

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&**

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WA.No. 1474 of 2015 () IN WP(C).17481/2015

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AGAINST THE JUDGMENT IN WP(C) 17481/2015 of HIGH COURT OF KERALA DATED
11-06-2015**

APPELLANT(S)/PETITIONER:

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POPULAR VEHICLES & SERVICE PVT LTD
KUTTUKKARAN CENTRE, MAMANGALAM, KOCHI - 682 025
REPRESENTED BY ITS MANAGING DIRECTOR
MR. JOHN K. PAUL.**

**BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS**

RESPONDENT(S)/RESPONDENTS:

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1. REGIONAL PROVIDENT FUND COMMISSIONER
EMPLOYEES PROVIDENT FUND ORGANISATION
SUB REGIONAL OFFICE, 36/685 A, BHAVISHYANIDHI BHAVAN
P.B. NO. 1985, KALOOR, KOCHI - 682 017.**

**2. THE RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND ORGANISATION
SUB REGIONAL OFFICE, 36/685A, BHAVISHYANIDHI BHAVAN
P.B.NO. 1985, KALOOR, KOCHI - 682 017.**

**R. BY ADV. DR.S.GOPAKUMARAN NAIR (SR.)
R. BY ADV. SRI.S.PRASANTH, SC, EMPLOYEES PROVIDENT FUND
ORGANISATION
R BY SRI.S.PRASANTH, SC, EMPLOYEES PROVIDENT FUND ORGANISATION**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22-07-2015,
ALONG WITH WPC. 17481/2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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**P.R. RAMACHANDRA MENON
&
BABU MATHEW P.JOSEPH, JJ**

W.A.No.1474 of 2015

Dated this the 22nd day of July, 2015

JUDGMENT

P.R.RAMACHANDRA MENON.J.

The writ petition has been filed by the petitioner with the following prayers:-

- “i) issue writ of certiorari or any other appropriate writ, order or direction, quashing Ext.P5 notice issued for recovery of the amount covered by Ext.P1 attaching the bank account of the petitioner;
- ii) direct respondents not to recover the amount covered by Ext.P1 by attachment of bank account or any other mode until the appeal i.e. ATA No.337 (7) of 2015 is decided;
- iii) declare that action of respondents taking steps for recovery of the amount covered by Ext.P1 order by issuing Ext.P5 before expiry of the period prescribed for filing the appeal is illegal;

AND

- iv) to grant such other and incidental reliefs as this Hon'ble Court may deem just and necessary on the facts and circumstances of this case.”

2. When the matter came for consideration before the learned single Judge on 11.06.2015, an order was passed

granting interim stay, subject to satisfaction of a sum of Rs.35 lakhs. The said order is sought to be challenged by filing the appeal.

3. The main contention is that, since no Tribunal has been constituted at Bangalore and since the matters coming within the jurisdiction of the proposed Bangalore Bench are not being taken up in the Principal Bench of the Tribunal at Delhi, the position was taken note of by the Apex Court and a detailed order was passed enabling the aggrieved parties to file appeal before the Delhi Bench and ordering the coercive proceedings if at all, to be kept in abeyance till the Bench is constituted at Bangalore. Ext.P5 notice issued by the Asst. PF Commissioner and Recovery Officer is contrary to the above direction given by the Apex Court and hence is sought to be challenged in the writ petition.

4. Taking note of the sequence of events, when the writ appeal came up for consideration before this Court on 10.07.2015, the following order was passed:

“ Challenge is against the condition imposed by the learned single Judge as per Interim Order dated 11.6.2015 in W.P.(C). No.17481/2015, whereby the petitioner/appellant has been required to satisfy a sum of Rs.35 lakhs, virtually 50% of the disputed liability within one month.

2. Case of the appellant/writ petitioner is that, being aggrieved of Ext.P1 order of assessment, they have already moved the appellate Tribunal at New Delhi by way of Ext.P2, wherein Ext.P3 order was passed

admitting the same on 12.5.2015 and causing the matter to be transferred to the bench at Bangalore as and when it starts functioning. Reference is also made to the course to be followed, as directed by the Apex Court in W.P. (C).No.999/2014, vide order dated 3.3.2015. A copy of the order passed by the Supreme Court has been produced as Ext.P4.

3. On going through the contents of the above order, this Court finds that, in view of the on-going steps to constitute a Tribunal at Bangalore, and the necessity to transfer all such matters to the concerned bench and because of the delay involved in causing the matters to be considered for granting interim relief to the aggrieved parties to the appropriate extent, the Apex Court observed as follows:

“As far as the second aspect is concerned, as it is conceded to by the learned Solicitor General that the appeals can be presented at Delhi till the Tribunal is constituted at Bangalore, we further clarify that till the Tribunal is constituted, the appeals that ought to have been filed at Bangalore and are filed in Delhi, no coercive steps shall be taken in respect of the cases which are required to be preferred before the Southern Tribunal to be situated at Bangalore, for there is no authority who can take up the matter for grant of any interim relief.”

4. From the above, it is very clear that a blanket order of stay with regard to the coercive proceedings has been granted by the Apex Court in respect of all appeals which are permitted to be filed in Delhi and to be transferred to the proposed Bench of the Tribunal at Bangalore. There is no case that the Tribunal has been constituted at Bangalore. Similarly, there is no case that the

aforesaid order passed by the Apex Court vide Ext.P4 has been varied or reviewed in any manner. It is without any regard to the said order, that Ext.P5 demand notice dated 29.5.2015 has been issued by the concerned Assistant Provident Fund Commissioner and Recovery Officer to the petitioner/appellant; which has been sought to be challenged by filing the writ petition.

5. After hearing both sides, we are of the prima facie view that Ext.P5 notice issued by the Employees' Provident Fund Organisation is in total disregard to the rule of law; paying only scant regards to the verdict passed by the Apex Court which may involve an offence of contempt as well.

6. The learned Standing Counsel for respondents 1 and 2 seeks time to get instructions and also as to the further course of action, if it were a mistake. Post next week along with W.P.(C).17481/15. No further steps shall be pursued pursuant to Ext.P5”

7. Today, the learned Standing Counsel appearing for the respondents submits with reference to the statement dated 18.07.2015 filed before this Court that, filing of the statutory appeal by the writ petitioner before the Tribunal at Delhi, was not known to the concerned authority who happened to issue Ext.P5. It is also added that, no further coercive proceedings are intended to be proceeded for the time being and that Ext.P5 will be kept in abeyance till further orders are passed in the proceedings stated as preferred before the Tribunal.

In the above circumstance, this Court finds that nothing

further requires to be considered in this writ petition as well as in the appeal. The statement and submissions are recorded. Both the proceedings are closed accordingly.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

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PA TO JUDGE

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