

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31410 of 2019
and
W.M.P.No.31581 of 2019

The Commissioner,
Udumalpet Municipality,
Udumalpet - 642 126

..Petitioner

Vs.

The Assistant Provident Fund Commissioner,
Regional Office,
Dr.Balasundaram Road,
Coimbatore - 641 018

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the Respondent relating to the Impugned Order bearing No.TN/RO/CBE/CC-5(24)/1557442/2019 dated 23.09.2019 and quash the same.

For Petitioner : Mr.A.S.Thambuswamy
For Respondent : M/s.R.Meenakshi

O R D E R

The Warrant of Arrest issued by the respondent in proceedings dated 23.09.2019 is under challenge in the present writ petition.

2. The writ petitioner is Udumalpet Municipality.

3. The learned counsel appearing on behalf of the writ petitioner made a submission that 170 permanent employees are serving with the writ petitioner Municipality and they are covered under the Employees Provident Fund and Miscellaneous Provisions Act 1952, the contributions are being paid punctually and there is no default. In July 2018, the respondent asked the Municipality to attend the enquiry scheduled to be held on 27.07.2018. The Municipality deputed one Mr.Kannan, Assistant Accountant to attend the enquiry on 27.07.2018 and the Enquiry

officer on behalf of the department, requested the Municipality to produce the details of Labour and Civil Contractors for the period from January 2011 to May 2018 and their TDS details. In the enquiry held on 03.08.2018, the Municipality representative attended and produced the details of Contractors and took time to produce the other details. Even on 05.09.2018, the Municipality representative attended the enquiry and produced the details of Civil Contractors and even on the enquiry held on 28.11.2018, the Representative of the petitioner Municipality appeared and represented that the Contractors should be issued with summons and they should be enquired instead of the Municipality. Based on the directions, the Municipality sent Notice dated 12.12.2018, calling upon the Contractors to submit the details called for by the Respondent on or before 21.12.2018. Due to pressing office work, the representative of the Municipality did not attend the enquiry on 22.02.2019, but on 20.03.2019, the representative of the Municipality attended the enquiry and stated that due to election work, they were not able to attend and sought for time to produce other document i.e. TDS Certificates of the Contractors. Instead of issuing summons to the contractors, the Respondent resorts to issue Notices after Notices, calling for new documents and even issued Notice to the Engineer, even in spite of the fact that the Municipality is paying the Provident Fund to the regular workers and the Contractors, who are also registered. Mr.T.Kannan, Assistant, Accounts-in-charge of the petitioner could not attend the hearing on 19.08.2019 and on 12.09.2019 due to Local Fund Auditor's Inspection. Under those circumstances, on account of the said non-appearance, the respondent issued Warrant of Arrest without looking into the records. Thus, the petitioner is constrained to move the present writ petition.

4. The learned counsel appearing on behalf of the respondent made a submission that it is not as if the Warrant of Arrest was issued immediately, the Warrant of Arrest was issued after adjourning the enquiry for about 19 occasions and in all those occasions, the representative of the writ petitioner Municipality either not appeared or not submitted the relevant records, enabling the respondent to continue the enquiry proceedings. On account of these lapses, the respondent is forced to issue the Warrant of Arrest by invoking the provisions of the Act. Therefore, the writ petition is liable to be dismissed.

5. At the outset, it is contended that on account of the continuous absence of the representative of the writ petitioner Municipality, the order of Arrest was issued and there is no infirmity as such.

6. This Court is of the considered opinion that the object of the Act is to ensure that the enquiry is conducted by affording opportunity to all the parties concerned and actions are initiated regarding the contributions to be recovered from the employer concerned. In the present case, the learned counsel for the writ petitioner states that the EPF Contributions are paid punctually and there is no default.

7. This being the submission, this Court is of an opinion that the respondent ought to have verified the payment of contributions by the Municipality and in respect of other details and the non-payment of the contributions by the contractors is to be dealt with in accordance with the provisions of the Act. Undoubtedly, the writ petitioner is also liable to pay the contributions and thereafter, recover the same from the contractors. Ultimately, the very purpose and object of the Employees Provident Fund and Miscellaneous Provisions Act 1952, is to ensure that the welfare of the workmen are protected. Therefore, the petitioner being a Municipality, is duty bound to cooperate with the EPF authorities for collection of particulars in respect of the workman engaged by the contractor with whom, they have entered into an agreement. Thus, all these efforts are to be taken by the Municipality concerned to furnish the particulars and details to the respondents, enabling them to recover the contributions as per the provisions of the Act.

8. This being the principles to be followed, this Court is of an opinion that one opportunity is to be given to the writ petitioner to participate in the enquiry and to furnish all the details to the respondents, if necessary even by collecting those details from their own contractors.

9. Under these circumstances, the order impugned passed by the respondent in proceedings No.TN/RO/CBE/CC-5(24)/1557442/2019 dated 23.09.2019 is quashed. However, it is made clear that the opportunity is given by this Court in this writ petition, enabling the writ petitioner to collect all the particulars, if necessary from the contractors also and furnish all those particulars and details to the respondents, enabling the respondents to proceed with all further actions by following the procedures as contemplated under the Employees Provident Fund and Miscellaneous Provisions Act, as expeditiously as possible. The respondent is directed to fix the enquiry date and communicate the same to the writ petitioner, enabling them to participate in the enquiry.

10. With these observations, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

The Assistant Provident Fund Commissioner,
Regional Office,
Dr.Balasundaram Road,
Coimbatore - 641 018

+1 CC to Mr. Arumugam, Advocate sr 95917.
+1 CC to Mrs.R. Meenakshi, Advocate sr 95407.
+1 CC to Mr.R. Arumugam, Advocate sr 95917(10/01/2020)

W.P.No.31410 of 2019

GMR (CO)
SP (26/12/2019)

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