

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.6874 to 6877 of 2018
and
WMP Nos.8518 to 8521 of 2018

K.Pandurangan
Transport Contractor cum Proprietor
P.R.Transport
S.S.Sahib Street, Amaithakarai
Chennai-600 021.

..Petitioner
(in WP.No.6874 of 2018)

T.E.Murali
Sri Sapthagiri Transport
Transport Contractor cum Proprietor
No.42, Akshaya Colony, 2nd Street,
Mugapair, Chennai-600 050.

..Petitioner
(in WP.No.6875 of 2018)

M.Karpagam
Sri Karpagambal Transport
Transport Contractor cum Proprietor
No.30/50, Vanniampathi Street,
R.A.Puram, Chennai-600 004.

..Petitioner
(in WP.No.6876 of 2018)

M.Baskar
Sree Gokul Transport
Former Transport Contractor cum Proprietor
No.5, Basement, Doshi Garden
Vadapalani, Chennai-600 026.

..Petitioner
(in WP.No.6877 of 2018)

Vs.

1. The Managing Director
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Tower II, 4th Floor
Gandhi-Irwin Bridge Road,
Egmore, Chennai-600 008.

.. 1st Respondent
(in WP.Nos. 6874 to 6877 of 2018)

2. The Senior Regional Manager
Chennai Region
Anna Salai, Chennai-600 002.

3. The District Manager
Chennai (North) District
Ambattur Estate, Chennai-600 058.

..Respondents 2 & 3
(in WP.No. 6874 of 2018)

2. The Senior Regional Manager
No.19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008.

.. 2nd Respondent
(in WP.Nos.6875, 6876 & 6877 of 2018)

3. The District Manager
Chennai (Central) District
Ambattur Estate, Chennai-600 058.

..3rd Respondent
(in WP.No. 6875 of 2018)

3. The District Manager
Chennai (South) District
B-4, Ambattur Estate,
Chennai-600 058.

..3rd Respondent
(in WP.Nos. 6876 & 6877 of 2018)

Writ petition No.6874 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records connected with the proceedings issued in Na.Ka.No.A2/1309/2016 dated 05.02.2018 passed by the 3rd respondent insofar as the petitioner is concerned and quash the same.

Writ petition No.6875 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records connected with the proceedings issued in Na.Ka.No.6334/05/C1 dated 16.02.2018 passed by the 3rd respondent and quash the same.

Writ petition No.6876 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records connected with the proceedings issued in Na.Ka.No.1287/B5/2017 dated 12.02.2018 (period from 01.01.2004 to 31.12.2009 of Rs.8,52,243/-) and Na.Ka.No.1287/B5/2017 dated 12.02.2018 (period from 01.01.2010 to 31.08.2010 of Rs.1,46,674/- total amount of Rs.9,98,917/-) passed by the 3rd respondent and quash the same.

Writ petition No.6877 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records connected with the proceedings issued in Na.Ka.No.1287/B5/2017 dated 12.02.2018 (period from 01.01.2008

to 31.12.2009 of Rs.2,91,574/-) and Na.Ka.No.1287/B5/2017 dated 12.02.2018 (period from 01.01.2010 to 31.08.2010 of Rs.2,26,356/-) and Na.Ka.No.1287/B5/2017 dated 12.03.2018 (total period from 01.02.2008 to 31.08.2010, total amount of Rs.5,17,930/-) passed by the 3rd respondent and quash the same.

For Petitioner : Mr.S.Ilamvaludhi
(in WP.Nos. 6874 to 6877 of 2018)
For Respondents : Mr.K.Sathish Kumar
standing counsel
(in WP.Nos. 6874 to 6877 of 2018)

C O M M O N O R D E R

These writ petitions are filed by different writ petitioners. They are aggrieved against the orders of the third respondent, calling upon them individually to pay the relevant amount referred to in the impugned proceedings, towards provident fund payable to the workers of the respective petitioners.

2. Heard the learned counsel for the petitioners and the learned standing counsel for the respondents.

3. The grievance ventilated by the petitioners before this Court is in twofold. Firstly, it is contended that the impugned proceedings were issued in violation of principles of natural justice, as no notice was issued to the petitioners before passing the impugned orders. It is specifically contended by the petitioners in the affidavit filed in support of the writ petitions that they were not put on notice before passing the impugned orders. Secondly, it is contended that in the absence of any such condition imposed by the Tamil Nadu State Marketing Corporation Ltd., while confirming the tender in favour of the respective petitioners for the Transport of Indian made Foreign Spirit (IMFS) and Beer to various retail units to the effect that the Transport Contractors are responsible for the payment of EPF contribution for load man for every month, during the disputed period from 2004 to 2009, the present demand and liability cannot be fastened on the writ petitioners. It is further stated that since such condition was stipulated specifically only from the year 2010 onwards, the petitioners are paying EPF contribution from the year 2010 onwards and therefore, for the earlier period, in the absence of any specific clause in the agreement entered between the parties, the demand in respect of those period is unsustainable.

4. The respondents have filed a counter affidavit and sought to sustain the impugned proceedings.

5. Let me first consider the objections raised by the petitioners on the ground of violation of principles of natural justice. I have already referred supra, that the petitioners have specifically raised the plea in their respective affidavit that the third respondent has not issued any notice to the petitioners before passing the impugned orders. Even though the impugned proceedings referred to a communication dated 30.01.2018, as if issued on the respective petitioners, in the counter affidavit filed by the respondents, such allegation made by the petitioners for want of notice, has not been specifically disputed or denied. On the other hand, the counter is totally silent about the issuance of notice.

6. The learned standing counsel for the respondent also is not in a position to satisfy this Court, with regard to the issuance of the said notice. Therefore, it is evident that the impugned orders were passed in violation of principles of natural justice. When such being the factual position, this Court is inclined to set aside the impugned orders and remit the matter back to the third respondent for passing fresh orders, after issuing notice to the respective petitioners. Since this Court is inclined to remit the matter on the sole ground of violation of principles of natural justice, the other ground raised by the petitioners is left open to be agitated before the third respondent, by filing their reply to the notices to be issued by the third respondent.

7. Accordingly, all these writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the third respondent for passing fresh orders on merits and in accordance with law, after issuing notice to the petitioners individually and considering the objections of the petitioners in response to such notice. The third respondent shall also give personal hearing to the respective petitioners. The whole exercise shall be completed by the third respondent within a period of six weeks from the date of receipt of a copy of this order. If any amount is paid by the petitioners in pursuant to the interim order granted by this Court during the pendency of these writ petitions, the same shall be kept in the account and shall be taken into consideration, accordingly, while passing fresh orders, as directed in these writ petitions.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mk

To

1. The Managing Director
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Tower II, 4th Floor
Gandhi-Irwin Bridge Road,
Egmore, Chennai-600 008.
2. The Senior Regional Manager
Chennai Region
Anna Salai, Chennai-600 002.
3. The District Manager
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No.19-A, Rukmani Lakshmipathy Road,
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6. The District Manager
Chennai (South) District
B-4, Ambattur Estate,
Chennai-600 058.

+1 cc to M/s.K.Sathish kumar Advocate sr 66198
+4 ccs to M/s.S.Ilamvaludhi Advocate sr 66985,
66986, 66987, 66988

W.P.Nos.6874 to 6877 of 2018

gp(co)
aa15/10/2018

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