

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.23752 of 2018
and W.M.P.No.27708 of 2018

V.Saravanan

... Petitioner

Vs.

The Assistant Provident Funds Commissioner,
Employees Provident Funds Organisation,
S.J.Plaza, Swarnapuri, Salem - 636 004. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records in proceedings No.CB/RO/SLM/COMP-II/1700531/E-III/2018 dated 03.08.2018 issued under Section 193 Indian Penal Code on the file of the respondent quash the same.

For Petitioner : Mr.D.Abdullah
For Respondent : Mr.R.Thirunavukkarasu

O R D E R

The present Writ Petition has been filed for issuance of Writ of Certiorari to call for the records in proceedings No.CB/RO/SLM/COMP-II/1700531/E-III/2018 dated 03.08.2018 issued under Section 193 of the Indian Penal Code on the file of the respondent and quash the same.

2. According to the petitioner, the respondent issued 7A notice to cover the employees of franchisee treating them as employees of the petitioner. The petitioner submitted an elaborate reply, documents and citations. According to the petitioner, the only issue before the respondent is certain clauses in the franchisee agreement amount to control and supervision by the petitioner. The respondent called upon the petitioner to submit details of all the franchisees under respondent's jurisdiction. The respondent issued show cause notice under Sections 193 and 196 of IPC alleging that the establishment by shifting its stand stating that the documents called for, are not necessary, amounts to offence of submitting false evidence under Sections 193 and 196 of I.P.C.

3. The petitioner has also submitted a reply to the show cause notice and challenging the aforesaid show cause notice, the present Writ Petition has been filed before this Court on the ground that abuse of powers and violating the liberty of the petitioner.

4. The learned Standing Counsel appearing for the respondent would submit that the Writ Petition filed by the petitioner is not maintainable as the petitioner challenges the show cause notice issued by the respondent under the provisions of Sections 193 and 196 of I.P.C.

5. According to the respondent, in response to the letter dated 26.04.2017, the petitioner replied to the respondent stating that the coverage of EPF Scheme for franchisee employees doesn't come under the purview of the Act and that the EPF compliances are to be handled by the respective Franchisee partners based on the eligibility criteria. The petitioner requested time to furnish details of employees and outlets and the said enquiry has been posted for several hearings and the petitioner did not submit the details of franchisee as requisitioned by the respondent. Therefore, the petitioner requested the respondent to initiate an enquiry under Section 7A of the Act. The respondent, therefore, formed a squad comprising a team of Enforcement Officers to look into the matter of whether the outlets of the petitioner establishment would be covered under the purview of Section 13 of the Act. The squad of the respondent submitted their interim report after conducting inspections at various outlets coming under the jurisdiction of the respondent's Regional Office, Salem.

6. Pursuant to the said report, a summon dated 07.02.2018 under Section 7A of the Act was issued to the petitioner to appear for the inquiry on 23.02.2018 and to represent the case along with all the relevant documents and particulars and subsequently, the hearing was adjourned to 09.03.2018 and 13.03.2018. One R.Senthil Nathan represented the petitioner in the enquiry and sought two weeks time to produce the statement, documents and evidence and therefore, the inquiry was adjourned to 27.03.2018 and further, on the request, it was adjourned till 01.08.2018 and the petitioner failed to submit the employees details sought by the respondent. During the enquiry, according to the Writ Petitioner, each franchisee is a separate legal entity and is engaging lower than the statutory limit of 20 employees and therefore, are not coverable under the Act. The inspection report would show that the same was confirmed by the individual franchisee owners when they were summoned as witness under Section 30 of the Code of Civil Procedure, 1908. The petitioner was directed to clarify on the same as the details given by the petitioner was erroneous and contradicted with the details given by the said two franchisee owners and therefore, the respondent sought detailed list

requisitioned documents and the writ petitioner has not produced the same. Therefore, the respondent issued the impugned show cause notice under Sections 193 and 196 I.P.C. to produce accurate data without fail. An explanation was also submitted by the petitioner and the same is pending. At this stage, the present Writ Petition has been filed and therefore, the Writ Petition is not maintainable.

7. On a perusal of the counter affidavit as well as the submissions of the learned counsel for the respondent, the Writ Petitioner challenges the show cause notice issued under Sections 193 and 196 of I.P.C. and submitted a reply on 21.08.2018 and the same is pending. Admittedly, no final order has been passed.

8. It is not a disputed fact that the authorities concerned are empowered to issue impugned notice to produce documents in respect of the said notice and the petitioner also submitted a reply. At this stage of show cause notice, filing the Writ Petition cannot be entertained in a routine manner. Judicial review against the show cause notice is limited and the High Court can entertain a Writ Petition against the show cause notice, only under exceptional circumstances as settled by the Supreme Court as well as this Court. If the petitioner raised mala fides, then the person against whom mala fides is alleged has to be impleaded as a necessary party in the writ proceedings. Therefore, in the absence of any legal ground, no writ proceedings can be entertained against the show cause notice. On the contrary, the petitioner has approached this Writ Court and obtained an interim order.

9. Hence, prima facie this Court cannot entertain the Writ Petition at this point of time and this Court is of the opinion that the ground raised by the petitioner are untenable to quash the impugned show cause notice. Admittedly, the petitioner submitted a reply to the respondent and therefore, the respondent has to consider the petitioner's reply on merits and in accordance with law and pass an appropriate order. Accordingly, the Writ Petition deserves to be rejected and has to be dismissed.

10. With the above observations, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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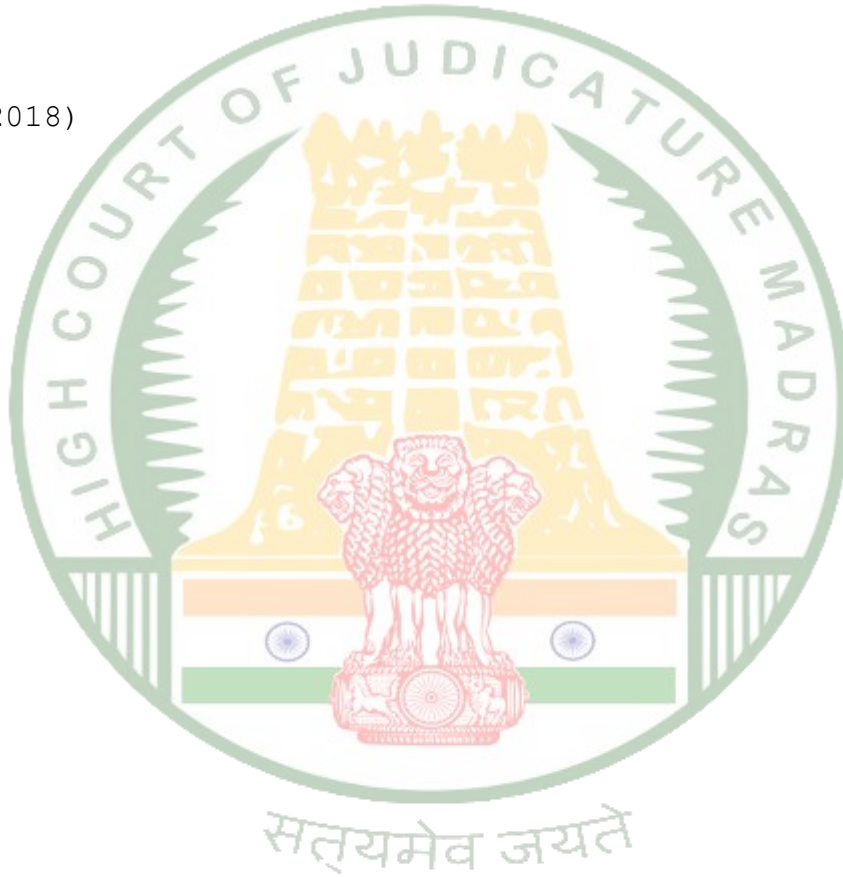
The Assistant Provident Funds Commissioner,
Employees Provident Funds Organisation,
S.J.Plaza, Swarnapuri, Salem - 636 004.

+1cc to Mr.R.Thirunavukkarasu, Advocate, S.R.No. 78683

+1cc to Mr.D.Abdullah, Advocate, S.R.No. 79228

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KK(CO)
GN(17/12/2018)



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