IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice N.ANAND VENKATESH

W.A.No.1390 of 2010

and

M.P.Nos.1 and 2 of 2010

Madras Fertilizers Ltd.,
rep. by Executive Director (P & A),
Manali, Chennai - 68. ..Appellant

Vs

1.Union of India rep. by the
Secretary to Government,
Ministry of Labour,
120, Shram Shakhi Bhavan,
New Delhi.

2.Regional Provident Fund Commissioner
for Tamil Nadu and Pondicherry
States rep. by its Commissioner,
No.20, Royapettah High Road,
Chennai - 14.

3.Madras Fertilizers Staff Union rep. by
its General Secretary,
No.6, Katchaleeswarar Agraharam,
Chennai - 1.

4.Madras Fertilizers National Employees Union,
145/1,Thiruvottiyur High Road,
Chennai - 81.

5.Madras Fertilizers Limited Officers
Association rep. by its
General Secretary
No:2,Moovar street,
East Tambaram,
Chennai-600059. ..Respondents

Appeal preferred under Clause XV of Letters Patent against the order dated 13.04.2010 made in W.P.No.10358 of 2001.

W.P.No.10358 of 2001.

This Writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records pertaining to the proceedings/orders bearing No.TN/7929/SDC 7/Regl.099 dated 13.5.1999 of the second respondent and to quash the same

For Appellant .. Ms.Rita Chandrasekar
for M/s.Aiyar and Dolia

For Respondents .. Mr.P.Ayyaswamy for R1
Mr.T.R.Sundaram for R2

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant herein is the petitioner before the learned single Judge. Challenge was made to the impugned order by which the damages were levied against the appellant on the belated payment of provident fund made subsequent to the dismissal of the writ petition, which was pending with interim orders, in which, the appellant was also a party. The learned single Judge after noting the statutory mandate of Section 6 A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 r/w para 4 of the Employees' Pension Scheme, 1995 was pleased to dismiss the writ petition. Hence the present appeal.

2.Learned counsel appearing for the appellant would contend that this is a case where the appellant has paid the entire provident fund with interest after the disposal of the earlier writ petition filed by the third respondent. It is the third respondent who filed the writ petition in which the appellant was the party. Therefore, for complying with the interim order passed by this Court, the appellant cannot be penalised.

There cannot be any penalty when the Court has prevented a party from complying with the mandate of the Act, which in turn, results in implementation of the scheme. An act of the Court shall not cause any inconvenience to a party, which was not responsible for it. Thus, the order of the learned single Judge requires interference.

3.Learned counsel appearing for the second respondent would submit that in view of the statutory prescription and notwithstanding the fact that there was no dispute on the submission made on facts by the learned counsel for the appellant, the demand was made. There is no power for the second respondent to condone the delay in payment. In any case, there is a appellate remedy available under the statute and without exhausting the same, the appellant cannot approach this Court directly.

4.We have noted that the learned single Judge has decided the writ petition on merits. Therefore, a belated submission at this stage on the availability of alternative remedy stands rejected particularly when the facts are not in dispute. A perusal of the order impugned itself would show that the basic facts are not denied or disputed. Admittedly, the writ petition was filed by the third respondent on the earlier occasion, challenging the scheme, in which there is an interim order, which prohibited the appellant from implementing the said scheme. If that is the case admitted by all the parties, the belated compliance after the disposal of the writ petition with the interim orders cannot be put against the appellant. After all, the compliance has to be seen on the factual context. When it is impossible to comply, its result would have the effect of violating the orders of the Court, damage can never be imposed on such a party for complying the orders. In the case on hand, the appellant has shown its bonafide by paying the entire provident fund due under the scheme with interest. Therefore, we are of the considered view that the order impugned cannot be sustained in the eye of law. Accordingly, the same is set aside and the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
   Ministry of Labour,
   120, Shram Shakhi Bhavan,
   New Delhi.

2. The Commissioner,
   Regional Provident Fund Commissioner
   for Tamil Nadu and Pondicherry States,
   No.20, Royapettah High Road,
   Chennai - 14.

+1cc to M/s.Aiyar and Dolia, Advocate, S.R.No.37398
+1cc to Mr.TR.Sundaram,Advocate,S.R.No.37622

W.A.No.1390 of 2010

SVN(CO)
BM 28/06/2018