

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25662 of 2017
and
W.M.P.No.27063 of 2017

The Chief Manager,
UCO Bank,
10 BTM Sarani,
(Brabourne Road),
Kolkata-700 001.

...Petitioner

vs

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office, Salem,
S.J. Plaza, Swarnapuri,
Salem-636 004.

...Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the respondent pertaining to the order dated 06.07.2017 and quash the same and also the proceedings pending against the Bank before him and consequently forbear the respondent proceeding any further with any enquiry, pursuant to the order dated 06.07.2017.

For Petitioner : Mr. Srinath Sridevan

O R D E R

The Show cause notice dated 06.07.2017 issued by the respondent is under challenge in this writ petition.

2. The show cause notice can be challenged in a writ petition only on exceptional circumstances and no writ can be

entertained in a routine manner against a show cause notice. A show cause notice can be challenged only if the same is issued by an incompetent authority having no jurisdiction or allegations of malafides are raised or the show cause notice issued is in violation of statutory rules. Even, in case of raising allegation of malafide the authority against whom such allegation is raised has to be impleaded as a party in the writ proceedings in his personal capacity . In the absence of any one of these legal grounds, no writ can be entertained against the show cause notice. Judicial review against show cause notice is certainly limited and the Court must be conscious before exercising the power of judicial review under Article 226 of the constitution of India.

3. In the case on hand, the learned counsel appearing for the writ petitioner made a complaint that the respondent ought to have furnished a copy of the complaint, they have received it on the date on which the impugned order has been passed. This apart, the learned counsel for the writ petitioner is of the opinion that the issue was already decided by the High Court of Karnataka and the principles laid down in that case also to be considered by the respondent. Further, the respondents have predetermined the issue and same is available in the earlier communication sent by the respondent.

4. This Court is of the view that the writ petitioner is entitled to get the copy of the complaint and other relevant documents relied on by the respondent and if an application is made in this regard to the respondents, the respondents are bound to consider and furnish the copy of the complaint and other related documents enabling the writ petitioner to submit explanations/objections in this regard.

5. However, this Court is of the view that the respondent who is the competent authority under the Act, shall be allowed to exercise the power under the Act, and in accordance with law. Intermittent intervention in such matters are not preferable as authority competent in this regard, shall be allowed to complete the process in accordance with law. It is for the competent authorities to consider the materials available on record and by providing opportunity to the writ petitioner and take a decision on merits and in accordance with.

6. In this view of the matter, the respondents are directed to furnish a copy of the complaint to the writ petitioner, which they have relied on or any other materials, the same also to be furnished, enabling the petitioner to submit explanations/objections explaining their position and other legal aspects, and on receipt of such an explanations/objections, the respondent may consider the same and take a decision in accordance with law. This being the factum to be considered, no further consideration is required in respect of the merits of the matter.

7. Accordingly, the writ petition stands dismissed. Consequently, connected Miscellaneous Petition is also dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rpl

To

Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office, Salem,
S.J. Plaza, Swarnapuri,
Salem-636 004.

सत्यमेव जयते

W.P.No.25662 of 2017
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AR IV (CO)
PSI 28/10/2017

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