IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 1386 of 2014 (W)

PETITIONER :

THE COMMANDANT AND MANAGER,
MALABAR SPECIAL POLICE ENGLISH MEDIUM HIGH SCHOOL
MALAPPURAM.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS :
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1. **THE ASSISTANT PROVIDENT FUND COMMISSIONER,**
   SUB REGIONAL OFFICE, ERANHIPALAM P.O., KOZHIKODE.

2. **THE ENFORCEMENT OFFICER,**
   EMPLOYEES PROVIDENT FUND ORGANISATION,
   SUB REGIONAL OFFICE, ERANHIPALAM P.O., KOZHIKODE.

R1 & R2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC, P.F.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 1386 of 2014 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : **TRUE COPY OF THE CHALLAN OF THE MONTH OF NOVEMBER,2013.**

EXHIBIT P2 : **TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT DATED 01.04.2013.**

EXHIBIT P3 : **TRUE COPY OF THE REPLY GIVEN BY THE PETITIONER.**

EXHIBIT P4 : **TRUE COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT DATED 11.09.2013.**

EXHIBIT P5 : **TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT.**

EXHIBIT P6 : **TRUE COPY OF THE REPRESENTATION DATED 04.11.2013**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

K. Vinod Chandran, J.

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W.P.(C)No.1386 of 2014

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Dated this the 2nd day of March, 2015.

JUDGMENT

1. Petitioner is aggrieved with Ext.P5 order of assessment of the Assistant Provident Fund Commissioner of the respondent Organisation under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, the "Act"). The said assessment order was passed, on the premise that, with respect to certain employees, contributions were not remitted under the Act. The period covered under Ext.P5 order is 6/2011 to 2/2013. The order is dated 28.10.2013 and admittedly, no appeal was filed. However, within the period of appeal, the above writ petition was filed, raising a contention, which goes to the root of the matter.
2. The compelling argument of the learned counsel for the petitioner is that, the petitioner, being an establishment, covered under the Act and regularly assessed under the Act, no proceedings under Section

7A; which would lie only in a case where dispute arises regarding the applicability of the Act. In the present case, there is no such issue, since, the petitioner has been regularly assessed from 1919. Even for the period under Ext.P5, the petitioner has been regularly assessed and the petitioner is paying the contributions with respect to its employees. The provision, under which, the authority could have proceeded, is Section 7C, where there could be determination of an escaped amount. The contention in the above writ petition, being addressed on the question of jurisdiction under Section 7A, to proceed against an already covered establishment, this Court is of the opinion that, powers under Article 226 could be invoked. Ext.P5 order would stand set aside, however, reserving the liberty of the respondent Organization to proceed under Section 7C, subject to any limitation provided under the Act.

Writ petition is allowed.

K. Vinod Chandran, Judge.

sl.