

(2024) 12 SHI CK 0060

High Court Of Himachal Pradesh

Case No: LPA No. 41 Of 2024

Employment Provident Funds
Organization

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

Date of Decision: Dec. 20, 2024

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 7A, 7Q, 11(2), 14B
- Himachal Pradesh Land Revenue Act, 1954 - Section 76
- Himachal Pradesh General Sales Tax Act, 1968 - Section 16B
- Himachal Pradesh Cooperative Societies Act, 1968 - Section 72, 79(1), 87

Hon'ble Judges: Vivek Singh Thakur, J; Rakesh Kainthla, J

Bench: Division Bench

Advocate: Vivek Singh Attri, Seema Sharma, Rajiv Rai, Rakesh Thakur, Surinder Saklanir

Final Decision: Allowed

Judgement

Vivek Singh Thakur, J

1. These appeals have been proposed to be filed against order dated 19.6.2019 passed by learned Single Judge in CMP No. 6710 of 2018 in CWP No.

3 of 2006 with applications seeking leave to file these appeals.

2. For involvement of consideration of common question of law and facts arising out of the same order, these appeals alongwith applications are being

decided by this common judgment.

CMP Nos. 11126 of 2021 in LPA No. 36 of 2021 and 1949 of 2024 in LPA No. 41 of 2024

3. The applications bearing CMP No. 11126 of 2020 in LPA No. 36 of 2021 and CMP No. 1949 of 2024 in LPA No. 41 of 2024 have been filed

seeking leave to appeal (LPA) to assail order dated 19th June, 2019 passed by learned Single Judge in CMP No. 6710 of 2018 in CWP No. 3 of 2006

whereby learned Single Judge has decided that respondent/State/ Excise Department has preferential right to recover its dues from the amount

deposited in the Registry of this Court as the sale proceeds realized out of the sale of property/assets of the District Cooperative Marketing and

Consumer Federation Limited (The Hamirpur Jila Sehkari Vipnan and Upbhogta Sangh) (hereinafter referred to as Federation) represented through

Liquidator in these proceedings, as applicants in these applications were not party in CWP No. 3 of 2006.

4. Applicants in CMP No. 11126 of 2020 in LPA No. 36 of 2021 are/were employees of the Federation who are claiming their right to receive

payment for their service and retiral benefits out of the sale proceeds deposited in the Registry.

5. Applicant in CMP No. 1949 of 2024 in LPA No. 41 of 2024 is the Employeesâ€™™ Provident Fund Organization (EPF Organization). Claim of EPF

Organization is that it has first right to recover the amount of Provident Fund dues from the Federation in terms of provisions of Sections 7A, 1(2), 14-

B and 7-Q of the Employeesâ€™™ Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) for having first charge over the sale proceeds

of the assets of the Federation. It is the case of EPF Organization that it was not made party either in CWP No. 3 of 2006 or in CWP No. 200 of

2005 and it had no knowledge regarding pendency of these petitions. Further that none of the parties to the writ petitions had brought to the notice of

Court that EPF Organization was necessary party to the lis, despite having knowledge about first charge of Organization over the assets of the

Federation.

6. Grievance of applicants in CMP Nos. 11126 of 2020 and 1949 of 2024 is that impugned order dated 19.6.2019 has been passed on their back

without considering their right to recover service/retiral benefits from the Federation or its assets amounting to defeat their legal right to recover dues

from the Federation/sale proceeds of its assets.

7. It has been submitted that applicants being aggrieved persons have locus and entitlement to file and maintain the appeal against the impugned order.

8. It has been submitted that at the time of final adjudication of CWP No. 3 of 2006 it was observed by the Court that claim of State/Excise

Department or the Bank, having first charge to recover their dues from sale proceeds received on sale/auction of assets of Federation, was not

subject matter of the said Writ Petition and said issue was kept open. It has been submitted that claim of appellants in present appeals was not

adjudicated by the Writ Court.

9. In absence of appellants, the impugned order has been passed in application CMP No. 6710 of 2018 in CWP No. 3 of 2006 filed on behalf of

Federation in 2018, after 9 years of passing of judgment dated 29.09.2009 in CWP No. 3 of 2006, to release the sale proceeds in favour of Federation.

In the said application, on the basis of objections/reply filed on behalf of respondent/State/Excise Department, learned Single Judge has decided that

Excise Department has first charge on the sale proceeds. It has prejudiced the claim of appellants herein.

10. In aforesaid facts and circumstances, we are of considered opinion that appellants in both appeals are "aggrieved persons" having right and

entitlement to assail the impugned order by filing appeal. Accordingly, despite not a party in original Writ Petition No. 3 of 2006, they are entitled to file

appeals and accordingly allowing CMP Nos. 11126 of 2021 and 1949 of 2024, they are granted leave to file and maintain present appeals.

LPA No. 36 of 2021 and LPA No. 41 of 2024

11. The "Federation" went under liquidation on 4.7.1998. At that time 14 employees were working in the Federation. On 4.7.1998, the then

District Inspector, Office of Assistant Registrar Cooperative Societies, Hamirpur was appointed as liquidator of Federation under Section 79(1) of the

H.P. Co-operative Societies Act, 1968 (herein after referred as Societies Act). Thereafter different officers were appointed liquidators of the

Federation from time to time.

12. Respondent No. 4 is Collector-cum-Assistant Excise Taxation Commissioner, Hamirpur.

13. Respondent No. 5 is Kangra Central Co-operative Bank Limited Dharamshala (herein after referred to as "KCC Bank").

14. Respondent No. 5-KCC Bank, for repayment of recovery of loan, i.e. principal of ₹38,35,271/- and interest ₹47,43,554/- calculated up to

24.6.1996, had referred the matter to the Registrar Co-operative Society under Section 72 of the Act for realization of outstanding loan amount. In

furtherance thereto the Arbitrator had announced Award dated 6.3.1997, whereby Federation was directed to transfer the possession of building and

land to the KCC Bank to adjust principal amount, within 90 days of passing of Award, with direction to the Bank to find out the possibility to write off

the amount as per provisions of Co-operative Law by leaving the issue open to the Bank with respect to payment of interest of outstanding amount as

on 24.1.1996. It was further ordered by the Arbitrator that in case of non settlement, Bank may realize the whole principal amount alongwith up to

date interest on contractual rate as arrears of land revenue as provided under Section 87 of the Societies Act.

15. Award dated 6.3.1997 was not challenged for 7 years. Whereafter an appeal No. 37 of 2004 was filed before the Secretary Co-operative

Societies by the Federation, which was dismissed being belated. Thereafter, District Collector, Hamirpur referred the case of KCC Bank to Recovery

Tehsildar for recovery of outstanding amount of ₹85,78,625/-.

16. KCC Bank had filed CWP No. 1117 of 2005 in this High Court, which was decided on 24.11.2005 with following order:-

"Notice confined to respondents No. 1 to 3 at this stage. Learned Deputy Advocate General appears and waives service of notice on behalf of respondents No. 1 to 3.

Heard. No orders save and except that District Collector, Hamirpur-respondent No. 3 shall proceed to consider the application of the petitioner-Kangra Central

Co-operative Bank Limited, Dharamshala, dated 6 November, 2001 for the execution of the award made against respondent No. 6 Hamirpur Distt. Co-operative

Marketing and Consumer Federation Ltd. Though its Liquidator-cum-Assistant Registrar Cooperative Societies Hamipur and pass appropriate orders within four

weeks from today. The petitioner shall appear before the District Collector on 29 November, 2005. The writ petition is accordingly disposed off."

17. Respondent No. 4 Collector-cum-Assistant Taxation Commissioner, for recovery of amount of ₹17,74,029/- and interest amounting to ₹18,88,055/-

up to 30.6.2007, total amounting to ₹36,62,084/-under statutory provisions of HP General Sales Tax Act, 1968 (for short "GST Act") had issued

proclamation under Section 76 of the H.P. Land Revenue Act, 1954 (for short "Land Revenue Act") for auctioning some property of the

Federation. The said act was challenged by the Federation in CWP No. 200 of 2005, which was disposed of on 28.8.2009 with following order:-

"19. The respondent No. 4 has projected that Excise and Taxation Department has priority to recover sales tax arrears under Section 16-B of the Himachal

Pradesh General Sales Tax Act, 1968. The question involved in this writ petition is whether the property of the Federation is to be sold by an order of this Court

in the manner and on the grounds pleaded in the writ petition. It has already been noticed above that petitioner has failed to point any legal or statutory right so

as to seek direction against respondents from this Court for selling the property of the Federation. The priority of claim of Excise and Taxation Department on the

basis of sales tax arrears or of respondent No. 5 under the award is not under adjudication in this writ petition. The petitioner has miserably failed to make out a

case in support of his prayer made in the writ petition. Resultantly, the writ petition is dismissed with no order as to costs."

18. Second CWP No. 3 of 2006 preferred by the Federation was also dismissed with following order:-

"Learned counsel for the petitioner has stated that in view of sale of properties (b) and (c) mentioned in the order dated 21.5.2007 substantial properties have

been sold. He has submitted that the petitioner has filed CWP No.3 of 2006 and in that writ petition the remaining claim of the petitioner is to be decided. In view

of CWP No.3 of 2006, orders dated 21.5.2007, 15.5.2008 and other orders passed in CWP No.200 of 2005, for selling the properties, the learned counsel for the

petitioner does not press the petition. Accordingly, the writ petition is dismissed as not pressed. However, the prayer of learned counsel for the petitioner is

allowed to the extent that documents filed by the parties in CWP No.200 of 2005 shall also be read while deciding the CWP No.3 of 2006."

19. Sale proceed from the auction was deposited in the Registry of this Court, which is lying in the Registry of this Court.

20. In aforesaid background Federation filed an application CMP No. 6710 of 2018 in CWP No. 3 of 2006 for releasing the aforesaid sale proceed

alongwith interest in favour of Federation.

21. Notice of the application was served upon KCC Bank and Collector-cum-Assistant Excise and Taxation Commissioner.

22. Bank claimed its right for release of sale proceed for recovering the amount in execution of Award dated 6.3.1997 passed in its favour. Collector-

cum-Assistant Excise and Taxation Commissioner claimed its first charge over the amount by referring Section 16(B) of the GST Act.

23. Taking into consideration submissions of the Federation, Bank and Excise Department and referring the Supreme Court judgments, learned Single

Judge held that Excise Department has first charge over the amount and directed to adjust the sale proceed at the first instance at the claim of Excise

Department and thereafter left out amount, if any, towards outstanding amount of KCC Bank.

24. Appellants in LPA No. 36 of 2021 being employees of the Federation are claiming their first right and thus have assailed the aforesaid order.

25. EPF Organization claims that the aforesaid facts and order of learned Single Judge came to its knowledge in communications of the liquidator sent

to the EPF Organization in response to the notice issued by the EPF Organization for recovery of liability of ₹11,51,598/- in terms of Sections Section

7A, 11(2), 14B and 7Q of the EPF Act.

26. Chapter-X of the Societies Act deals with winding up and dissolution of co-operative societies. Where under Section 78 an order has been made

by the Registrar for winding up of the Society, Section 79 provides appointment of Liquidator. Section 80 describes power of the Liquidator, wherein

provisions of Section 80(2)(c) empowers the Liquidator, however subject to control of the Registrar, to investigate the claims against the Society and

to decide question of priority arising between the claimants subject to the provisions of the Act.

27. In CWP Nos. 200 of 2005 and 3 of 2006, there is no adjudication with respect to priority to recover the amount regarding respective claims of first

charge of parties or appellants herein. Rather in CWP No. 3 of 2006, it has been categorically observed that priority of claim of Excise and Taxation

Department on the basis of Sales Tax arrears or of KCC Bank under the Award was not under adjudication in that petition.

28. The property of the Federation was sold in a process of winding up by the Liquidator. Sale proceed has been deposited in the Court. As provided under Section 80(2)(c) of the Societies Act, all claims against the Society in the process of winding up were and are to be considered, settled and decided by the Liquidator, however subject to control of the Registrar.

29. The priority of claim was not subject matter of the main petition (CWP No. 3 of 2006), therefore, such claim could not have been adjudicated in the said petition much less in application filed for release by the Liquidator, that too after dismissal of the Writ Petition with observation that such issue was not under adjudication in the said Writ Petition.

30. In the aforesaid facts and circumstances, we are of the considered opinion that impugned order dated 19.6.2019 passed in CMP No. 6710 of 2018 in CWP No. 3 of 2006, deciding the priority of the charge in favour of Excise Department or any other party is not sustainable.

31. Accordingly, impugned order dated 19.6.2019 is set aside and application filed by the Liquidator for release of amount in favour of Federation is allowed by directing the Registry to release the same in the Bank Account of the Federation under Liquidation.

32. Appellants/workers/Employees, EPF Organization, Excise Department and KCC Bank shall prefer their claims against the Society before the Liquidator as provided under the Societies Act on or before 15.1.2025. Thereafter Liquidator shall adjudicate and decide the claims of all parties alongwith other liabilities against the Federation in accordance with law as applicable. Prior to that Liquidator shall not release the amount in favour of either party or any third party.

33. The Liquidator shall invite claims against the society by issuing publication in daily newspaper on or before 4th January, 2025 by giving reasonable time in accordance with law for preferring claims against Federation and thereafter within one month he shall decide and settle the claims of such applicants by passing a reasoned and speaking order. However, amount shall be released on expiry of 90 days after passing of such order.

Appeals are allowed and disposed of in aforesaid terms, alongwith pending application(s).