

(2016) 07 KL CK 0042

High Court Of Kerala

Case No: Writ Petition (C) Nos. 15194 of 2013-Y, 16856 of 2015-F, 26605 of 2015-A & 9613
of 2016-B

Kerala State Cashew
Development
Corporation Ltd.

APPELLANT

Vs

Regional Provident
Fund Commissioner

RESPONDENT

Date of Decision: July 18, 2016

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 7A,
Section 7Q

Citation: (2016) 3 CLR 1106 : (2017) 152 FLR 702 : (2017) LabLR 141

Hon'ble Judges: Mr. K. Vinod Chandran, J.

Bench: Single Bench

Advocate: Sri. C. Unnikrishnan (Kollam), Standing Counsel, for the Petitioner; Sri. V.V.
Suresh, Standing Counsel, for the Respondents No. 1 to 5

Final Decision: Allowed

Judgement

K. Vinod Chandran, J. - W.P.(C) No. 15194 of 2013 is the first case, the grievance in which, gave rise to the default; which is the cause of action of the other writ petitions. The Corporation, the petitioner herein, was assessed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [for brevity "EPF Act"], including the trainees who were engaged by them for a definite period. The period is not relevant. Suffice it to notice that the assessment was made; and pending consideration in the various forums provided under the EPF Act itself, recovery was effected of Rs.53,70,634.13 [Rupees fifty three lakhs, seventy thousand, six hundred and thirty four and paise thirteen only].

2. It is an admitted fact that the said amounts were recovered with respect to the alleged employees, the coverage of whom was disputed by the petitioner-Corporation, since they were said to be mere trainees not liable to be covered under the Act. The challenge made by the petitioner-Corporation was upheld by the Employees' Provident Funds Appellate Tribunal, as is seen from Exhibit P1 and similar orders passed with respect to the dues of the various units existing all over Kerala. The recovery had been effected from the Head Office of the petitioner-Corporation at Kollam. After Exhibit P1 and similar orders, the petitioner was before the 5th respondent by Exhibit P2, a representation for the return of the amounts recovered with interest. But, the same was not done, since the Provident Fund Organisation had taken up the matter before this Court. The challenge made by the Provident Fund Commissioner was declined by Exhibit P3 by a learned Single Judge and the refusal to exercise discretion was not interfered with by a Division Bench, as is evidenced by Exhibit P4. The issue has become final. Admittedly an amount of Rs. 53,70,634.13 is due to the petitioner-Corporation by way of the recoveries effected in pursuance of an assessment, which has been set aside by Exhibit P1 and affirmed by this Court.

3. The other three writ petitions are with respect to assessment orders made against various units in different parts of the State. W.P.(C) No.16856 of 2015 challenge an assessment made for the period April, 2014 to September, 2014 and W.P.(C) No.26605 of 2015 challenge the assessment made for the period October, 2014 to May, 2015 ; both with respect to the assessments of the competent officer at Kannur. W.P.(C) No.9613 of 2016 is with respect to the interest and damages levied by the competent authority having jurisdiction over Irinjalakuda with respect to a delay made in remittance of contribution.

4. The contention of the petitioner-Corporation is that if the entire arrears now due in Kannur and Irinjalakuda along with the interest leviable under Section 7Q is adjusted, even then there would be balance payable to the petitioner-Corporation. The refusal to make the payments was also not on account of any laches on the part of the petitioner and was only due to the financial constraints; accentuated by the fact that the Employees' Provident Fund Organisation had to return an amount of more than Rs.53 lakhs to the petitioner-Corporation.

5. In the above circumstances, it is only proper that the petitioner be granted the amounts due with 12% interest, since the recovery is said to be against the provisions of the EPF Act, which levies an interest @12%. The Regional Provident Fund Commissioners or the Authorised Officer, who are the respondents in W.P.(C) Nos.16856 of 2015, 26605 of 2015 and 9613 of 2016, shall compute the amounts due as on 30.07.2016 along with the levy of Section 7Q interest and forward such computation to the Regional Provident Fund Commissioner, Kollam, the 1st respondent in W.P.(C) No.15194 of 2013. It is made clear that no damages need be levied with respect to the demands made, covered by the above writ petitions, since

the damages in the nature of a deterrent measure, need not be levied against the petitioner in the peculiar facts arising in the case. The 1st respondent in W.P.(C) No.15194 of 2013 shall, on receipt of such computation from the various Regional Provident Fund Commissioners, transfer the amount demanded to the said Regional Provident Fund Commissioners within two weeks from the date of receipt of such computation, including Section 7Q interest for the period after 30.07.2016 till payment. Any arrears with respect to the factories at Kollam shall also be adjusted from the amounts with due notice to the petitioner-Corporation, which exercise shall also be completed within a period of one month from the date of receipt of a certified copy of this judgment. After adjusting the said amounts, if any amount remains, from the amount of Rs.53,70,634.13 and 12% interest calculated from the date of respective recoveries made, the same shall also be paid to the petitioner-Corporation. The entire exercise shall be completed within the period specified herein above. The recovery orders impugned in W.P.(C) Nos.16856 of 2015, 26605 of 2015 and 9613 of 2016 shall stand set aside.

6. All the above writ petitions are allowed with the above directions. No costs.