(2003) 02 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No''s. 3753 and 5172 of 1994

The Kolhapur District Central Cooperative Bank Limited — APPELLANT

Vs

Maharashtra Labour Welfare Board, Asstt. Labour Welfare Commissioner and S.Y. Nagulwar, Inspector under the Bombay Labour Welfare Fund Act, 1953
 Satara District Central Co-operative Bank Limited Vs Maharashtra Labour Welfare Board, Labour Welfare Commissioner and Inspector under the Bombay Labour Welfare Fund Act, 1953 — RESPONDENT

Date of Decision : 07-02-2003

Acts Referred:

Bombay Labour Welfare Fund Act, 1953 — Section 2, 4, 6BB
Bombay Shops and Establishments Act, 1948 — Section 2(4)
Factories Act, 1948 — Section 7

Citation : (2003) 2 ALLMR 1 : (2003) 4 BomCR 582 : (2003) 2 LLJ 913

Hon'ble Judges : R.M. Lodha, J;Nishita Mhatre, J

Bench : Division Bench

Advocate : Vijay Patil, for the Appellant;

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—These two writ petitions raise identical question about the applicability of the Bombay Labour Welfare Fund Act, 1953 and, therefore, were heard together and are disposed of by this common order.

2. In writ petition No. 3753/1994 the Kolhapur District Central Co-operative Bank Limited is the petitioner while in writ petition No. 5172/1994, Satara District Central Cooperative Bank Limited is the petitioner. Both the petitioners are Central Banks under Sub-section (6) of Section 2 of Maharashtra Co-operative Societies Act, 1960. The case of the petitions is that they were constituted for promotion of the economic interest and general welfare of its members or the public in general in accordance with the cooperative principles. The formation and constitution of the Bank is explained by submitting that the credit structure obtaining in Maharashtra is of three Tier system consisting of the Primary Rural

and Urban societies at the base, district Central banks at the intermediate level and the State Cooperative Bank at the Apex. The District Central Banks and State Cooperative Banks are Federal institutions. The District Banks function as a balancing centre and is a mediator in rural, agricultural lending through primary societies and sustains barely on negligibly slender margin of interest, received for the services rendered by it. The bank works not as a profit oriented commercial bank, but serves with the esteemed aim of upliftment of weaker economic rural sections through cooperative movement. In this background it is submitted that the District Central Banks are not establishment as defined under the Bombay Labour Welfare Fund Act, 1953.

3. The only question that arises for consideration is whether the said District Central Banks are ''establishment'' as defined under Bombay Labour Welfare Fund Act, 1953.

4. The Bombay Labour Welfare Fund Act, 1953 (for short, "Act of 1953") was enacted to provide for the constitution of a Fund for the financing of activities to promote welfare of labour in the State of Maharashtra for conducting such activities and for certain other purposes. The Maharashtra Labour Welfare Board is the Board constituted u/s 4 and contribution means the sum of money payable to the Board in accordance with the provisions of Section 6BB. Employer in Clause (3) of Section 2 reads thus:

"(3) "Employer" means any person who employees either directly or through another person either on behalf of himself or any other person, one or more employees in an establishment and includes-

(i)in a factory, any person named u/s 7(i)(f) of the Factories Act, 1948 as the manager;

(ii) in any establishment, any person responsible to the owner for the supervision and control of the employees or for the payment of wages."

5. "Establishment" as defined in Clause (4) reads thus:

"Establishment" means -

(i) a factory;

(ii) a tramway or motor omnibus service or a motor transport undertaking to which the Motor Transport Workers Act, 1961, applies; and

(iii) any establishment within the meaning of the Bombay Shops and Establishments Act, 1948, which employs, or on any working day during the preceding twelve months, employed five or more persons:

Provided that, any such establishment shall continue to be an establishment for the purposes of this Act, notwithstanding a reduction in the number of persons to less than five at any subsequent time:

Provided further that, where for a continuous period of not less than three months the number of persons employed therein has been less than five such establishment shall cease to be an establishment for the purposes of this Act with effect from the beginning of the month following the expiry of the said period of three months, but the employer shall within one month from the date of such cessation, intimate by registered post the fact thereof to such authority as the State Government may specify in this behalf."

6. It would be thus seen that u/s 2(4)(iii) the establishment within the meaning of bombay Shops and Establishment Act, 1948 which employs or on any working day during the preceding twelve months employed five or more persons is a establishment covered inter alia under the Act of 1953. The question, whether the said Banks are establishment within the meaning of Bombay Shops and Establishment Act, 1948 or not need not detain us since it is admitted case that the petitioners Banks are registered under the Bombay Shops and Establishment Act, 1948. The fact that the Petitioners are registered under the Bombay Shops and Establishment Act, 1948 leaves to manner of doubt that the petitioners Banks are establishment covered under the Act of 1953. The petitioners have sought to contend that the application has been made by them for cancellation of the registration under the Bombay Shops and Establishment Act, 1948. There is nothing on record that such applications made by the petitioners have been granted or that their registration under the Bombay Shops and Establishment Act, 1948 has been cancelled. In our opinion, the factum of petitioners registration under the Bombay Shops and Establishment Act, 1948 clinches the issue that the petitioners Banks are establishment under the Act of 1953. In this view of the matter the demand raised by the respondents against the petitioners Banks cannot be faulted. Incidentally ,we may note that while issuing rule, this Court did not grant any interim relief and on the prayer made by the Advocate for the petitioners, two weeks time was granted for payment of the due amount under the demand. Obviously, that payment must have been made by the petitioners.

7. For all these reasons, no case for invocation of writ jurisdiction is made out. Both the writ petitions are dismissed. Rule is discharged. No costs.

