

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.07.2018

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

W.P.No.16771 of 2018

and

W.M.P.No.19953 of 2018

Andhra Bank

Mount Road Branch

Represented by Assistant General Manager

V.Gurusubramanian

Chennai-600 002.

... Petitioner

Vs

1.The Recovery Officer

EPF Organisation

Ministry of Labour and Employment

Government of India

Regional Office

No.37, Royapettah High Road

Chennai-600 014.

2.The Regional Provident Fund Commissioner-II

No.37, Royapettah High Road

Chennai-600 014.

3.The Assistant Provident Fund Commissioner

No.37, Royapettah High Road

Chennai-600 014.

4.Vasan Health Care Private Limited

Represented by Managing Director

383, Anna Salai, 3rd Floor

Saidapet, Chennai-600 015.

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, to call for the records pertaining to letter No.CHN/TN/36534/Recovery/Reg1/2018 dated 29.06.2018 and quash the same as unlawful and illegal and further issue Writ or Order of direction directing the 1st, 2nd and 3rd respondents not to interfere with current account No.084811100001866 opened with the Petitioner bank by the 4th respondent in accordance with the specific direction issued by the Hon'ble Company Court in C.P.No.267 of 2015 in Company Application No.220 & 221 of 2016 dated 21.11.2016.

For Petitioner

: Mr.P.Veeraraghavan

O R D E R

The show cause notice issued by the 1st respondent/The Recovery Officer in proceedings dated 29.06.2018 under Section 8F (3) of the Employees' Provident Fund and Miscellaneous Act, 1952 (EPF & MP Act) is under challenge in this writ petition.

2.The writ petitioner is Andhra Bank, Main Road Branch, represented by Assistant General Manager. The petitioner Bank is a Nationalised Bank and filed the present writ petition questioning the issuance of the show cause notice issued by the Recovery Officer under the provisions of the Employees' Provident Fund and Miscellaneous Petitions Act, 1952.

3.The learned counsel appearing on behalf of the writ petitioner made a submission that the very issuance of show cause notice to the petitioner Bank is contrary to the facts and circumstances and the writ petitioner Bank is not obligated to deposit the amount as such claimed by the respondent organization.

4.The learned counsel for the petitioner urged this Court in respect of the earlier orders passed by this Court and the orders passed by the other authorities and stated that these aspects, already placed before the respondent organization had not been considered at all. However, the sincere attempt made by the learned counsel for the writ petitioner to establish the merits, facts and circumstances cannot be adjudicated by this Court at this point of time, in the absence of the verification of all the documents and relevant orders, which is to be done by the competent authorities at the first instance.

5.Certain disputed facts and merits between the parties can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India. Such disputed facts are to be adjudicated by way of a trial or before the competent authority, while exercising the powers under the statute, which is a quasi judicial function. Under these circumstances, it is left open to the writ petitioner to place all the records, facts, merits etc., before the respondent in order to establish their case and in the event of submitting such explanation/objections on the impugned show cause notice, it is for the authorities competent to adjudicate the same by providing an opportunity to the writ petitioner and take a decision and pass orders in this regard. Contrarily, the writ petitioner cannot rush to the High Court by filing the present writ petition, challenging the very issuance of show cause notice.

6.Show cause notice is nothing but an opportunity provided to a person to explain their case. If the writ petitioner is not even prepared to submit their explanation/objections in respect of the merits and the demerits of the case, this Court is afraid that the very purpose of the statute and its provision in this regard will be diluted. Every authority competent under the Act must be allowed to perform their duties in all respects and the proceedings initiated must reach its logical conclusion.

7.Intermittent intervention in quasi judicial functions are not preferable in all circumstances. Only on exceptional circumstances, the High Court can interfere during the pendency of the proceedings initiated under any statute. The Provident Fund Act is a welfare legislation. After all, the respondent organization is initiating proceedings only for the interest of the employees of the organisations. It is the duty mandatory on the part of the respondents to ensure that the dues in respect of Provident Fund are collected from the management and the same is disbursed to the employees concerned. During the process, it is for them to issue show cause notice to the organizations concerned and on receipt of any such notice, it is equally duty mandatory on the part of the Management to submit their explanation/objections and defend their case in accordance with law and by availing opportunities to be provided by the competent authorities under the provisions of the Act.

8.No writ can be entertained against a show cause notice in a routine manner. A writ against a show cause shall be entertained, if the same has been issued by an incompetent authority having no jurisdiction or an allegation of mala fides are raised or in the same is in violation of the statutory rules in force. Even in case of raising allegation of mala fides, the authorities against whom such an allegation is raised, to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any of these legal grounds, no writ proceedings can be entertained in respect of the show cause notice issued under the statute. Judicial review against the show cause notice is certainly limited.

9.The learned counsel for the petitioner though accepted the factual circumstances and the merits of the case of the writ petitioner, this Court would not be in a position to adjudicate the same in view of the fact that the impugned order is nothing but a show cause notice. Without availing the opportunities to be provided by the respondent organization, the writ petition cannot be adjudicated on merits. Thus, it is left open to the writ petitioner to submit their objections/explanations to the respondents and defend their case on merits and in accordance with law. The respondents also shall consider all the grounds,

documents and materials produced by the writ petitioner and decide the matter on merits and in accordance with law and by providing reasonable opportunity to the writ petitioner to represent their case before the competent authority.

10. With these observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Recovery Officer
EPF Organisation
Ministry of Labour and Employment
Government of India
Regional Office
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Chennai-600 014.
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4. Vasan Health Care Private Limited
Represented by Managing Director
383, Anna Salai, 3rd Floor
Saidapet, Chennai-600 015.

+1cc to Mr.P.VEERARAGHAVAN, Advocate, S.R.No.43545

W.P. No. 16771 of 2018

TR(12/07/2018)