

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21914 of 2017 and

W.M.P.No.22952 of 2017

The Madras Pinjrapole,
A Society Registered under
Tamil Nadu Society's Registration Act,
Represented by its Joint Secretary,
Mr.Kantilal D.Shah,
Having office at No.383, Konnur High Road,
Otteri, Chennai - 600 012. ... Petitioner

Vs.

1. The Asst. Provident Fund Commissioner (COMP),
Employees Provident Fund Organisation,
Ministry of Labour and Employment,
Regional Office,
No.37, Royapettah High Road,
Chennai - 600 014.
2. The Enforcement Officer,
Employees Provident Fund Organisation,
Regional Office,
No.37, Royapettah High Road,
Chennai - 600 014.
3. The Commissioner,
Employees Provident Fund Organisation,
Regional Office,
No.37, Royapettah High Road,
Chennai - 600 014. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in Chennai-1/TN/1456029/Div.23/Enf/Regl/2017 dated 02.08.2017 and quash the same as illegal and for a consequential direction directing the third respondent to issue the Exemption

Certificate as requested by the petitioner Society's representation dated 09.03.2017, and 28.04.2017.

For Petitioner : M/s.S.Deepika

For Respondents : Mr.T.R.Sundaram

O R D E R

The proceedings dated 02.08.2017 passed by the first respondent against the writ petitioner is under challenge in this Writ Petition.

2. The proceedings dated 02.08.2017 is a show cause notice issued before initiation of 7(A) enquiry under the Employees' Provident Funds and Miscellaneous Provisions Act. Instead of submitting explanation/objection and even before filing the documents, the writ petitioner has chosen to challenge the very show cause notice issued by the competent authority before initiation of 7(A) enquiry under the provisions of the Act.

3. No Writ Petition can be entertained in the routine manner. The writ petitioner's representation against the show cause notice is certainly limited. The show cause notice can be challenged if the same was issued by the incompetent authority having no jurisdiction, an allegation of mala fide is raised if the same is in violation of statutory rules in force. Even in case of raising allegation of mala fides against the authority, it is necessary that such an authority against whom allegations are raised is to be impleaded as a party in the writ proceedings in his personal capacity. Thus, in the absence of any one of the legal ground, no writ proceedings can be entertained against the show cause notice. It is left open to the writ petitioner to submit his explanation/objection on the show cause notice for the purpose of defending their case. Contrarily, they cannot move the present writ petition under Article 226 of Constitution of India at the stage of issuance of show cause notice, which was issued before initiation of 7(A) enquiry under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act.

4. In these circumstances, this Court is of the opinion that the present writ petition deserves no consideration and the petitioner is at liberty to submit their explanation/objections, documents, etc., before the competent authority for the purpose of considering the same in accordance with law.

5. In this view of the matter, there is no infirmity in respect of show cause notice issued for the purpose of initiation of 7(A) enquiry. Thus, the relief sought for in this writ petition is devoid of merits and accordingly, the writ

petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-sd/-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Asst. Provident Fund Commissioner (COMP),
Employees Provident Fund Organisation,
Ministry of Labour and Employment,
Regional Office,
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Chennai - 600 014.
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Chennai - 600 014.

+2C.C. to MR.T.R.Sundaram Advocate SR.NO. 29800 dt.23.4.18

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MR (CO)
VS 11.05.2018

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