

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.Nos.30713 & 30719 of 2018
and
WMP.Nos.35836 and 35840 of 2018
and WMP.Nos.35847 and 35848 of 2018

Tamilnadu State Marketing Corporation Ltd.,
Represented by its District Manager,
No.29/30, SIDCO Industrial Estate,
Kakkalur, Tiruvallur District. ... Petitioner
in both W.Ps.

vs.

- 1.The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organization,
R-40A, T.N.H.B. Office Complex,
Mogappair Road,
Mugappair (East), Ambattur,
Chennai 600 037.
- 2.Presiding Officer,
Central Government Industrial Tribunal,
The Appellate Authority under the Provident Fund Act,
Shastri Bhavan, Nungambakkam, Chennai 600 008.
- 3.ICICI Bank, Nungambakkam Branch,
Commercial Banking, 110, Prakash Presidium,
1st Floor, Utthamar Gandhi Salai,
Nungambakkam High Road,
Chennai 600 034. ... Respondents in both W.Ps.

Prayer in both W.Ps.: Writ petitions filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the 1st respondent viz., the Regional Provident Fund Commissioner-I not to take any coercive steps with respect to the orders dated 25.09.2018 and 24.09.2018 in W.P.No.30719 of 2018 and W.P.No.30713 of 2018 till the waiver petitioner filed by the petitioner before the second respondent namely the Appellate Authority under the Provident Fund Act is taken up for hearing.

For Petitioner : Mr.Sanjay Mohan (in both W.Ps.)
for M/s.M.John Kennedy
For Respondents : Mr.J.Sathyanarayana Prasad
for Provident Fund.
(In both W.Ps.)

C O M M O N O R D E R

The petitioner has filed the Writ Petitions praying to issue a writ of Mandamus directing the 1st respondent viz., the Regional Provident Fund Commissioner-I not to take any coercive steps with respect to the orders dated 25.09.2018 and 24.09.2018 till the waiver petition filed by the petitioner before the second respondent namely the Appellate Authority under the P.F.Act.

2. Facts of the case

The first respondent had passed two orders dated 05.05.2011 and 25.05.2012 under Section 7A of EPF & MP Act, 1952 against the petitioner to pay the PF Contribution amounts. Though the demand has to be paid by the contractor, the same was recovered by the first respondent from the petitioner Corporation. Thereafter, the first respondent passed further two separate orders dated 24.09.2018 and 25.09.2018 under Sections 14 B and 7 Q of EPF and M.P.Act, 1952 for recovery of Rs.1,34,12,723/- and 1,88,57,623/- towards damages and interest respectively. The 1st respondent has sent recovery orders dated 01.11.2018 under Section 14 B of EPF and MP Act, 1952 to the bankers of the petitioner Corporation for recovery of the aforesaid amounts. Subsequently, the petitioner Corporation has sent a letter dated 12.11.2018 to the ICICI Bank to stop payment to the first respondent. However, on 09.11.2018, the first respondent had approached the ICICI bank and issued recovery order to the said bank and proceeded to attach the sum of Rs.1,34,12,723/- and Rs.1,88,57,623/- respectively. On 13.11.2018, the petitioner Corporation has filed two appeals along with Waiver application before the second respondent to set aside the orders dated 24.09.2018 and 25.09.2018. On the same day i.e. on 13.11.2018, the letters have been issued to the Banks by informing that appeals have been preferred by the petitioner Corporation and requested them to drop the proceedings against the notices issued by the 1st respondent. Challenging the aforesaid proceedings, the petitioner Corporation has come forward with the present writ petitions for the aforesaid prayer.

3. The learned counsel appearing for the petitioner Corporation has relied on the following decisions of this Court:

- i) In W.P.No.14591 of 2009, (Pyramid Salmira Theatre Ltd., vs. Regional Provident Fund Commissioner, Employees Provident Fund Organisation and Others in W.P.No. 14591 of 2009) and
- ii) 2018 LLR 1272, (Regional Provident Fund Commissioner-II vs.Success Global Consulting Pvt.Ltd., and Others)

In the light of the aforesaid decisions, attachment cannot be effected by the 1st respondent within the prescribed limited period as per Section 7(1) read with Rule 7 of E.P.F. Appellate Tribunal.

4. The learned counsel appearing for the first respondent has filed separate counter affidavit in both writ petitions. He has submitted that the first respondent vide orders dated 24.09.2018 assessed Rs.55,37,682/- towards damages under Section 14 B of the E.P.F. and M.P.Act, 1952 and charged Rs.78,75,041/- as interest under Section 7 Q of the Act and vide order dated 25.09.2018 assessed Rs.10,017,821/- towards damages under Section 14-B of the E.P.F. Act and M.P.Act, 1952 and charged Rs.88,39,802/- as interest under Section 7 Q of the Act for the belated remittance. The above said amounts were recovered on 17.11.2018 from the petitioner's bank Account by way of Demand Draft and also encashed. It is further submitted that the first respondent has passed an order dated 24.09.2018 and the petitioner has not communicated to the first respondent about the filing of the appeals before the Appellate Tribunal. Therefore, the first respondent has recovered the aforesaid amount from the petitioner Corporation through bank. It is also further submitted that the petitioner Corporation ought to have preferred an appeal on or before 25.11.2018. But the petitioner Corporation has filed the two appeals on 13.11.2018. Therefore, the said appeals have been filed within the prescribed time limit of 60 days under the provisions of the Act.

5. A perusal of the impugned proceedings dated 24.09.2018 shows that the first respondent vide order dated 24.09.2018, the contribution payable by the petitioner for the period from January 2004 to November 2016 which was belatedly remitted during the period from 01.04.2016 to 31.03.2017. Further, the impugned proceedings dated 25.09.2018 the contribution payable by the petitioner for the period from January 2004 to February 2012 which was belatedly remitted during the period from 01.04.1996 to 31.12.2013 under Section 14 (B) and Section 7 Q of the E.P.F.Act for the belated remittance. The aforesaid subsequent recovery orders were passed on 09.11.2018. This Court, in the identical matter in W.P.No.14591 of 2009, (Pyramid Salmira Theatre Ltd., vs. Regional Provident Fund Commissioner,

Employees Provident Fund Organisation and Others) in para 8, held as follows:

"8. Before parting with this matter, this Court is constrained to state that in view of the orders of attachment which are being passed even prior to the expiry of the period of appeal and revision, this Court is flooded with the filing of similar petitions. Therefore, in order to avoid the frequent filing of similar petitions and also with a view to secure the interest of the petitioner and the respondent/Employees' Provident Fund Organisation, this Court is constrained to make it clear that the orders passed under Section 7-A and 14-B of the Employees' Provident Fund Act and consequential order of attachment, if any to be issued by the respondent/Employees Provident Fund Organisation, shall be kept in abeyance as per the terms of the Act and Rules under the following circumstances, namely ,

- i) During the period of limitation prescribed under Section 7-1 read with Rule 7 of E.P.F. Appellate Tribunal (Procedure) Rules 1998 and Section 7B of E.P.F. Act for preferring the appeal before the Appellate Tribunal.
- ii) During the period of pendency of Review petition before the authority.
- iii) Till the date of first actual hearing of the waiver petition filed along with the appeal filed before the Appellate Tribunal."

In the decision reported in 2018 LLR 1272 (Regional Provident Fund Commissioner-II vs. Success Global Consulting Pvt.Ltd., and Others) in para 11, held as follows:

" 11. The learned counsel for the 1st respondent has also produced a letter dated 01.04.2015 in LC02(908) 2014/KR/311 issued by the Additional Central P.F.Commissioner, Head Quarters; New Delhi, addressed to all Additional Central P.F. Commissioners, drawing their attention to the orders passed by the Supreme Court in Writ Petition (Civil) No.999 of 2014, with a request to all the Regional Officers to comply with the order of the Hon'ble Supreme Court. Despite this circular, the appellant had chosen to recover the sum of

Rs.65,41,649/- from the 1st respondent. This action of the appellant needless to say amounts to contempt of the Hon'ble Supreme Court. The learned counsel for the appellant would further submit that out of Rs.65,41,649/- recovered from the 1st respondent a sum of Rs.39,79,466/- is towards interest and that cannot be a subject matter of a dispute before the Tribunal also. Therefore, he would submit that the appellant is ready to refund a sum of Rs.25,62,183/-."

6. The principles laid down in the above two decisions squarely applicable to the facts of the present case. The petitioner Corporation has filed both the appeals on 13.11.2018 within the prescribed period of 60 days under the provisions of the Act. The first respondent has passed the recovery orders dated 01.11.2018 within the limitation prescribed. At this stage, the learned counsel for the petitioner has fairly submitted that in the light of the Judgments cited supra, the first respondent has to refund the aforesaid amounts under Section 14B of the Act which goes to Rs.55,33,682/- and Rs.1,00,17,821/- respectively. Therefore, in the interest of justice, this Court is inclined to pass the following orders:

i) The first respondent is directed to refund the amount Rs. 55,37,682/-and 1,00,17,821/- respectively to the petitioner Corporation within a period of one week from the date of receipt of a copy of this order.

ii) The Tribunal is directed to dispose of the waiver application (if it is numbered) in the appeal filed by the petitioner on 13.11.2018 as expeditiously as possible.

iii) Both the parties are directed to co-operate before the Tribunal in disposing of the waiver application.

7. Both the writ petitions are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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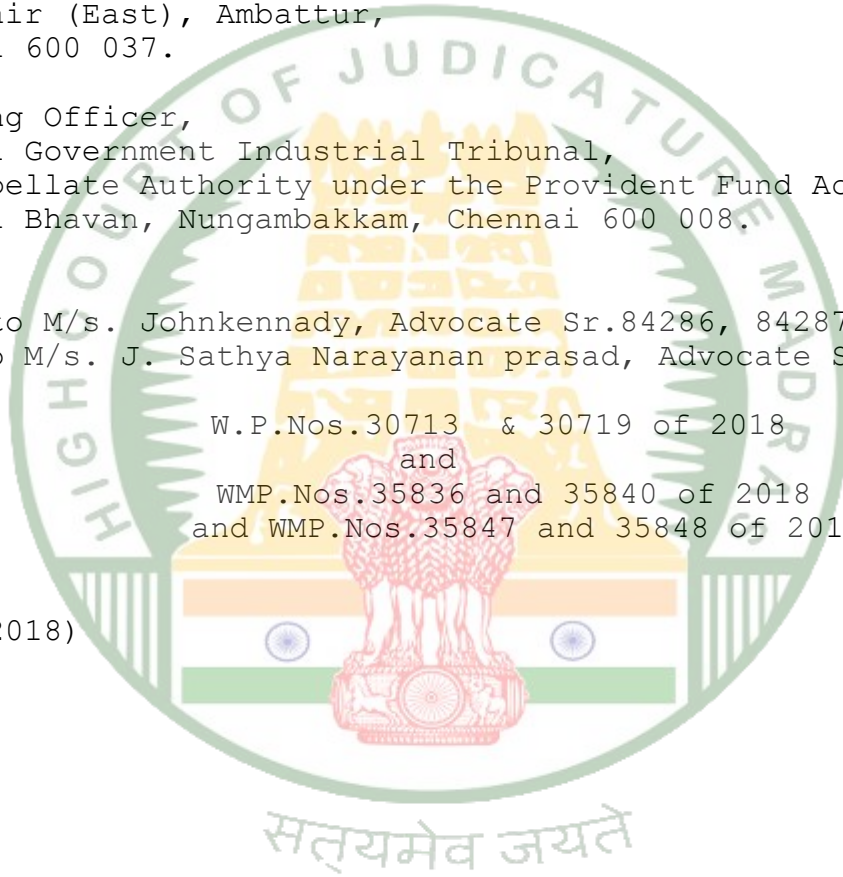
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+ 2 ccs to M/s. Johnkennady, Advocate Sr.84286, 84287
+ 2 ccs to M/s. J. Sathya Narayanan prasad, Advocate Sr.

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