

(2011) 10 MAD CK 0174

In the Madras High Court

Case No : Writ Petition (MD) No. 2873 of 2010 and M.P. (MD) No. 1 of 2010

The Kanyakumari Central Co-operative Bank Ltd. APPELLANT

Vs

The Assistant Provident Fund Commissioner, The Manager,
State Bank of India and The Chiramadam Primary
Agricultural Co-operative Credit Society RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 11(2),
8F, 8F(3)

Citation : (2011) 10 MAD CK 0174

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C. Godwin, for the Appellant; V.S.V. Venkateshwaran for 1st
Respondent, Mr. M. Vallinayagam for 2nd Respondent and No Appearance for 3rd
Respondent, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is the Kanyakumari Central Co-operative Bank Ltd., represented by its Special Officer. In the present Writ Petition, they have challenged the order passed by the Employees' Provident Fund Organisation dated 02.02.2010. By the impugned order, the Provident Fund Authorities informed the bank that their representation dated 20.01.2010 cannot be considered by them as valid explanation.

2. The Employees Provident Fund Organisation found that the 3rd respondent Co-operative Society defaulted to pay contribution towards Provident Fund and action was initiated u/s 8(F) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) and in that context a notice was issued to the petitioner on 26.08.2009 stating that the 3rd respondent has defaulted in making payment to the department to the extent of Rs.2,077,730/-and they were directed to pay the amount at the credit of the 3rd respondent to the Employees Provident Fund Organisation.

3. It shows on specific occasion amounts were received on behalf of the 3rd respondent by the petitioner from the Government towards rehabilitation scheme. The petitioner's bank informed the Provident Fund Authorities that the amount of Rs.20,00,000/-was received by them only towards the Special Loan to be given to the members on jewel loan and it should be utilised only for that purpose and not for any other purpose and therefore, the money was not realised.

4. The explanation was not satisfactory to the authorities. So, they passed the impugned order stating that notwithstanding any rule, u/s 8(F) the specific request was made to remit the amount retained by the petitioner on behalf of the 3rd respondent, but they have disobeyed the order of attachment and paid the amount to 3rd respondent, which was squarely illegal and contrary to sub Section 3 of 8(F) of the Act, and the manager of the Bank was personally liable for such an action.

5. Subsequent to the impugned order, the authorities have also informed the State Bank of India to remit the amount of Rs.1,88,866/-, which is still remaining with the petitioner Bank to the Employees Provident Fund Organisation. The State Bank of India, accordingly, debited the petitioner's bank account and credited the same to Employees Provident Fund Organisation. At this juncture, the petitioner has come forward with this petition, challenging the notice dated 02.02.2010 and also seeking refund of Rs.1,88,866/-which was taken away through the directions issued to the State Bank of India, who are bankers of the petitioner's bank.

6. When the Writ Petition came up on 09.03.2010, notice was ordered to the respondents and status quo was directed to be maintained by the first respondent. On notice from this Court, the Employees Provident Fund Organisation has given written instructions in this regard. It is stated by the first respondent that the petitioner bank has failed to obey the order issued u/s 8F of the Act and their explanation was examined in the light of Section 11(2) of the Act and u/s 11(2) the dues to the Employees Provident Fund Organisation have priority over the other debts of the defaulted establishments.

7. Since the petitioner bank has disobeyed the order of attachment issued u/s of the Act and instead of retaining the amount paid it to 3rd respondent, the only question before this Court is as to whether the impugned order is liable to interfered with by this Court?

8. In this context, it is necessary to refer to the judgment of the Supreme Court in Maharashtra State Co-operative Bank Ltd. Vs. The Assistant Provident Fund Commissioner, , where the provisions of Section 11(2) was examined and it was held by the Supreme Court that Section 11(2) of the Act is having over riding effect to any other law. In paragraphs 66 to 68 of the said decision, it is observed as follows:

66. Section 11 gives statutory priority to the amount due from the employer

vis-?-vis all other debts. Clause (a) of sub-section (1) of Section 11 is applicable to cases where an employer is adjudicated insolvent or, being a company, an order of its winding up is made. In that situation, the amount due from the employer in relation to an establishment to which any scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable u/s 14-B, accumulations required to be transferred u/s 15(2) or any other charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme. Clause (b) is applicable to cases where the amount is due from the employer in relation to exempted establishment in respect of any contribution to the provident fund or any insurance fund insofar it relates to exempted employees under the rules of provident fund or any insurance fund, any contribution payable by him towards the Pension Fund u/s 17(6), damages recoverable u/s 14-B or any charges payable by him to the appropriate Government under the Act or under any of the conditions specified in Section 17. This sub-section then lays down that such amount shall be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up. Sub-section (2) lays down that any amount due from the employer whether in respect of the employees' contribution deducted from the wages of the employee or the employer's contribution shall be deemed to be the first charge on the assets of the establishment, and shall be paid in priority to all other debts.

67. The expression "any amount due from an employer" appearing in sub-section (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including sub-section (1) of Section 11 and Sections 7-A, 7-Q, 14-B and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund. If any amount payable by the employer becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7-Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages.

68. As mentioned earlier, sub-section (2) was inserted in Section 11 by Amendment Act 40 of 1973 with a view to ensure that payment of provident fund dues of the workers are not defeated by the prior claims of the secured and/or of the unsecured creditors. While enacting sub-section (2), the legislature was conscious of the fact that in terms of existing Section 11 priority has been given to the amount due from an employer in relation to an establishment to which any scheme or fund is applicable including damages recoverable u/s 14-B and accumulations required to be transferred u/s 15(2). The legislature was also aware that in case of delay the employer is statutorily responsible to pay interest in terms of Section 17. Therefore, there is no plausible reason to give a restricted meaning to the expression "any amount due from the employer" and confine it to

the amount determined u/s 7-A or the contribution payable u/s 8.

9. In the light of above, there is no case made by the petitioner. Hence, the Writ Petition stands dismissed. No costs. Consequently, connected M.P.(MD) No.1 of 2010 is closed.