

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.08.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 191 of 2020
and
W.M.P. Nos. 220, 4416 and 6118 of 2020

Vaniyambadi Municipality,
Rep. by it's Municipal Engineer and Commissioner
in-charge of Vaniyambadi Municipality,
Mr. P. Cecil Thomas, S/o. Perumal,
No. 3, Islamiah College Road,
Vaniyambadi - 635 752.

... Petitioner

-vs-

The Assistant Provident Fund Commissioner (Compliance),
Regional Office,
S-1, TNHB Phase - III,
Sathuvachari,
Vellore - 9.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorarified
Mandamus, calling for the records of the impugned proceedings
(1) No. TB/VLR/92213/ENF/DIV-III/2019-20/2676 dated 28.06.2019
and (2) No. TB/VLR/92213/ENF/DIV-III/2019-20/9981 dated
11.12.2019 issued by the Respondent and quash the same as void
and illegal.

For Petitioner : Mr. V.J. Arulraj for
Mr. M. Kirubaharan

For Respondent : V.J. Latha, Standing Counsel

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O R D E R
(through video conference)

Heard Mr. V.J.Arulraj, Learned Counsel for the Petitioner
and Ms.V.J. Latha, Learned Standing Counsel appearing for the
Respondent and perused the materials placed on record, apart
from the pleadings of the parties.

2. The Respondent by Order No. TB/VLR/92213/ENF/DIV-III/2019-20/2676 dated 28.06.2019 had levied penal damages under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act' for short) against the Petitioner, who accepts to have received the copy of that order in 03.07.2019 itself. The Petitioner was entitled to prefer appeal against that order under Section 7-I of the Act within a period of 60 days from the date of its receipt in terms of Rule 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997, before the Appellate Authority, who has been empowered to condone delay in filing such appeal for an extended period of 60 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner did not prefer any such appeal before the Appellate Authority, but has instead filed this Writ Petition on 03.01.2020 challenging the order passed by the Respondent beyond the maximum limitation period of 120 days from the date of receipt of copy of that order, and that too, after the receipt of the consequential order of recovery in Order No. TB/VLR/ 92213/ENF/DIV-III/2019-20/9981 dated 11.12.2019 passed by the Respondent.

3. The Hon'ble Supreme Court of India in Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) has emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India ought not to entertain Writ Petition assailing the order passed by a Statutory Authority which was not appealed against within the maximum period of limitation before the concerned Appellate Authority. It is equally recognized principle of law that a challenge to a consequential order of recovery cannot be maintained in respect of issues which have attained finality in the adjudication made in the parental order itself. In view of that legal position, it is not possible to entertain this Writ Petition challenging the impugned orders passed by the Respondent.

4. Learned Counsel for the Petitioner made a fervent plea that the Petitioner may be permitted to recover the amounts that it has been held to pay towards provident fund dues of the contract workers from the respective contractors through whom they had been engaged and who are primarily liable for the same. It is made clear that the Petitioner is not precluded from working out its remedies against the respective contractors for appropriate relief before the proper forum in the manner

recognized by law and that no view has been expressed by this Court on the correctness or entitlement of the claim made by the Petitioner in that regard.

5. Accordingly, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar

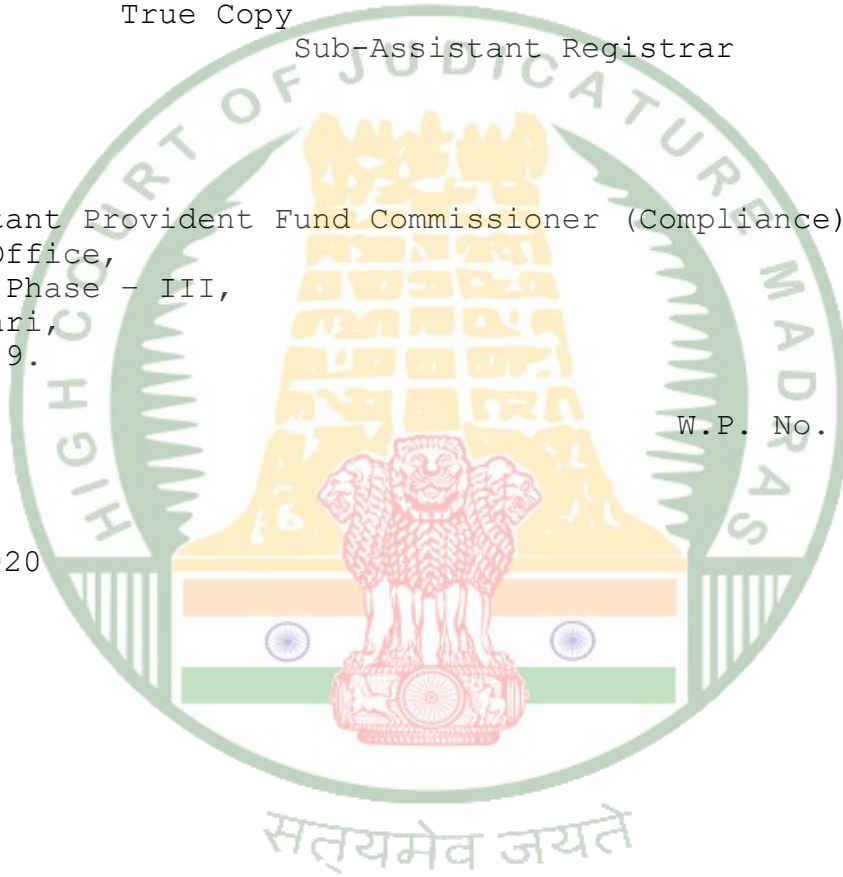
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Sub-Assistant Registrar

vjt/dm
To

The Assistant Provident Fund Commissioner (Compliance),
Regional Office,
S-1, TNHB Phase - III,
Sathuvachari,
Vellore - 9.

W.P. No. 191 of 2020

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