

(2010) 07 BOM CK 0183

In the Bombay High Court

Case No : Writ Petition No. 5767 of 1997

Ratnakar Bank Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 5, 7(1), 8B, 8G

Citation : (2011) 2 BomCR 362 : (2011) 1 LLJ 261

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Vaibhav Gaikwad, instructed by A.M. Kulkarni, for the Appellant; Suresh Kumar, for the Respondent

Judgement

Nishita Mhatre, J.—The question which arises in this Writ Petition is the applicability of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, (for short "the Act"), to a Multi State Co-operative Bank.

2. The few facts which are necessary to appreciate the controversy between the parties are as follows.

3. The Petitioner-Bank, which is a Multi State Cooperative Bank, sought a clarification from the Respondents as to whether their establishments were covered by the provisions of the aforesaid Act. The Regional Provident Fund Commissioner, Goa, informed the petitioner-Bank that their Bank was not covered by the Act. However, a show cause notice was issued to the Petitioner-Bank on August 23, 1995 by the Respondent No. 1 calling upon it to show cause as to why damages should not be levied for non payment of the contribution of provident fund. The Petitioner-Bank immediately replied to that notice contending that since it was a Multi State Cooperative Bank, it was not covered by the provisions of the aforesaid Act and, therefore, no contributions had been paid by the Petitioner-Bank. An order was passed on October 11, 1995 by

Respondent No. 1 declaring that the Petitioner-Bank was guilty of delayed payments of provident fund contributions. Therefore, a demand of ` 78,015/- was made on the Petitioner- Bank for the provident fund contributions payable 1990 from November 1990 to December 1991 together with damages and other dues payable u/s 14-B of the Act. This order was communicated to the Petitioner-Bank only on January 8, 1997. As the amount was not paid, the demand notices were issued on February 20, 1997 and May 16, 1997 to the Petitioner-Bank directing it to pay the aforesaid amount. The Petitioner-Bank was informed that in case of default, steps would be taken to realize the amount in accordance with. the provisions of Section 8-B to Section 8-G of the Act Hence, the present writ petition.

4. Mr. Gaikwad, the learned advocate appearing for the Petitioner-Bank, has taken me through the aforesaid notices and the Petitioner-. Bank s reply to the said notices as well as the demands made off the Petitioner-Bank for the damages. He submits that the Division Bench of this Court has already taken the view that the provisions of the Employees Provident Fund Act are not applicable to the Multi State. Co-operative Banks. He fortifies his submission by relying on a judgment in the case of United Western Bank Ltd. v. Central Provident Fund Commissioner and Ors. (1984) L.I.C. 1504. Mr. Gaikwad then points, out that after the judgment of the Division Bench in the aforesaid case, a notification was issued on February 25, 2000 u/s 5 read with Section 7(1) of the Act. By this notification, the Employees" Provident Fund Scheme, 1952 was amended. The words "Banks doing business in one State or Union Territory and having no departments or branches outside that State or Union Territory" found in Para I(3) (b) Item III were deleted. They were substituted by the words "Banks other than the Nationalized Banks established under any Central or State Act". The notification was challenged in Civil Writ Petition No. 314/2001 by a Bank on the ground that an arbitrary distinction was drawn between the Nationalized Banks and other Banks and therefore the amendment violated Articles 14 and 21 of the Constitution of India. By the order dated August 13, 2009 the Division Bench of this Court in the aforesaid Writ Petition in the case of United Western Bank Ltd. and Anr. v. Secretary, Government of India and Ors. has quashed the said notification dated February 25, 2000 being violative of Article 21 of the Constitution of India. The Division Bench of this Court followed the judgments of three different High Courts while drawing this conclusion. The Division Bench observed that there was no reason to take a different view. Mr. Gaikwad therefore submits that the writ petition must be allowed and the impugned orders should be set aside.

5. Mr. Suresh Kumar, the learned advocate appearing for Respondent No. 1, fairly concedes that the judgment in the case of United Western Bank Ltd. v. Central Provident Fund Commissioner and Ors. (supra) covers the issue in the present Writ Petition. The Division Bench has held that the notification of 1965 indicates that the language in the notification was similar and even if one condition ceases to exist, then the applicability of the Act also must cease. Once the Petitioner

Bank became a Multi State Co-operative Bank, the Act ceased to apply to it and therefore all orders passed in exercise of powers under the Act must be quashed.

6. Rule made absolute in terms of prayer Clauses (a) to (f).

7. No orders as to costs.