



WEB COPY

W.P(MD)No.23645 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P (MD) No.23645 of 2019
and
WMP (MD) No.20248 of 2019

M/s.Sri Nachammai Cotton Mills Ltd.,
rep.by its Managing Director,
Chettinad - 630 102,
Karaikudi Taluk,
Sivagangai District.

... Petitioner

Vs.

1.The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Madurai - 625 002.

2.G.Shaji
Recovery Officer,
Employees Provident Fund Organisation,
Madurai - 625 002.
Tamil Nadu.

3.V.Sunthan
Enforcement Officer,
Employees Provident Fund Organisation,
Madurai - 625 002.
Tamil Nadu.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus to direct the 2nd respondent not to take coercive steps including recovering the ordered amount and also against the notice in No.MD/MDU/1092/M-40/RECY/CP-25/2019 dated 22.10.2019 pending disposal of the appeal before the EPF Appellate Tribunal in EPFA No.397/2018.

For Petitioner : Mr.V.O.S.Kalaiselvam

For Respondents : Mr.K.Murali Sankar



ORDER

This writ petition is filed seeking a direction to the second respondent not to take any coercive steps including recovering the ordered amount and against the notice in No.MD/MDU/1092/M-40/RECY/CP-25/2019, dated 22.10.2019, pending disposal of the appeal before the EPF Appellate Tribunal in EPFA No.397/2018.

2.Mr.K.Murali Sankar, learned Standing Counsel takes notice on behalf of the respondents. By consent, the writ petition is taken up for final disposal at the stage of admission itself.

3.The second respondent issued orders under Section 14-B & 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [hereinafter referred to as 'the Act']. Consequent to the said order, a certificate was issued in MDMDU7455/0001092/13/04/2016/501/35 dated 13.04.2016, in respect of payment of amount. Thereafter, the petitioner has preferred an appeal against the order passed by the authority and the same is still pending. In the meanwhile, the stay granted by the Appellate Tribunal was vacated for non compliance of the conditions imposed for grant of stay. Now that, by the impugned show cause notice dated 22.10.2019, the petitioner was asked to appear before the Recovery Officer to show cause as to why he should not be committed to the civil prison in execution of the said certificate. Aggrieved over the same, the petitioner is before this Court.

4.I have heard the submissions made on either side.

5.Section 8-B of the Act specifies Issue of certificate to the Recovery Officer and mode of recovery. As per the said provision, the Recovery Officer shall first adopt the mode of attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer; thereafter, arrest of the employer and his detention in prison. It is clarified that sale of the property shall be effected against the properties of the establishment first and thereafter, the properties of the employer. If that be so, the Recovery Officer shall first avail the first mode of attachment and sale of the movable or immovable property of the establishment and thereafter the property of the employer. If recovery of money is insufficient or high, then only he can attempt to adopt the other mode of arrest of the employer and his detention in prison. Further, the show cause notice issued by the Recovery Officer does not disclose the attempt made for attachment of the property of the establishment as well as the employer and that they are not sufficient to satisfy the dues. But, directly ventured to commit the employer in prison and such procedure is not contemplated under the Act. Therefore, the petitioner cannot be arrested without complying with the procedures contemplated under Section 8-B of the Act. The petitioner is



directed to appear before the second respondent on the date scheduled for his appearance. However, arrest shall not be made without following the other modes of requirements.

6.The writ petition is disposed of with the above observation. No costs. Consequently, WMP(MD)No.20248 of 2019 is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

mj

To

Recovery Officer,
Employees Provident Fund Organisation,
Madurai - 625 002.
Tamil Nadu.

+1 CC to M/s.K.MURALI SANKAR, Advocate SR-97047.

+1 CC to M/s.V.O.S.KALAISELVAM, Advocate SR-9732.

W.P. (MD) No.23645 of 2019
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