

In the High Court of Judicature at Madras

Dated: 18.08.2016

Coram:

The Hon'ble Mr.Justice N.KIRUBAKARAN

W.P.No.28978 of 2016 and
W.M.P. Nos.25062 to 25064 of 2016

Indian Oil Corporation Limited
Tondiarpet Terminal,
Tondiarpet,
Chennai - 600 081
rep. By its Chief Terminal Manager ...Petitioner

Vs.

1. The Regional Provident Fund Commissioner
Employees Provident Fund Organisation
Sub-Accounts Office, Ambattur,
R.40A 1, TNHB Shopping cum-Office Complex,
Mogappair Road, Mogappair (East)
Chennai - 600 037
2. The Asst. Provident Fund Commissioner,
Employees Provident Fund Organisation
Sub-Accounts Office, Ambattur,
R.40A 1, TNHB Shopping cum-Office Complex,
Mogappair Road, Mogappair (East)
Chennai - 600 037
3. The Deputy General Manager,
State Bank of India, Commercial Branch
Accounts, 232, NSC Bose Road,
Chennai - 600 001
4. M/s J.B.Enterprises,
No.69, 1st Floor, 3rd Cross street,
M.R.Nagar, Kodungaiyur,
Chennai - 600 118 . ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari calling for the records of the 2nd respondent in proceedings No.TN/SRO/AMB./51228/CC-II/Area-10/2016 dated 10.05.2016 and consequential order of the 2nd respondent dated 04.07.2016 in proceedings No.TN/AMB/51228 under Section 8F of the EPF Act, and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.Anand Gopalan for
M/s T.S.Gopalan and Co.,

For Respondents: Mr.K.Gunasekar
1 & 2 Special Central Government Standing
counsel

O R D E R

The Writ Petition is relating to Tondairpet Terminal of the petitioner's oil company, wherein it stores petroleum oil products for distribution and registered under Factories Act and also for engaging of contract labour under the Contract Labour (Regulation and Abolition Act).

2. The petitioner, engaged the 4th respondent, contractor, who is having its own Provident fund and ESI code numbers. The 4th respondent was engaged between September 2007 and July 2010 and the 4th respondent has submitted bank challans as proof of remittance of provident fund contribution for the contract labour engaged at the petitioner's premises during the period September 2007 to July 2010.

3. When things stand so, a communication dated 11.12.2014 was received from the 1st respondent stating that the 4th respondent fail to remit the contribution to the tune of Rs.8,37,329/- for a period of March, 2008 to February 2013 and another communication by the 2nd respondent on 27.03.2015. A reply dated 17.04.2015 was given to the 1st respondent stating that the 4th respondent was engaged as a contractor for the period from September 2007 to July 2010 only and the provident fund contribution was Rs.4,19,496/-. The challan evidencing payment by the 4th respondent was also submitted along with the said letter.

4. However, on 12.08.2016, the 3rd respondent-bank issued a communication stating that Rs.8,93,443/- has been put on hold pursuant to the order of the 2nd respondent. Thereafter only the petitioner came to know that the 2nd respondent passed an order under Section 7A of the EPF and MP Act, 1952 (hereinafter referred to as: Act) on 10.08.2016, regarding which, the petitioner does not have any knowledge after July, 2010.

5. The said order passed under Section 7A of the Act, consequential communication from the 2nd respondent and the impugned order dated 04.07.2016 issued by the 2nd respondent are challenged before this Court.

6. Mr. Anand Gopalan, learned counsel appearing for the petitioner would submit that the petitioner is an exempted industry. The 4th respondent is having separate ESI and PF code numbers and therefore, the liability cannot slap down on the petitioner and if at all, it has to be recovered from the liability of the 4th respondent and the petitioner's bank account cannot be proceeded with. He relied upon the Judgment of this Court in Brakes India Limited (Brakes Division) Sholingur Vs. Employees Provident Fund Organisation reported in 2015 (2) LLN 233 Madras, another unreported Judgment in Writ Petition (MD) No.3469 of 2009 dated 07.09.2011, in the matter of The Madurai District Central Co-operative Bank Limited Vs. EPF Organisation and Another and the Judgment of the Bombay High Court in TATA Engineering and Locomotive Company Limited and Union of India and others in W.P.No.631 of 1984 dated 10.09.1990, to assist the point that the contractor, who is registered with the department having independent Provident Fund code number has to be treated as independent employer and not the contractor and EPF amount cannot be recovered from the principal employer.

7. However, Mr. Gunasekar, learned standing counsel for Employees Provident Fund Organisation would submit that the petitioner did not take part in the proceedings issued under Section 7A of the Act before the 2nd respondent and therefore, all the facts have not been properly placed before the 2nd respondent.

8. It is seen from the records especially the EPF commissioner's Communication dated 10.05.2016, that the 4th respondent contractor's Establishment code number has been given as TNAMB0051228000, which is an independent code number and the same is registered with the EPF authorities, hence, the respondents 1 and 2 cannot proceed against the petitioner. The said point is also supported by the aforesaid judgment referred by learned counsel for the petitioner especially, 2015 2 LLN 233 (Brakes India Limited (Brakes Division) Sholingur Vs. Employees Provident Fund Organisation reported in 2015 (2) LLN 233 Madras). Therefore, there is no independent liability on the part of the petitioner, and if at all, it can be only against the 4th respondent.

9. Taking into consideration that the petitioner did not participate in the proceedings issued under Section 7A of the Act before the 2nd respondent, the orders dated 10.05.2016 and 04.07.2016 are set aside and the matter is remanded to the 2nd respondent. The 2nd respondent is directed to issue fresh notice to the petitioner as well as to the 4th respondent and decide the matter as per law. It is open to the petitioner to put forth all these contentions and all the documents before the 2nd

respondent. The 2nd respondent is directed to pass orders after hearing both the petitioner and 4th respondent within a period of six weeks from the date of receipt of copy of this order. It is needless to state that the 1st and 2nd respondents shall forthwith take steps to inform the 3rd respondent about the garnishee order already set aside by this Court, since the matter is remanded, notice to the 3rd and 4th respondents is dispensed with.

With the above observation, this Writ Petition is disposed of. Consequently connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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No.69, 1st Floor, 3rd Cross street,
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+1cc to K.Gunasekar, Advocate Sr.47504
+1cc to T.S.Gopalan & Co, Advocate Sr.47176

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