

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.07.2018

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

W.P.No.2423 of 2015

and

M.P.No.1 of 2015

Thirupatur Nagara Oppanghatharargal
Nala Sangam (Regn.No.235/2014)

Rep.by R.Venugopal

Honorary President

No.9, Gangadharan Street,

Extension, Thirupatur,

Vellore District.

...Petitioner

vs

1.The Assistant Commissioner,
Employees Provident Fund,
O/o.The Assistant Commissioner,
Thirupatur,
Vellore District.

2.The Commissioner,
Thirupatur Municipality,
Thirupathur,
Vellore District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records relating to both the notice issued by the 2nd respondent in Na.Ka.No.110/2013/E1 dated 31.07.2014 and also the consequential notice in Na.Ka.No.1101/2013/E1 dated 19.08.2014, quash both the said notices.

For Petitioner:Mr.J. Ramakrishnan

For Respondent:Ms.V.J. Latha for R1

Mr.E. Gokulakrishnan, for R2

O R D E R

The notice dated 31.07.2014 and the consequential notice dated 19.08.2014 issued by the 2nd respondent are under challenge in this writ petition.

2. The writ petitioner is the President of Thirupatur Nagara Oppandhatharragal Nala Sangam. The grievances of the writ petitioners are that they are not liable to pay contribution under the provisions of the Employees Provident Fund. Though various grounds have been raised in this writ petition, this Court is of an opinion that merits and demerits of the liability or otherwise cannot be adjudicated in the present writ petition, in view of the fact that the competent authority are in the process of considering those merits and demerits under the provisions of the Act. Thus, the merit part of the arguments advanced by the writ petitioner deserves no consideration at all. The disputed and complex facts can never be adjudicated in the writ proceedings under Article 226 of the Constitution of India. It is left open to the respective parties to adjudicate those disputed facts and circumstances before the competent authority by availing the opportunities provided under the provisions of the Act. Thus, this Court is not inclined to consider the merits of the case advanced by the writ petitioner in the present writ petition.

3. On a perusal of the impugned notice, it seems that the 1st respondent issued a notice to the 2nd respondent to furnish the documents and details of the employees who are all employed in the writ petitioner Sangam so as to make an assessment and issue appropriate orders under the provisions of the Act. When the process of compliance of the Act has been commenced and the 1st respondent issued notice to the 2nd respondent, the 2nd respondent issued consequential notice to the writ petitioners directing them to produce all the details and documents enabling them to submit the same before the 1st respondent for enquiry and adjudication. However, the writ petitioners instead of submitting their details and documents, filed the present writ petition.

4. The learned counsel appearing for the 1st respondent made a submission that the persons engaged by the establishment through contracts are also employees for the purpose of the Act. Accordingly the 2nd respondent Establishment was appraised of the provisions of the Act, with reference to the employees engaged through contracts and was required to comply with the provisions of the Act in respect of the said employees. Enquiry under Section 7 A is in progress and the 2nd respondent is yet to produce all the relevant records before the enquiry authority. The enquiry is yet to be proceeded.

5. The learned counsel appearing for the 1st respondent further contended that the writ petitioners themselves had admitted certain facts and the said relevant paragraphs are extracted hereunder:

'4). It is stated that by the aforesaid amendment, the employees engaged by the Municipal Councils/Corporations, either directly or through contractors and those who are not in enjoyment of any scheme of contributory Provident Fund/Pension Fund Schemes have been made liable to be enrolled under the Employee's Provident Fund and allied Schemes. As per the own admission of the petitioner, the members of the Petitioner-Associates have engaged men who are employed in connection with the civil construction and maintenance works undertaken on behalf of the 2nd respondent. It is also admitted by the petitioner that they were engaged on contract basis by the 2nd Respondent. The Petitioner having admitted to the same, nothing survives in present writ petition. Hence the present writ petition deserves to be dismissed in limini, as the employees engaged by the members of the petitioner association are contract employees engaged by the members of the petitioner association are contract employees engaged by respective contractors, who are covered under the provisions of the EPF & MP Act 1952. The Act is a piece of social welfare legislation, intended for the benefit of poor workers to secure benefits to them in the evening of their life.

6). As per the own admission of the petitioner, the registered contractors of the Petitioner-Association undertake civil work for 2nd respondent Municipality by participating in the tender process floated by the 2nd respondent from time to time. The workers under them are employed in connection with the works like maintenance of road, drainage maintenance, and other construction works, which is the work and duty to be performed statutorily by the 2nd Respondent herein.'

6. This Court is of an opinion that the competent authorities under the Act is empowered to conduct enquiry by providing reasonable opportunity to the parties concerned. In fact the 1st respondent, as a competent authority under the provisions of the Act issued notice to the 2nd respondent to furnish the details and the documents enabling them to conduct an enquiry. The 2nd respondent in turn sent a notice to the writ petitioner seeking particulars and documents. In view of the pendency of the present writ petition, the competent authorities are unable to proceed with the enquiry and pass appropriate orders. Under these circumstances, this Court is of an opinion that the present writ petition deserves no consideration, in view of the fact that the writ petitioners are liable to submit all the particulars of the employees engaged by them along with documents to the 2nd respondent, who intturn has

to submit the same to the 1st respondent for enquiry. In this view of the matter, the writ petitioners are directed to cooperate with the respondents 1 and 2 for the purpose of conducting an enquiry under the provisions of the Act by furnishing details and documents.

7. Thus, the writ petition is devoid of merits and accordingly, stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To

1.The Assistant Commissioner,
Employees Provident Fund,
O/o.The Assistant Commissioner,
Thirupatur,
Vellore District.

+1 CC to Mr.J. Ramakrishnan, Advocate sr 48879.

RK(CO)
SP(11/08/2018)

W.P.No.2423 of 2015

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