

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.10775 of 2015

and

M.P.No.1 of 2013

Fichtner India Consulting Engineers (India) Pvt. Ltd.,
Menon Eternity, 9th Floor,
New No.165, Old No.110, St Mary's Rad,
Alwarpet, Chennai-600 018.
Rep., by its Director, Mr.V.Narendra Kumar. .. Petitioner

-vs-

1.Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Regional Office,
No.37, Royapettah High Road,
Chennai-600 014.

2.The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Regional Office,
No.37, Royapettah High Road,
Chennai-600 014.

3.The Enforcement Officer,
Employees' Provident Fund Organisation,
Regional Office,
No.37, Royapettah High Road,
Chennai-600 014.

.. Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the
connected records relating to the issue of the impugned notice
No. CHN/TN/23377/CCI/DV 19/Eng/Regl/215 dated 13.03.2015 of the
1st respondent and quash the same as illegal and void.

For Petitioner : Mr.Muthukumar
For M/s.Paul and Paul

For Respondents: Mr.T.R.Sundaram

ORDER

The lis on hand is filed challenging the order passed by the 1st respondent dated 13.03.2015.

2.Perusal of the impugned order reveals that it is a summons issued to appear in person (assesseees/witnesses) under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). The said summons is challenged mainly on the ground that the writ petitioner is not liable for any such assessment with reference to certain allowances, which cannot be construed as back wages and under these circumstances, the petitioner has chosen to challenge the very summons in the present writ petition.

3.The learned counsel for the writ petitioner made a submission that even as per the orders passed by the 1st respondent, the petitioner is not liable for any such assessment and in view of the fact that basic principles are violated by the 1st respondent, the petitioner has chosen to file the present writ petition.

4.The learned counsel appearing on behalf of the respondents Provident Fund Organisation disputed the contentions by stating that the Hon'ble Supreme Court of India delivered a judgment with reference to the issues in relation to the calculation of special allowances as back wages for the purpose of calculating the contributions to be paid by the employers. In view of the judgment of the Supreme Court, the writ petitioner is also liable to pay the contributions by calculating the special allowances along with the back wages paid to the employees.

5.This Court is of an opinion that all these grounds raised on merits cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India. The grounds raised in the present writ petition with reference to the merits and the materials available are to be adjudicated by the competent authorities and such an adjudication cannot be done in the present writ petition. This apart, the impugned order is the summons to appear in person issued under Section 7A of the Act. All these facts, circumstances as well as the legal grounds shall be placed before the competent authorities by the writ petitioners for complete adjudication of the issues on merits and in accordance with law. However, such an adjudication cannot be done in this writ petition.

6.A Writ Petition against the summons cannot be entertained in a routine manner. The explanations, objections as well as the documents relied on by the writ petitioner have to be placed

before the competent authorities for complete adjudication. A Writ against the summons can be issued on certain limited grounds only if, such summons are issued without any jurisdiction or if the same is in violation of the statutory rules in force. In all other circumstances, the persons, who received summons under the provisions of the Act are bound to appear before the authorities competent and defend their case by producing documents and adducing evidences, if required. These being the facts and circumstances, this Court is of an opinion that the writ petitioner is at liberty to participate in the adjudicatory process to be done by the respondents by following the procedures and defend their case in the manner known to law.

7. With the above liberty, this writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Regional Office,
No.37, Royapettah High Road,
Chennai-600 014.
2. The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Regional Office,
No.37, Royapettah High Road,
Chennai-600 014.
3. The Enforcement Officer,
Employees' Provident Fund Organisation,
Regional Office,
No.37, Royapettah High Road,
Chennai-600 014.

+1cc to Mr.T.R.Sundaram, Advocate, S.R.No. 94438

W.P.No.10775 of 2015

NR(CO)
GN(27/12/2019)