IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM

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

W.P.No.14831 of 2018
and
W.M.P.Nos.17540 and 17541 of 2018

M/s.Santha Spinning Mills Pvt.Ltd.,
Reg. Off: No.9/119C, Car Street,
Somanur-641668,
Coimbatore District,
rep. By its Director,
C.Cibi Vishnu .. Petitioner

Vs

1.The Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation
Regional Office, S.J.Plaza,
Swarnapuri, Salem-636 004.

2.The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization
Regional Office, S.J.Plaza,
Swarnapuri,
Salem-636 004.

3.The Enforcement Officer,
Office of the Employees' Provident Fund Organisation,
Income Tax Office Building,
Gandhiji Road,
Erode. .. Respondents

PRAYER : Petitions filed under Article 226 of the Constitution of India to issue of Writs of Certiorarified Mandamus, to call for the records of the 2^{nd} respondent made in his proceedings No.CB/RO/SLM/Comp-II/34595/E-1/2018 dated 05.06.2018 issued under Section 193 of IPC and proceedings No.CB/RO/SLM/Comp-II/34595/E-12018 dated 05.06.2018 issued under Section 196 of IPC and proceedings No.CB/RO/SLM/Comp-II/34595/E-1/2018 dated 11.06.2018 issued under Section 14(2) of EPF and Miscellaneous Provisions Act, 1952 and quash the same and consequently direct the 2^{nd} respondent or the 1^{st} respondent to pass orders on merits and as per law from the records available and the EPF Act pertaining to the years 2011-2016 within a time frame as may be fixed by this Court.

For Petitioner : Mr.S.Silambanan (Senior Counsel)
for M/s.Kaavya Silambanan Asso.

For Respondents :Mr.R.Thirunavukarasu

O R D E R

The show cause notice issued against the writ petitioner, is under challenge in this writ petition.

2.The learned senior counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner is constrained to move the present writ petition, on account of the fact that the employees of the writ petitioner Mills, were being harassed by the respondent insisting them to sort out the files within four days. In respect of that it is informed that the employees of the writ petitioner Mill are addressing the officials to clarify their doubts, in respect of the files produced by the writ petitioner.

3.The grievance of the writ petitioner is that though the petitioner has produced all the relevant files, the respondents are repeatedly insisting the production of files from the writ petitioner and also to submit further documents, which are all not available with the writ petitioner. The learned senior counsel is of an opinion that the petitioner is ready to abide by the orders if any being passed by the respondent in accordance with the provisions of law based on documents produced before the authorities. In other words, it is contented that the respondents are at liberty to pass orders based on the records submitted by the writ petitioner and in accordance with law, after affording an opportunity to the petitioner. Contrarily they cannot repeatedly insist upon the production the documents and harass the writ petitioner.

4.The learned counsel appearing on behalf of the respondents opposed the contention by stating that the authorities under the provisions of Section, 7A and 3A of the Act are entitled to direct the persons to submit all relevant documents and even in the absence of any such request the writ petitioner is duty bound to submit all the documents. In fact the authorities are empowered to direct the parties to produce the relevant documents and it should not be considered as harassment. On receipt of the documents produced, the competent authorities will be in a position to scrutinise the same, take a decision and pass appropriate order, in accordance with the provisions of the Act.

5.The learned counsel for the respondents has stated that the respondents initiated enquiry under Section 7A on 18.11.2015 based on complaint from Central Vigilance Office, EPFO New Delhi on 06.11.2015, in respect of non enrolled employees and sought for records from the year 2011 on wards. The enquiry under Section 7A has not been concluded in the year on account of the fact that the writ petitioner has not submitted all the records to the respondents. Whereas, the enquiry under Section 14B/7Q was initiated on 28.10.2015 for belated remittance of contribution for the period from March 2014 to January 2015, in respect of regular employees.

6.The petitioner attended the enquiry and submitted remittance of Rs.1460/- for damages and Rs.608/- for interest and the said enquiry under Section 14B/7Q was concluded. The allegation of the respondent is that the writ petitioner is misleading the Court by clubbing the enquiry under Section 7A and the enquiry under Section 14B/7Q of the Act.

7.May that it be, this Court is of an opinion that the authorities competent/respondents are empowered to direct the writ petitioner to submit all the required documents. It is the duty mandatory on the part of the writ petitioner to submit all the available documents to the respondents, enabling them to conduct inspections/enquiry into the factual details, take a decision and pass appropriate orders in accordance with the provisions of the Act. Thus, it is for the writ petitioner to co-operate with the enquiry and the adjudication if any being conducted by the respondents under the provisions of the Act. If the writ petitioner is unable to produce any of the documents, then it is left open to the competent authorities to draw the factual inference that such documents are not available and take decision based on the available records produced by the writ petitioner. Non availability of certain important documents is also a ground to draw a factual inference and decide the matter accordingly.

8.However, the present writ petition has been filed challenging the show cause notice. Instead of submitting the explanation/objections and produce the documents, the writ petitioner has now challenged the show cause notice issued to the petitioners asking them to submit their explanations/objections.

9.This court is of an opinion that no writ petition can be entertained against the show cause notice issued to a person asking them to submit their explanation/objections and such show cause notice cannot be challenged in a routine manner and no writ can be entertained against the show cause notice 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, where, if the notice has been issued by the incompetent authority having jurisdiction, or allegation of mala fides or if the same is in violation of statuary rules in force. Even, in case of allegation raising mala fides, the authority against whom such allegations are raised to be impleaded as party respondents in the writ proceedings. In the absence of any one of the above legal grounds, no writ proceedings can be entertained against the show cause notice. The person who receive such show cause notice from the competent authority is bound to submit his explanation/objections setting out the facts, and furnish the documents if any available. Contrarily, they cannot move the writ Court for the purpose of quashing the show cause notice an certain factual grounds or on merits. The merits and the factual grounds are to be raised by the parties and adjudicated before the competent authorities and only after passing final orders, the parties are at liberty to redress their grievances either before the appellate forum and under the provisions of the Act.

10.Intermittent interventions in the departmental proceedings under the provisions of the act are not preferable and the authorities who initiated the proceedings under the Act must be allowed to conclude the same and the same should be reached to its logical conclusion in accordance with the provisions of the Act. All interventions during the departmental adjudications are to be avoided, in view of the fact that it will delay the proceedings and would cause prejudice to either of the parties and therefore only on exceptional circumstances, the High Court can intervene during the pending proceedings. In all other circumstances, the statutory authorities, who initiated the proceedings, must be allowed to conclude the same in accordance with the provisions contemplated.

11. The grievance of the writ petitioner is that he has produced all the documents available with them. Therefore, the authorities competent shall take a decision and pass orders. Contrarily they are insisting the petitioner to submit further documents, which are all not available with them.

12.However, the writ petition challenging the show cause notice cannot be entertained at this point of time, and this Court is of an opinion that the grounds raised are untenable, so as to quash the show cause notice. It is left open to the writ petitioner to submit their explanations/objections along with the documents if any available. On receipt of the same, Competent authority is bound to take a decision and pass orders on merits in accordance with law.

13.With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

stm/nmm

To
1.The Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation
Regional Office, S.J.Plaza,
Swarnapuri, Salem-636 004.

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3.The Enforcement Officer,
Office of the Employees' Provident Fund Organisation,
Income Tax Office Building,
Gandhiji Road,
Erode.

+1cc to M/s.Kaavya Silambanan Asso, Advocate sr.no.47020
+1cc to Mr.R.Thirunavukarasu, Advocate sr.no.46445

W.P.No.14831 of 2018

nr 06/08/2018