

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 11TH FEBRUARY 2008 / 22ND MAGHA 1929

RP.No. 233 of 2007()

(AGAINST JUDGEMNT IN M.F.A. NO.1286 OF 1995)

REVIEW PETITIONER/APPELLANT

**DAIRY MANAGER, KOTTAYAM DAIRY,
ERNAKULAM REGL.CO.OP.MILK PRODUCER'S
UNION LTD., VADAVATHUR, KOTTAYAM-10.**

BY ADV. SRI.K.ANAND (A.201)

RESPONDENTS - RESPONDENTS:

- 1. REGIONAL DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION,
PANCHADEEP BHAVAN, NORTH SWARAJ ROUND,
THRISSUR-20.**
- 2. THE KOTTAYAM DISTRICT CO-OP.MILK
SUPPLIERS UNION, VADAVATHUR,
KOTTAYAM REP. BY ITS SECRETARY.**
- 3. THE ASSISTANT DIRECTOR,
DAIRY DEVELOPMENT, KOTTAYAM.**

**BY ADVOCATE SHRI T.P.M. IBRAHIM KHAN R1
BY ADVOCATE SHRI V.G. ARUN R2
BY SR. GOVERNMENT PLEADER SHRI BASANT BALAJI R3**

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 11/02/2008, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

K. PADMANABHAN NAIR ,J.

C.M.Appln.No.353 of 2007

in

R.P.No.233 of 2007

Dated, this the 11th day of February, 2008

ORDER

This is a petition to condone delay of 1890 days in filing the Review Petition. Review Petition is filed by the Dairy Manager, Kottayam Dairy to review a final judgment in M.F.A. to the effect that the appellant is liable to pay the contribution of the employees of Kottayam District Co-operative Milk Suppliers Union.

2. Kottayam District Co-operative Milk Suppliers Union (Union, for short) was having a dairy plant. Union was taken over by the Dairy Development Department which was subsequently taken over by the review petitioner (MILMA). Subsequent to the taking over Employees' State Insurance Corporation demanded contribution from the Dairy Manager, Kottayam Dairy (Dairy, for short) on the ground that the entire assets of Union were taken over by Dairy. The stand taken by the review petitioner was that the contribution due to the period prior to the taking over should be paid by the Union. ESI Corporation negated that contention on the ground that there was a complete taking over and hence

the employer who takes over the establishment was liable to pay the entire contribution which was due from the erstwhile employer also. That decision was confirmed by this Court in M.F.A.No.1286/1995. Now the stand taken by the Union is that what was taken over by the MILMA was only the milk plant and not other assets and they always existed as such and were functioning also. The Registrar passed an order recognising and accepting their stand that they exist in all purposes. Challenging that decision MILMA filed O.P. No.11649/2001 before this Court which was dismissed. Challenging that judgment MILMA filed W.A.No.2057/2005. During the pendency of Writ Appeal Government passed an order cancelling a grant of Rs.40 lakhs which was granted for the purpose of revival. On account of the order passed by the Government MILMA submitted before the Division Bench that their grievance was redressed and hence the Writ Appeal need not be considered on merits. On 25.1.2008 the Division Bench disposed of the Writ Appeal as having become infructuous. In the meanwhile, Union filed W.P.(C) No.19702/2007 before this Court challenging the order passed by the Government cancelling the grant. That Writ Petition is pending. According to the Union the grant was sanctioned not for the revival of the plant taken over by Dairy but for the establishment of new plant. It is evidently clear that the dispute as to whether the entire

assets of Kottayam District Co-operative Milk Suppliers Union were taken over by MILMA is very much alive. Since both are co-operative union structures, I am of the view that it is only just and proper that the Review Petition is to be heard on merits. The explanation offered by the review petitioner for condoning the delay of 1890 days in filing the Review Petition is sufficient. So, in spite of the objections raised by the respondents, especially Kottayam District Co-operative Milk Suppliers Union, the delay in filing the Review Petition is condoned.

**K. PADMANABHAN NAIR,
JUDGE.**

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