

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

WRIT PETITION NO.5767 OF 1997

The Ratnakar Bank Ltd., Kolhapur .. Petitioners
V/s.

The Regional Provident Fund
Commissioner, Kolhapur & Ors. .. Respondents

Mr. Vaibhav Gaikwad i/b. Mr. A.M. Kulkarni
for the Petitioners.

Mr. Suresh Kumar for Respondent No.1.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 15TH JULY, 2010.

ORAL JUDGMENT:

1. The question which arises in this Writ Petition is the applicability of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, (for short "the Act"), to a Multi State Co-operative Bank.

2. The few facts which are necessary to appreciate the controversy between the parties are as follows.

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3. The petitioner-Bank, which is a Multi State Co-operative Bank, sought a clarification from the respondents as to whether their establishments were covered by the provisions of the aforesaid Act. The Regional Provident Fund Commissioner, Goa, informed the petitioner-Bank that their Bank was not covered by the Act. However, a show cause notice was issued to the petitioner-Bank on 23rd August, 1995 by the respondent No.1 calling upon it to show cause as to why damages should not be levied for non payment of the contribution of provident fund. The petitioner-Bank immediately replied to that notice contending that since it was a Multi State Co-operative Bank, it was not covered by the provisions of the aforesaid Act and, therefore, no contributions had been paid by the petitioner-Bank. An order was passed on 11th October, 1995 by respondent No.1 declaring that the petitioner-Bank was guilty of delayed payments of provident fund contributions. Therefore, a demand of Rs.78,015/- was made on the petitioner-Bank for the provident fund contributions payable from November, 1990 to

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December, 1991 together with damages and other dues payable u/s. 14B of the Act. This order was communicated to the petitioner-Bank only on 8th January, 1997. As the amount was not paid, the demand notices were issued on 20th February, 1997 and 16th May, 1997 to the petitioner-Bank directing it to pay the aforesaid amount. The petitioner-Bank was informed that in case of default, steps would be taken to realize the amount in accordance with the provisions of Section 8B to Section 8G of the Act. Hence, the present Writ Petition.

4. Mr. Gaikwad, the learned Advocate appearing for the petitioner-Bank, has taken me through the aforesaid notices and the petitioner-Bank's reply to the said notices as well as the demands made off the petitioner-Bank for the damages. He submits that the Division Bench of this Court has already taken the view that the provisions of the Employees Provident Fund Act are not applicable to the Multi State Co-operative Banks. He fortifies his submission by relying on a judgment in the case of

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The United Western Bank Ltd. vs. Central Provident Fund Commissioner and Ors., reported in 1984 LAB. I. C. 1504. Mr. Gaikwad then points out that after the judgment of the Division Bench in the aforesaid case, a notification was issued on 25th February, 2000, under Section 5 read with Section 7(1) of the Act. By this notification, the Employees' Provident Fund Scheme, 1952 was amended. The words "Banks doing business in one State or Union Territory and having no departments or branches outside that State or Union Territory" found in Para 1(3)(b) Item III were deleted. They were substituted by the words "Banks other than the Nationalized Banks established under any Central or State Act". The notification was challenged in Civil Writ Petition No.314 of 2001 by a Bank on the ground that an arbitrary distinction was drawn between the Nationalized Banks and other Banks and therefore the amendment violated Articles 14 and 21 of the Constitution of India. By the order dated 13th August, 2009, the Division Bench of this Court in the aforesaid Writ Petition in the case of The

United Western Bank Ltd. and Anr. V/s. The Secretary, Government of India and Ors. has quashed the said notification dated 25th February, 2000 being violative of Article 21 of the Constitution of India. The Division Bench of this Court followed the judgments of three different High Courts while drawing this conclusion. The Division Bench observed that there was no reason to take a different view. Mr. Gaikwad therefore submits that the Writ Petition must be allowed and the impugned orders should be set aside.

5. Mr. Suresh Kumar, the learned Advocate appearing for respondent No.1, fairly concedes that the judgment in the case of The United Western Bank Ltd. vs. Central Provident Fund Commissioner and Ors. (supra) covers the issue in the present Writ Petition. The Division Bench has held that the notification of 1965 indicates that the language in the notification was similar and even if one condition ceases to exist, then the applicability of the Act also must cease. Once the petitioner-

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Bank became a Multi State Co-operative Bank, the Act ceased to apply to it and therefore all orders passed in exercise of powers under the Act must be quashed.

6. Rule made absolute in terms of prayer clauses (a) to (f).

7. No orders as to costs.