



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.20347 & 20361 of 2017
and
WMP(MD)Nos.16614 & 16615 of 2017

WP(MD)No.(MD)No.20347 of 2017 :

Sree Visalam Chit Fund Limited,
Rep.by one of its Director,
CT.Natarajan

... Petitioner

Vs.

1.Union of India,
Rep.by its Secretary to Government,
Ministry of Labour, New Delhi.

2.The Regional Provident Fund
Commissioner,
Regional Office of Employees
Provident Fund,
Lady Doak College Road,
Chockkikulam,
Madurai - 625 002.

3.The Assistant Provident Fund
Commissioner,
Regional Office of Employees
Provident Fund,
Lady Doak College Road,
Chokkikulam, Madurai - 625 002.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the second respondent vide his proceedings bearing No.D/MD/MDU/17048/Exem(Enf)/Surcharge/2017 dated 19.09.2017 and quash the same.

WP(MD)No.(MD)No.20361 of 2017 :
Sree Visalam Chit Fund Limited,
Rep.by one of its Director,
CT.Natarajan

... Petitioner

Vs.

1.Union of India,
Rep.by its Secretary to Government,
Ministry of Labour, New Delhi.



2.The Regional Provident Fund
Commissioner,
Regional Office of Employees
Provident Fund,
Lady Doak College Road,
Chockkikulam,
Madurai - 625 002.

3.The Assistant Provident Fund
Commissioner,
Regional Office of Employees
Provident Fund,
Lady Doak College Road,
Chokkikulam, Madurai - 625 002.

4.The Manager,
State Bank of India,
Main Branch,
Subramaniyapuram,
Karaikudi.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the second respondent vide his proceedings bearing No.MD/MDU/RO/Enf(Exem)/17048/8F/2017 dated 30.10.2017 and quash the same.

For Petitioner
in both cases : Mr.S.Parthasarathy

For Respondents
in both cases : Mr.P.Paul Pandi for R1

Mr.Murali Shankar
for R2 & R3

COMMON ORDER

Sree Visalam Chit Fund Limited is a company registered under the provisions of the Companies Act, 1956. It is carrying on the business of chit funds. The petitioner company was originally exempted from the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. The petitioner taking inspiration from the Judgment of this Court reported in 1989 (1) LW 291 (Sudarsan Finance Corporation v. Regional Commissioner, Employees Provident Fund, Madras), raised a plea that the very Act does not cover the petitioner company since it is carrying on the business of chit funds.

2.They filed WP.No.18432 of 1990. While dismissing the writ petition, this Court directed the petitioner herein to move the authorities. The issue was taken on Writ Appeal. But, the Hon'ble



Division Bench, by order dated 19.07.2000 dismissed WA.No.1036 of 1999 filed by the petitioner. The Hon'ble Division Bench held that the petitioner should move the authorities with a specific prayer that the provisions of the Act are not applicable to them.

3. In view of the liberty given by this Court, the petitioner herein filed a representation dated 19.08.2000. In the said representation, the petitioner company contended that they should be given opportunity to place materials to show that the business of the company is purely a chit fund transaction and that therefore the authorities must give a decision that the Employees Provident Funds and Miscellaneous Provisions Act, 1952 is not applicable to them. Though this representation was submitted as early as on 19.08.2000, the authorities have not taken any decision till date. There has been exchange of correspondence between the parties. In the meanwhile, writ petitions were also periodically filed questioning the levy of surcharge.

4. The present writ petitions also challenge such surcharge orders. This Court is of the view that when once the second respondent takes a decision with regard to the applicability or otherwise of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 to the petitioner, the entire issue can be given a quietus. This Court is not interested in doing a postmortem as who was at fault and who dragged on the proceedings.

5. A direction is given to the second respondent to decide the issue of applicability of the statute to the petitioner establishment on or before 30.06.2018. It is made clear that the petitioner will be given an opportunity of personal hearing on a definite date of enquiry fixed by the second respondent. On the said date, the petitioner will be entitled to place all the relevant records. The orders impugned in these writ petitions shall be kept in abeyance till then. It is made clear that the validity or otherwise of the impugned orders will necessarily abide by the outcome of the proceedings now pending before the second respondent.

6. These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government, Union of India,
Ministry of Labour, New Delhi.

2. The Regional Provident Fund Commissioner,
<https://hcservices.ecourts.gov.in/hcservices/>
Regional Office of Employees Provident Fund,
Lady Doak College Road, Chockkikulam, Madurai - 625 002.



3.The Assistant Provident Fund Commissioner,
Regional Office of Employees Provident Fund,
Lady Doak College Road,
Chokkikulam, Madurai - 625 002.

+1CC to Mr.S.Parthasarathy, Advocate, SR.Nos. 52712, 52713

+1CC to Mr.K.Murali Sankar , Advocate, SR.No. 52716

W.P (MD) Nos.20347 & 20361 of 2017
and
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AM/KKR/SAR 1/29.05.2018/4P/6C