



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.02.2019

Pronounced on : 12.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.4533 of 2011

and

MP(MD)No.1 of 2011

Dr.Prakash Anand

... Petitioner

Vs.

1.The Presiding Officer,
Employees' Provident Fund Appellate
Tribunal, SCOPE MINAR,
CORE II 4th Floor Laxmi Nagar
District Centre,
Laxmi Nagar, New Delhi - 110 092.

2.The Regional Provident Fund
Commissioner,
Water Tank Road, Nagercoil,
Kanyakumari District - 629 001.

... Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the first respondent in ATA No.192(13) 2010, dated 28.01.2011 and quash the same.

For Petitioner : Mr.M.Azeem

For Respondents : Mr.Aayiram K.Selvakumar,
Addl., Government Pleader for R1

Mr.K.Gurunathan for R2

ORDER

The writ petitioner is a medical practitioner and a Pediatrician. He entered into a lease agreement with one Dr.Jasmine George on 14.04.2008 for starting a new pediatric hospital in a portion of the building in the name and style of "Arokia Annai Children Hospital". The said building earlier housed a maternity hospital known as "George Hospital" and was started by one Dr.George. He died in the year 2004. After his demise, it was run by Dr.Jasmine George. The case of the writ petitioner herein is that the establishment run by Dr.Jasmine George in the name and style of "George Hospital" was closed and that what was only a portion of the building and some of the equipments were leased out to him. In other words, what was transferred to him was only the lease hold interest in the building and the establishment as such was not transferred to him.



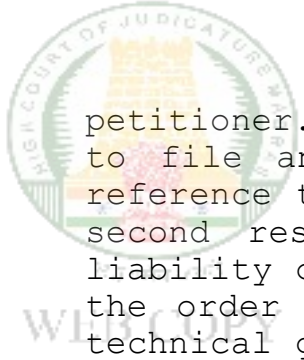
2. But then, an inspection was conducted and based on the same, notice of enquiry dated 04.11.2009 was sent by the Regional Provident Fund Commissioner. The writ petitioner submitted his reply on 24.11.2009. In the meanwhile, revised lease dated 18.11.2009 was entered into between Dr. Jasmine and the writ petitioner herein. The petitioner's explanation did not carry conviction with the authority who by order dated 28.01.2010 held that the provisions of the Act and Schemes shall continue to apply to the establishment and that Dr. J.T. Prakash Anand, the petitioner herein is under liability with effect from the date he took over the establishment on rental basis. Dues were determined accordingly and the writ petitioner was called upon to pay a sum of Rs.92,217/-. Aggrieved by the same, the petitioner filed an appeal before the Appellate Tribunal by filing ATA No.192(13)2010. By order dated 28.01.2011, the appeal was dismissed. Challenging the same, this writ petition has been filed.

3. The learned standing counsel appearing for the second respondent filed a detailed counter affidavit. He also filed a typed set of papers enclosing all the material documents. The respective counsel put forth the stand set out in their pleadings.

4. The learned counsel appearing for the writ petitioner would contend that the impugned order has to be set aside for more reasons than one. He would contend that the second respondent had relied on the reports of the enforcement officer. But, copies of the reports of the enforcement officer were not furnished to the writ petitioner herein. They were made available on 16.03.2011 following the application made under RTI Act. But the impugned order dated 28.01.2011 came to be passed much before that. The stand of the learned standing counsel is that since the writ petitioner did not make any request for being furnished with the copies of the reports of the enforcement officer, the authority was not under an obligation to furnish the same.

5. I am unable to agree with the submission of the learned standing counsel for the second respondent. The statutory authority while passing order under Section 7(A) of the Act had categorically mentioned that he had examined the case in detail with reference to the documents produced and reports received from the enforcement officer. In as much as reliance was placed on the report of the enforcement officer, copies of the same ought to have been made available to the writ petitioner herein. Not doing so, is a clear violation of the principles of natural justice.

6. The impugned order is quashed only on this ground. The matter is remitted to the file of the second respondent to pass orders afresh in accordance with law. Of course, there is no need for the second respondent to furnish the copies since they have been obtained by the petitioner later by invoking RTI Act. The second respondent shall give one more opportunity of hearing to the writ



petitioner. On the said date, the writ petitioner will be allowed to file an additional representation setting out his stand with reference to the report of the enforcement officer. Thereupon, the second respondent shall pass an order afresh determining the liability of the writ petitioner. It is once again made clear that the order impugned in this writ petition is quashed only on this technical ground and this Court has not gone into the merits of the matter.

7.This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Presiding Officer, Employees' Provident Fund Appellate Tribunal, SCOPE MINAR,
CORE II 4th Floor Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi - 110 092.

2.The Regional Provident Fund Commissioner,
Water Tank Road, Nagercoil,
Kanyakumari District - 629 001.

+1 CC to Mr.M.AZEEM, Advocate SR-68390.

+1 CC to Mr.K.GURUNATHAN, Advocate SR-68361.

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CS: (01/07/2019) 3P 5C