



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.02.2018
PRONOUNCED ON: 22.02.2018

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) Nos.20948, 22865 of 2017 and 1263 of 2018
and
W.M.P (MD) Nos.17234, 17235, 18641, 19168 and 19169 of 2017 and 1342
and 1343 of 2018

M.Natarajan ... Petitioner in W.P(MD)No.20748 of 2017

1.M.Balasubramanian
Partner, M/s.Bala & Co.,
No.753-G/6, Anantham Nagar,
EB Colony, South Manthithoppu Road,
Kovilpatti, Thoothukudi District 628 501.

2. S.Kumarapandian

3. S.Muniasamy

4. K.Shanmugavelu

5. Mohammed Ayub
Partner, M/s.K.S.Ameer Sulthan & Co.,
No.W5, 15/4, J.P.Nagar,
PTR Colony,
Uthamapalayam PO,
Theni District.

6. V.Alagudurai

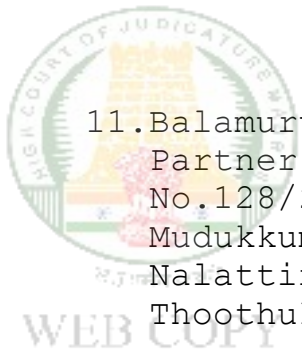
7. Mohammed Nazeer
Partner, M/s.Rifath Construction,
No.6-3-68/1, RTO Office Street,
Indra Nagar, Uthamapalayam,
Theni District 625 533

8. N.Chitra
Power Agent N.Naveen Kumar,
No.50/41, Alagar Nagar,
5th Street, K.Pudur, Madurai 625 007

9. N.Mohanram

<https://hcservices.ecourts.gov.in/hcservices/>

10.K.Jagathisan



11. Balamurugan,
Partner M/s. Ganapathi & Co.,
No. 128/21, South Street,
Mudukkumeendanpatti,
Nalattinpudur, Kovilpatti,
Thoothukudi 628 716
12. Karthick,
Partner, M/s. Shakthi Construction,
No. 267/5, V.P. Sinthan Nagar,
Nalattinpudur, Kovilpatti,
Thoothukudi 628 716
13. K. Ravi,
Partner M/s. K. Ravi & Co.,
No. 40/1, Perumalpuram,
Thoothukudi 628 003.
14. J. Sethuramalingam
15. M. Ramalingam
16. S. Chelladurai
17. S. Radha Krishnan
18. K. Chelladurai,
Proprietor, M/s. Hirtheek Construction,
No. 388/2, V.G.P. Nagar,
Moopanpatti, Kovilpatti
19. Praveen,
Partner, M/s. Iswarya Construction,
Plot No. 52, Kamatchi Bhavan,
Sathya Nagar, Velumahal Back Side,
Dindigul 624 004.
20. C. Prabhakaran
21. T. Robinson
22. M/s. Michel and Co.,
Kalluvilai, Mulagumoodu,
Kanyakumari District 629 167
23. Thambi Raja Selvan
24. S. David
25. R. Jeralin Jerish
26. T. Robert Wilson
27. Pankiraj
28. S. Kandhasamy,
M/s. Balaji Electrical Engineering,
102, Anna New Street,
Kalugumalai, Kovilpatti Taluk,
Tuticorin District.



29.P.Jayaraman

30.K.T.Paulraj

... Petitioners in W.P(MD)No.22865 of 2017

1.V.Jeyakrishnan

2.K.Saravanakumar

3.J.S.Nagarajan

4.S.Haribalakrishnan

5.A.Murugan

6.C.Ilangamani

7.M.Alagupandian

8.R.Sekar

9.Simharaj

10.S.Richard Raj

11.D.Dennis Veda John

12.L.Lakshmi

13.C.Theena Thayalan

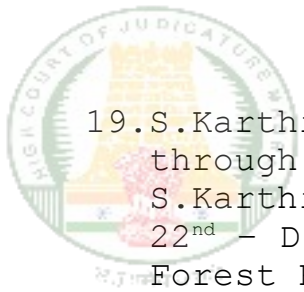
14.S.Subburaj

15.P.T.V.Dhanuskodi & Co.,
through its Managing Partner,
P.T.V.Dhanuskodi
5/702, Othaveedu,
Andarkottaram Post,
Madurai 625 020.

16.Aakash Construction,
through its Partner,
Muthukumar,
5/255 I, 1st Floor,
E.B.Colony,
Nellai Main Road,
Salaipudur, K.R.Nagar Post,
Kovilpatti,
Tuticorin District.

17.Shivani Lakshmi Construction,
through its Managing Partner,
Shivani Lakshmi,
267, D, Ground Floor,
Sivandhipatti Road,
Thiyagarajar Nagar,
Tirunelveli 11.

18.M/s.Priyadharshini Construction,
through its Managing Partner,
A.Muniyandi,
Sivapriya Illam,
Opp to Parvathi Theatre,
1-4-56, Y.Sri Bharathi Nagar,
Gumbum Road,
Thenkarai, Periyakulam,
Theni District 615 601.



19.S.Karthikeyan & Co.,
through its Managing Partner,
S.Karthikeyan,
22nd - D 7th Cross Street,
Forest Road, Theni 625 531.

20.M.K.Karuppanan ... Petitioners in W.P(MD)No.1263 of 2018

Vs.

1. The Chief Engineer (Personnel),
TANGEDCO and TANTRANSCO,
Office of Tamil Nadu Electricity Board,
Anna Salai, Chennai.

2. The Superintending Engineer,
General Construction Circle,
TANTRANSCO, K.Pudur,
Madurai 7.

... Respondents in all W.Ps.

Prayer in W.P(MD)No.20948 of 2017:Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to memo No. 094813/G44/G441/2007 dated 01.08.2017 and quash the same and exempt the petitioner from producing the EPF Number.

Prayer in W.P(MD)No.22865 of 2017: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to memo No.094813/G44/G441/2007 dated 01.08.2017 and quash the same and consequently directing the Respondents not to insist for EPF number for awarding tenders.

Prayer in W.P(MD)No.1263 of 2018: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to Memo No.094813/G44/G441/2007 dated 01.08.2017 and quash the same and consequently directing the Respondents not to insist for EPF number for awarding tenders.

For Petitioners : Mr.J.Alaguram Jothi
For Respondents : Ms.P.Malini
(In all W.Ps)

COMMON ORDER

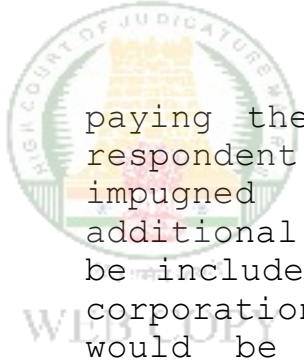
The writ petitions have been filed challenging the memo issued by the Chief Engineer, Tamil Nadu Generation and Distribution Corporation, Chennai, the first respondent herein directing the Chief Engineers and Superintending Engineers to award contract works only to those contractors who have EPF account number.



2. Since the issue involved in all the writ petitions is one and the same, they are taken up together and disposed of by this common order.

3. The grievance of the petitioners is that the petitioners are Class-I contractors in TANGEDCO and TANTRANSCO and they have participated in various tenders called for by the respondents and they have also completed many contract works for the respondents. All of a sudden, now the first respondent issued a memo to the Chief Engineer as well as to the Superintending Engineers stating that the work should be awarded only to the contractors who have Employees Provident Fund account number. In view of the above memo, now the authorities insisting the petitioners to register themselves under the Employees Provident Fund. According to them, the duration of the works awarded to the petitioners is very shorter period and they are employing labourers on daily wages who come from various States and various Districts and they are not the permanent employees. As soon as the work is completed or in the middle of the work, the employees will go away to other works which are beneficial to them. Further, the work is only for a very limited period and the petitioners also unable to guarantee that they will get another work immediately after the awarded work is completed and they cannot keep permanent employees. Hence, the direction issued by the first respondent to the second respondent that the works should be awarded only to the contractors who have E.P.F. Number cannot be carried out practically and it will cause great prejudice to them. In the above circumstances, the present writ petitions have been filed.

4. The first respondent has filed a counter affidavit contending that the impugned circular has been issued only to subordinate officials to ensure the benefits of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (in short, 'the Act') to reach the beneficiaries as it is a welfare legislation and also in compliance of various judgments of the Courts, the first respondent has made a condition to allow only the contractors who have registered under the Act to participate in the tenders. According to him, so far no tender has been issued and the petitioners, in anticipation of participating the tender in future, now, cannot maintain these writ petitions. It is further stated that even though the provisions of the Act, are not applicable to the respondent Corporation, in view of the judgment of the Supreme Court that the contract labourers engaged by the contractors to carry out the work in the respondent Corporation are liable to pay the contribution, this condition has been imposed. Factually, the tenders in which the petitioners participated valued to several lakhs and they would definitely come under the purview of the Act. When similar plea was raised by the building industry, the Hon'ble Supreme Court has upheld the extension of the provision of the Act to the building industry. It is further contended by the respondent that now the burden of



paying the contribution is not lying on the contractor as the respondent corporation has agreed to reimburse the amount. The impugned communication itself categorically stated that the additional liability of provident fund contribution of 13.36% can be included in the relevant work estimates. Since the respondent corporation has agreed to reimburse the said amount, no prejudice would be caused in any manner to the contractors. In the additional counter affidavit filed by the respondents, it is stated only in view of the judgment of the Supreme Court that in respect of the employees engaged by the contractors of the electricity board are liable to pay contribution, the condition has been included.

5. Learned counsel appearing for the petitioner would contend that the petitioners are engaged by the respondent corporation only on a temporary basis and they have been awarded with contract for a shorter period of work and the petitioners employing daily wage labourers who have come from various States and Districts and they are not the permanent employees of the petitioners and as soon as the work is over or in the middle of the work, the employees will go away to other works which are beneficial to them. Since the petitioners did not have permanent employees, they are not in a position to register themselves under the Act. Now, all of a sudden, the respondents have imposed new condition by which the petitioners are prevented from participating in the tender. Hence, the direction issued by the first respondent to the second respondent that the works should be awarded only to the contractors who have E.P.F. Number cannot be carried out practically and it will cause great prejudice to them and the condition is also arbitrary.

6. Per contra, learned counsel appearing for the respondents would contend that the Act being a welfare legislation only in order to extend the benefit of the Act to all the employees working under the petitioners, the present memo has been issued by the first respondent. Some of the petitioners were earlier executed works under the respondent corporation for a value of several lakhs and they were engaged more than 20 employees. In the said circumstances, they have to necessarily register under the Act. That apart, the burden of contribution also not lies with the contractor as the Corporation has agreed to reimburse the entire amount and the contribution is to be also included in the contract estimates. Learned counsel would further contend that this Court as well as the Hon'ble Supreme Court in a number of cases held that even the casual employees would come under the purview of the Act and even the petitioners engaged casual employees, they are liable to be registered under the Act.

7. I have considered the rival submissions made on either side and perused the entire records carefully.

8. The circular impugned in all these writ petitions is only a communication sent by the Chief Engineer,

TANGEDCO/TANTRANSCO, Chennai, the first respondent herein to the Superintending Engineers directing them to award works only to the contractors who have E.P.F account number. It is only an internal communication between the first and second respondents. All these petitioners who have alleged to have engaged in previous contracts with the respondents in anticipation of participating in future tenders, filed the present writ petitions challenging the said communication.

9. First of all, the petitioners cannot maintain the writ petitions in anticipation of imposing a tender condition in future. Even assuming that the petitioners right would be affected in the event of imposing such condition in the future tender notification issued by the respondent even then, the petitioners cannot challenge the tender condition.

10. The above condition will be imposed only to ensure the benefit of the Act which is a welfare legislation to reach beneficiaries. It is an admitted case that all the petitioners were class-I contractors and they were eligible to carry out civil work to the value upto 75 lakhs. Even according to the respondents, in the previous occasions most of the petitioners were engaged by the respondents and the records show that they were engaged more than 20 employees. Now, it is the contention of the petitioners that the persons employed under them are daily wages and they were not engaged continuously and they do not have permanent address and it is not practically possible to pay the contribution. The said contention cannot be countenanced for the simple reason that under Section 2(f) of the Act, even casual employees are also entitled to the benefit of the Act. Apart from that as per clause 26(2) of the Employees Provident Funds Scheme, 1952, every employee employed in or in connection with the work of that factory or establishment, other than an excluded employee, who has not become a member already shall also be entitled and required to become a member of the fund from the date of joining the factory or establishment. Even assuming that the petitioners employing the persons who have come from various States and Districts and therefore, they are not identifiable but it is totally irrelevant as the contribution is liable to be paid for them, when they were in employment.

11. The Hon'ble Supreme Court in **Regional Director, E.S.I., Corporation Vs. Kerala State Drugs and Pharmaceuticals Ltd.**, reported in **1995 Supp (3) SCC 148** has held as follows:-

"3. There is thus no quid pro quo between the persons insured and the benefit available under the Act. As regards the finding that the workmen were unidentifiable, what is forgotten is that under the Act, once an establishment comes to be covered by the Act, the employer becomes liable to pay the contribution in respect of the employees in his employment directly or indirectly.

The contribution which had become payable for the relevant period has to be paid even if the employees concerned are no longer in employment. Whether the employees are



unidentifiable today or not, is therefore, irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment".

In view of the same, the said contention is liable to be rejected.

12. Recently, a Division Bench of this Court in **Builders Association of India, Madurai Centre Vs. Union of India and others** reported in (2017) 152 FLR 369 has held that even casual workers also come under the purview of the Act. The relevant portion of the said judgment is as follows:-

"12. Since the Hon'ble Supreme Court has already dealt with amended paragraph 26 (2) of the Employees' Provident Fund Scheme, 1952, the same cannot be challenged in the present writ petition and further as per Section 2 (f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the same is applicable even to casual workers. Therefore, the first contention put forth on the side of the appellant/petitioner is sans merit.

13. Considering all those circumstances, I do not find any merit in the writ petitions. Accordingly, the writ petitions are dismissed. No costs. Consequently, W.M.P(MD) Nos. 17234, 17235, 18641, 19168 and 19169 of 2017 and 1342 and 1343 of 2018 are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Engineer (Personnel),
TANGEDCO and TANTRANSCO,
Office of Tamil Nadu Electricity Board,
Anna Salai, Chennai.

2. The Superintending Engineer,
General Construction Circle,
TANTRANSCO, K.Pudur, Madurai 7.

+ 1 cc TO Mr. J. Alaguram Jothi, Advocate in SR No. 50647

+ 1 cc TO Ms. P. Malini, Advocate in SR No. 50326

sms

AE/KK/SAR3/09.03.2018/8P/5C

Common Order made in
Writ Petition (MD) Nos. 20948,
22865 of 2017 and 1263 of 2018
and

W.M.P(MD) Nos. 17234, 17235, 18641,

<https://hcservices.ecourts.gov.in/hcservices/> 19168 and 19169 of 2017 and 1342 and 1343 of 2018
22.02.2018