

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5114 OF 2017

Central Bureau of Trustees, EPF Petitioner
Vs.
M/s Panvel Co-operative Urban Respondent
Bank Ltd.

Mr. Suresh Kumar for the Petitioner
Mr. S.C. Naidu a/w Mr. Manoj Gujar I/by Mr. T.R. Yadav for
Respondent.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 4th September, 2018,

P.C.:

1 Heard respective Counsel. Rule. Rule made returnable
forthwith with the consent of the parties.

2 The petitioner herein being aggrieved by the order dated
18th April 2016 passed by the Presiding Officer of the Employees
Provident Fund Appellate Tribunal, New Delhi, has approached this
Court by filing the present petition. The order of the Appellate
Tribunal arises out of the order passed by the Regional Provident

Fund Commissioner- II, Sub Regional Office, Vashi dated 27th February 2015.

3 The facts of the case in a nutshell are as follows :

The respondent herein happens to be the Panvel Co-operative Urban Bank Limited, which is registered under the Maharashtra Co-operative Societies Act, 1960 in the year 1987. That the Provident Fund Code was allotted to the respondent-Bank on 8th December 2010, pursuant to the application made by the bank on 7th December 2010. It was noticed that the bank had made deductions towards the Provident Fund and had deposited the same in a different account with the Raigad District Central Co-operative Bank. According to the Provident Fund, notice was issued to the respondent-Bank, as it had transpired that no contribution was made to the Provident Fund Commissionerate prior to allotment of the code and therefore a notice of damages towards belated payments was issued to the bank. It was stated that the Commissioner was required to recover a penalty by way of damages at the rate as specified in paragraph 32(A) of the E.P.F. Scheme, 1952. The

Commissioner had recorded the finding that although the deductions were made and that the establishment was having a provident fund established for their employees, they had not transferred the monies in the credit of the individual members to the fund immediately. That there is an element of deliberate delay in payment of the contributions and therefore the penalty of total amount of Rs.68,04,735/- was charged towards damages and interest on damages. The establishment was directed to pay the amount in the respective accounts within a period of 15 days from the date of receipt of the order dated 27th February 2015.

4 Being aggrieved by the said order, the Bank had approached the Employees Provident Fund Appellate Tribunal by filing ATA No. 342 (9) of 2015. The learned Tribunal has remanded the matter to the P.F. Commissioner by recording a finding that the bank was not liable to contribute provident fund prior to allotment of Code number to the bank and directed the Commissioner to consider the said contention of the respondent-bank.

5 Heard the respective counsel at length. Learned counsel for the petitioner has vehemently submitted that the observations of the learned Tribunal that when the respondent itself allotted provident fund Code to the appellant in the year 2010, the respondent is not empowered to assess damages from 1st March 2001 i.e. for pre-discovery period. According to the learned counsel for the petitioner, the same would cause loss not only to the petitioner but also to the interest of individual account-holders. Learned counsel for the respondent has drawn the attention of this Court to Section 71(2) of the Maharashtra Co-operative Societies Act, 1960, which reads as follows :

“71. Employees Provident Fund.—

(1) Any society may establish for its employees a provident fund, into which shall be paid the contributions made but its employees and by the society. Such provident fund shall not be used in the business of the society, nor shall it form part of the assets of the society; but shall be invested under the provisions of, the last preceding section, and shall be administered in the manner prescribed.

(2) Notwithstanding anything contained in the foregoing subsection, a provident fund established by a society to which the Employees' Provident Funds Act, 1952 is applicable, shall be governed by that Act.

6 It is submitted that in fact the respondent was exempted from contributing to the employees provident fund since the bank was registered under the Co-operative Societies Act. It is also submitted that there was a compliance of Section 70 of the Maharashtra Co-operative Societies Act. The respondent has filed a reply that the respondent-bank, since its inception till the date has not engaged more than 30 employees and the operations of the bank were carried on without the aid of power. It is submitted that the E.P.F. Act would not be applicable to an establishment registered under the Co-operative Societies act, which has employees less than 50 persons. It is submitted that by virtue of the notification issued by the Reserve Bank of India, the banking sector was brought under the class of establishment only on 1st March 2000. Although, banking was covered under the sector of establishment, the banks registered under the Co-operative Societies Act were not covered/included. However, Section 16(1)(a) of the Employees Provident Funds and Miscellaneous Provisions Act read as follows :

“16. Act not to apply to certain establishments:

(1) This Act shall not apply :

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or”

7 According to the learned counsel for the respondent, the respondent was not just a bank, which would be covered by the notification of 2000 but it was registered under the Co-operative Societies Act and therefore the exemption under Section 16(1)(a) would be applicable to the respondent-Society. The learned counsel for the petitioner has admitted that the said aspect has not been considered by the Tribunal. In view of this, the order remanding the matter back to the E.P.F. Commissioner for assessment of damages remained for reconsideration of the issue needs to be upheld. However, the directions that the matter is remanded to the respondent for assessment of damages for the period after allotment of P.F. Code to the appellant-establishment as per law needs to be quashed and set aside.

8 The P.F. Commissioner shall consider the aspect of the matter afresh, in view of the provisions of the Maharashtra Co-operative Societies Act in consonance with Section 16(1)(a) of the E.P.F. Act 1952 and without being influenced by the observations made by the Tribunal. The Commissioner shall also take into consideration the say of the respondent-Bank and also consider the various provisions of law and the circulars issued by the Central Government.

9 The Petition is partly allowed. Except the remand for re-consideration of the issue, the order is quashed and set aside. The rule is accordingly discharged.

10 No coercive action be taken against the respondent-Bank till the final adjudication by the authorities.

(Smt. Sadhana S. Jadhav, J)