

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2018

CORAM :

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.Nos. 27547 and 31049 of 2018
and
WMP Nos. 32066 and 36230 of 2018

M/s. Imayam Publications Pvt. Ltd.,
Rep. By its Managing Director
R.A. Jebaraj ...Petitioner in both WPs.

Vs.

1.The Assistant Provident Fund
Commissioner (C&R) Chennai
Employees Provident Fund
Organisation, Regional Office
37, Royapettah High Road
Chennai - 600 014. .. Respondent in WP No.27547/18

1.The Authorised Officer,
Employees Provident Fund
Organisation, Regional Office
37, Royapettah High Road
Chennai - 600 014.

2.The Assistant Provident Fund
Commissioner (C&R)
Employees Provident Fund
Organisation, Regional Office
37, Royapettah High Road
Chennai - 600 014.

3.The Recovery Officer,
Employees Provident Fund
Organisation, Regional Office
37, Royapettah High Road
Chennai - 600 014. ...Respondents in WP No.31049/2018

PRAYER in WP No.27547/2018: This Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Mandamus, forbearing the respondent from taking coercive steps to recover the dues as mentioned in the impugned order dated 13.04.2017 as the petitioner has paid Rs.9,68,657/-

which is over and above the 30% of the amount claimed in the impugned order dated 13.04.2018 and ordered to be paid to the respondent as per order dated 01.09.2017 passed in EPFA No.37 of 2017 by the Hon'ble Central Government Industrial Tribunal cum Labour Court, Chennai (CGIT) till such time Presiding Officer is appointed to Central Government Industrial Tribunal cum Labour Court, Chennai.

PRAYER in WP No.31049/2018: This Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to notice to show cause why a warrant of arrest should not be issued dated 26.10.2018 issued by the third respondent in his proceedings No. TN/CHN/1349532/Recovery/DN21/Regl/2018 and quash the same and consequently direct the respondents to serve certificate No. CHN/CC/21/TN/1349532/Enf/Regl/2017 dated 16.11.2017 purportedly issued by the first respondent to third respondent and pass such further orders.

For Petitioner : Mr.S. Pushpakaran
For Respondents : Mr.V. Sundareswaran, CFRS
in both WPs.

O R D E R

The petitioner company has filed W.P. No.27547 of 2018 seeking to issue a Writ of Mandamus, forbearing the sole respondent herein from taking coercive steps to recover the dues as mentioned in the impugned order dated 13.04.2017, till a Presiding Officer is appointed to Central Government Industrial Tribunal cum Labour Court, Chennai. W.P. No.31049 of 2018 has been filed seeking to quash the show cause notice dated 26.10.2018 issued by the third respondent in his proceedings No. TN/CHN/1349532/Recovery/DN21/Regl/2018 and to consequently direct the respondents to serve the certificate No. CHN/CC/21/TN/1349532/Enf/Regl/2017 dated 16.11.2017 purportedly issued by the first respondent to third respondent. Since the issue involved in these writ petitions are the same, both the writ petitions are taken up and decided together.

2. According to the petitioner, the Enforcement Officer of the respondent Organisation inspected the petitioner company and determined a sum of Rs.31,64,089/- as dues for the period from June 2015 to June 2016, in respect of the company towards Provident Fund, Pension Fund and Insurance Fund contributions and administrative charges and sent a report to the Assistant Provident Fund Commissioner (C&R). Relying upon the said

report, the Assistant Provident Fund Commissioner (C&R) by his proceedings No. TN/CHN/C-1/17/TN/1349532/Enf/2015 dated 13.04.2017 directed the petitioner's company to pay the amount of Rs.31,64,089/-, granting 15 days time for compliance. Although the Assistant Provident Fund Commissioner (C&R) had stated that the order dated 13.04.2017 has been passed relying upon the statement of the employer, complainant and the inspection report of the Enforcement Officer, none of the documents have been furnished to the petitioner's company. Aggrieved by the order, the petitioner's company approached the Central Government Industrial Tribunal, Chennai Branch to quash the same. The Tribunal was pleased to stay the impugned order on condition that the petitioner deposits 30% of the amount to the respondent within a period of one month and in default the appeal will stand dismissed. Against the interim order, an appeal was preferred by the Company and this Court by its order dated 28.09.2017 confirmed the conditional order passed by the Tribunal, however extended the time for compliance of the conditional order till 10.10.2017. Thereafter, the petitioner filed a petition for extension of time for payment of 30% of the award amount, along with a petition for condone delay before the Tribunal. Since the respondent has taken coercive steps to implement the order dated 13.04.2017, the petitioner company has filed the writ petition challenging the impugned show cause notice dated 26.10.2018.

3. The learned counsel for the petitioner would submit that the petitioner has filed a petition for extension of time for compliance of conditional order for payment of 30% of the award amount, along with a petition for condone delay before the Tribunal. The said petition is pending for want of Presiding Officer, which is vacant from September 2017. Therefore, he could not get any orders from the Central Government Industrial Tribunal and so the present writ petitions are filed for Mandamus and to quash the impugned show cause notice. The grievance of the petitioner is for limited scope that his petitions are pending before the Tribunal since no Presiding Officer was appointed and hence he has approached this Court for the aforesaid prayer.

4. Relying on the counter affidavit filed by the respondents, the learned Standing Counsel for the respondent Commission, would submit that the Presiding Officer for the Tribunal has taken charge and the Tribunal is now functioning. Hence, the petitioner can approach the Tribunal for extension of time to comply with the conditional order, subject to the maintainability of the said petition.

5. In view of the aforesaid facts and circumstances and considering the prayer in the writ petitions, without going into

the merits of the case, this Court is inclined to direct the Central Government Industrial Tribunal cum Labour Court (Chennai Bench) to consider the petitioner's application for extension of time, pending along with the condone delay application, if it is otherwise in order, and pass orders within a period of eight weeks from the date of receipt of a copy of this order. Till such time , the impugned show cause notice passed by the Recovery Officer shall be kept in abeyance.

6. Both the Writ Petitions are disposed of, with the above direction. Consequently, the connected Miscellaneous Petitions are closed. No order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Authorised Officer,
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Employees Provident Fund
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37, Royapettah High Road
Chennai - 600 014.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.81913
+2cc to Mr.S.Pushpakaran, Advocate, S.R.No. 81983

W.P.Nos. 27547 and 31049 of 2018
and
WMP Nos. 32066 and 36230 of 2018

PPA (CO)
GN(28/01/2019)