaji and P.M. Indu, for the Appellant; K.K. Babu and M.A. Thomaskutty, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—Ext.P1 notice issued to a Co-operative Society who is the petitioner herein is under challenge. Consequential steps for realisation by Ext.P3 proceedings have prompted them to file this Original Petition. The short fact which might be necessary for disposing of the Original Petition could be stated herein below:-

2. The show cause notice (Ext.P1) issued by the Labour Welfare Fund Inspector, the authority functioning under the Kerala Labour Welfare Fund Act, 1975 required the petitioner to pay an amount of Rs. 3813/- and interest thereon, to the statutory fund. It represented the contribution of employer and employees as prescribed by the Act. The show cause notice was answered by Ext.P2 and the petitioner-Society contended that in view of G.O.(MS) No. 348/75/AD dated 20.11.1975, as the Government had constituted a Welfare Fund called Co-operative Employees Welfare Fund Board for the employees of Co-operative Societies, and since the establishment represented by them was a subscriber thereto and since they were paying monthly contributions required, from 1988 onwards, they were not liable or answerable to the demand as made by Ext.P1.

When revenue recovery proceedings were initiated, they had approached this Court.

3. The issue is whether because of the Government Order dated 20.11.1975, the petitioner is to be exempted from making contribution under Kerala Welfare Fund Act, 1975.

4. Standing Counsel for the Board submits that the contention of the petitioner is totally misconceived. It is submitted that the statutory welfare fund has been introduced from 1.5.1977 and it is applicable to every establishment as defined u/s 2(f) of the Act. The term ''establishment'' has been given an inclusive definition and any commercial establishment within the meaning of Clause 4, or any shop within the meaning of Clause 15 of Section 2 of the Kerala Shops and Commercial Establishments Act, 1960 which employs two or more persons, comes within the purview of the statute. Only exemption is in respect of the establishments which belong to Central or any State Government and establishments which may be specifically exempted. A co-operative society has not so far been exempted from the purview of the Act.

5. The petitioner-- Co-operative Society comes within the purview of the Kerala Shops and Commercial Establishments Act, 1960 (Act 34 of 1960), which is indisputable. Therefore, it is idle to contend that the Welfare Fund Act is not applicable to them. Reference made to Government Order 1975 also is of no avail Since it is found that the Act came into force in 1977, and no exemption is provided. When statutory funds are constituted, contributions are required to be paid. Any payment towards schemes constituted by the notifications, have no relevance and the petitioner cannot claim exemption because of this reason alone.

6. All unpaid accumulations that accrue in an establishment are to be paid over to this statutory fund, apart from the regular contribution to be made in every six months. All fines including the amount realised under Standing Orders from the employees by the employers are likewise to be credited. Deductions made u/s 9 of the Payment of Wages Act also are to be transferred over to the fund. The Welfare Fund as above is to be utilised for the welfare activities of workmen, in general. The benefits that are envisaged as payable to the working class, and their welfare are far too numerous, and the co-operative fund referred to by the petitioner cannot at all be compared with the statutory fund by any stretch. It is also pointed out by respondents that the petitioner had been paying contributions, during the past years, but later had defaulted and had taken a stand that payments could not be demanded by them. However, it appears that such stand is mis-conceived. The contributions are of minimal nature and cannot be considered as causing undue burden on anybody. The reluctance for payment cannot be encouraged.

7. The Original Petition therefore deserves to be dismissed. The respondent-Board will be entitled to proceed with Ext.P3 so as to ensure that the

contributions are collected from the petitioner appropriately. No costs.

