

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24197 of 2013
and M.P.No.1 of 2013

Mrs.G.Lalitha

...Petitioner

vs.

1. The Commissioner,
Employees Provident Fund Organisation,
Ministry of Labour & Employment Government of India
Regional Office, Royapettah High Road,
Royapettah, Chennai-600 014.
 2. The Assistant Provident Fund
Commissioner (Comp),
Ministry of Labour & Employment Government of India
Sub Regional Office,
Sri Venni Commercial Complex,
No.101, 100 Feet Road,
Cholan Nagar,
Olandai Keerapalayam,
Puducherry-605 004.
 3. The Tamil Nadu Industrial Investment Corporation Limited
No.1, Bharathi Road, Arcot,
Wood Land (Annex), III Floor,
Cuddalore.
- ... Respondents

R3-Suo motu impleaded as per
order dated 11.09.2013 in W.P.No.24197 of 2013

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
to call for the entire records of the second respondent in
pursuance of the show cause notice in
No.TBM/SRO/PONDY/Comp/394/2013 dated 18.06.2013 and quash the
same.

For Petitioner : M/s.K.Murugan

For Respondents : Mr.K.Ramu for R1
Mr.V.J.Latha for R2.
Mr.I.Sathish for R3.

O R D E R

The show cause notice dated 18.06.2013 issued by the Assistant Provident Fund Commissioner is under challenge in the present writ petition.

2. The writ petitioner states that M/s.Amman Oven Sacks Private Limited was having factory at Setharapettai, Puducherry. The late husband of the writ petitioner Mr.R.Gunasekaran was the Managing Director of the said company and the petitioner came to know that her husband availed loan from the Tamil Nadu Industrial Investment Corporation in the year 1996 and executed a mortgage deed in favour of the Tamil Nadu Industrial Investment Corporation, mortgaging the land and building of the Company situated at Villanur Commune, comprised in R.S.No.42/2 Sedarapet Village admeasuring 53 Acres and 5 cents in Pondicherry District. The husband of the writ petitioner had executed a hypothecation deed on 06.09.1996 in favour of the Tamil Nadu Industrial Investment Corporation.

3. Due to the non-payment of the said loan, the Tamil Nadu Industrial Investment Corporation issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial assets and Enforcement of Security Interest Act 2002 and the Tamil Nadu Industrial Investment Corporation subsequently had taken possession of the factory premises along with Machineries and raw materials.

4. Under these circumstances, the Assistant Provident Fund Commissioner/Employees Provident Fund Organisation issued a show cause notice in proceeding dated 18.06.2013, directing the writ petitioner to produce all the relevant records such as salary/wages registers and attendance registers etc., for the period from 06/2003 to the date of closure before the undersigned on or before 24.06.2013, at 11.00 A.M, to proceed further in this matter. Being the legal representative of the employer, she should appear in person or through any authorized person on the stipulated date. The show cause notice reveals that, the failure to comply with the instructions, will lead to further legal action.

5. The writ petitioner instead of submitting the details to the competent authority has chosen to file a writ petition mainly on the ground that the company is not in existence, therefore, the legal representative of the deceased/occupier does not arise at all. It is further contended that Section 2 (e) of the Employees Provident Fund Act is applicable to the Existing Company and not the non-existing company. The petitioner states that she is in no way connected with the affairs of the company at any point of time.

6. This Court is of the considered opinion that all these factual and legal grounds can be raised before the Competent Authority. In view of the fact that the order impugned is only a show cause notice, directing the petitioner to produce all the records as well as the documents. In spite of submitting the factual as well as the legal grounds before the Competent Authority, the petitioner has chosen to file the writ petition.

7. This Court cannot adjudicate the disputed facts under Article 226 of the Constitution of India. All such disputed facts are to be adjudicated with reference to the original documents and by adducing evidence, if required. Such an exercise can never be done in a writ proceedings under Article 226 of the Constitution of India. Thus, the writ petitioner is bound to participate in the process of enquiry to be conducted by the Competent Authority by producing the original documents and other records, enabling the authority to conduct an enquiry in the manner prescribed under law.

8. No writ proceeding can be entertained for judicial review in a routine manner. Judicial review against the show cause notice is undoubtedly limited. The power of judicial review cannot be exercised, so as to quash the show cause notice, wherein, the person concerned is directed by the competent authorities to produce the records as well as the documents.

9. The writ petitioner has not established any legal grounds so as to interfere with the impugned show cause notice issued by the respondents in the present case.

10. Once an enquiry is contemplated and the Competent Authority has issued a show cause notice, all concerned persons must respond to such notice, enabling the authority to complete the enquiry in the manner prescribed under law. This being the factum, the writ petitioner is at liberty to produce all the records as well as the documents before the Competent Authority, enabling such authorities to consider the same for the purpose of passing a final order or initiating further action in this regard. Under these circumstances, the writ petitioner has not established any acceptable ground for the purpose of assailing the show cause notice. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

To

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3. The Tamil Nadu Industrial Investment Corporation Limited
No.1, Bharathi Road, Arcot,
Wood Land (Annex), III Floor,
Cuddalore.

+1cc to Mr.I.Sathish, Advocate SR.No.78354

+1cc to Mr.V.J.Latha, Advocate SR.No.78558

W.P.No.24197 of 2013
and M.P.No.1 of 2013

MR (CO)
GMY (15/11/2019)
GMY (27/11/2019)

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