



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2019

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD**

W.A.[MD]No.875 of 2016
and
C.M.P.(MD) No.5246 of 2016

The Recovery Officer
Employees' Provident Fund Organisation,
Regional Office,
No.2 Lady Doak College Road,
Madurai.

: Appellant

Vs.

R.Kanagasabai

: Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 13.09.2011 passed in W.P(MD)No.11593 of 2009.

Prayer in WP(MD)No.11593 of 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI, calling for the records relating to the impugned order passed by the respondent in his proceedings TN/MDU/808/RECY/RO/09 dated 19-10-2009 and quash the same as illegal.

For Appellant : Mr.K.Murali Shankar
For Respondent : Mr.M.E.Ilango

JUDGMENT

(Judgment of the Court was delivered by SUBRAMONIUM PRASAD, J.)

The correctness of the judgment dated 13.09.2011 in W.P.(MD) No.11593 of 2009 is under challenge in this writ appeal. The writ petition has been filed for a Writ of Certiorari calling for the records relating to notice dated 19.10.2009 passed by the Recovery Officer in exercise of the power under Section 8-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

2. For the disposal of the matter, a perusal of the impugned notice is necessary.

"It is observed that you have resigned the Directorship w.e.f.1-12-04 as per your letter dated 09.10.09 from the

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



establishment and accordingly you are responsible for the affairs of the establishment and responsible for the delay in payment of Provident Fund dues upto date of your relief in 01.12.04. It is informed that the above establishment have failed to remit the following dues to a tune of Rs.5,62,513/- upto 30.11.04.

Sl.No.	Nature of Dues	Period	Amount
1	14B	3/03 to 11/04	4,24,215/-
2	7Q	3/03 to 11/04	1,38,298/-
Total			5,62,513/-

As per Section 14 A of Employees' Provident Fund & Miscellaneous Provisions Act, 1952 is the person committing an offence under this Act, is a company every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against.

Notwithstanding anything contained in Sub-Section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director or manager, Secretary, or other officer of the company, such Director, manager, Secretary or other Officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against.

I hereby direct you to remit the above said amount immediately and submit the Triplicate Copy of Challan to the undersigned within 7 days of receipt of the communication failing which, recovery action will be initiated including attachment of movable/immovable property of the employer (Personal property) under Section 8B to 8G of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 without further notice."

3. A perusal of the above would show that the impugned notice seems to be a composite notice for initiating criminal prosecution under Section 14 A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'The Act') and also for recovery of the arrears of the Provident Fund under Section 8(B) of the Act.

4. The learned Single Judge by the order impugned herein has relied on a judgment dated 07.09.2011 in W.P.(MD) No.11546 of 2010 stating that the writ petitioner is not the employer under section 8 (B) of the Act and therefore, he is not liable to pay the amount as



found due from the establishment.

5. Learned counsel for the appellant challenges the order stating that Factory is an asset of the Company and the writ petitioner respondent being a Director is responsible to pay the Provident Fund dues, which are due and payable by the Factory and therefore, the order of the Single Judge suffers from infirmity and requires to be set aside. He would put that the respondent / writ petitioner would fall within the definition of employer under Section 2(e)(ii) of the Act.

6. On the other hand, learned counsel for the respondent would state that under Section 2(e)(i) of the Act, an employer in relation to an establishment which is a factory is the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named.

7. Learned counsel for the respondent would state that the writ petitioner respondent who is the Director in the Company would not fall within the definition of the term 'employer' and therefore, he is not liable to pay the dues under Section 8(B) of the Act .

8. We have perused the impugned notice and the relevant sections.

9. Section 14(A) of the Act deals with offences committed by Companies for action taken in violation of the Act. On the other hand, 8(B) of the Act deals with the recovery of the provident fund, which is due and payable by the employer. Both these sections operate in different fields. The person, who has committed an offence under the Act need not be an employer of a factory and liable to pay the dues. The impugned notice dated 19.10.2009 seems to be defective and the proceedings for recovery under Section 8(B) could not have been initiated on the basis of notice dated 19.10.2009.

10. In view of the above, the entire notice fails. The order of the learned Single Judge does not require any interference. Accordingly, the Writ Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



The Recovery Officer
Employees' Provident Fund Organisation,
Regional Office,
No.2 Lady Doak College Road,
Madurai.

+1 CC to M/s.K.MURALISANKAR, Advocate (SR-105621[F] dated
18/12/2019)

+1 CC to M/s.M.E.ILANGO, Advocate (SR-105863[F] dated 19/12/2019)

RR/STS

TE : 07/01/2020 : 4P/4C

JUDGMENT MADE IN
W.A.[MD]No.875 of 2016
Dated:18.12.2019