

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 5484 and 7016 of 2020
and

W.M.P. Nos. 6413, 6414, 6416 8371, 8372 and 8375 of 2020

W.P. No. 5484 of 2020:-

M/s. The Pondicherry Co-op. Spinning Mills Ltd.,
Represented by its Managing Director Mr. S. Shakthyvel,
Pondicherry-Villianur National Highways,
Thiruvandorkoil P.O.,
Thirubhuvanai,
Puducherry - 605 102.Petitioner

-vs-

1. The Regional Provident Fund Commissioner - II/OIC,
Employees Provident Fund Organisation, Regional Office,
No. 101, 100 Feet Road,
SreeVenni Commercial Complex,
Chozhan Nagar, Olandaikeerapalayam,
Puducherry - 605 004.
2. The Assistant Provident Fund Commissioner (COMP),
Employees Provident Fund Organisation, Regional Office,
No. 101, 100 Feet Road,
SreeVenni Commercial Complex,
Chozhan Nagar, Olandaikeerapalayam,
Puducherry - 605 004.Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to impugned order i) vide No. TN/RO/PDY/PC/299/Comp/DIV-II/7A ORDER/2019-20 dated 09.10.2019 passed by the First Respondent under Section 7-A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 and consequential attachment order ii) vide No. TN/RO-PDY/PC/299/Comp/DIV-II/8F Order/2019 dated 18.11.2019 passed by the Second Respondent under Section 8-F of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 and quash the same.

W.P. No. 7016 of 2020:-

M/s. The Pondicherry Co-op. Spinning Mills Ltd.,
Represented by its Managing Director Mr. S. Shakthyvel,
Pondicherry-Villianur National Highways,
Thiruvandorkoil P.O.,
Thirubhuvanai,
Puducherry - 605 102.

...Petitioner

-vs-

1. The Regional Provident Fund Commissioner - II/OIC,
Employees Provident Fund Organisation, Regional Office,
No. 101, 100 Feet Road,
SreeVenni Commercial Complex,
Chozhan Nagar, Olandaikeerapalayam,
Puducherry - 605 004.

2. Mr. Devaraj,
The Regional Provident Fund Commissioner - II/OIC,
Employees Provident Fund Organisation, Regional Office,
No. 101, 100 Feet Road,
SreeVenni Commercial Complex,
Chozhan Nagar, Olandaikeerapalayam,
Puducherry - 605 004.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records relating to impugned orders i) vide No.
TN/RO-PDY/PC/299/Comp/DIV-II/7A ORDER/2019-20/51 dated
18.02.2020 passed by the First Respondent under Section 7-A of
the Employees Provident Funds & Miscellaneous Provisions Act,
1952 and consequential enforcement order ii) vide No. TN/RO-
PDY/COMP/DIV-II/PC/299/8F/2020 dated 09.03.2020 passed by the
First Respondent under Section 8-F of the Employees Provident
Funds & Miscellaneous Provisions Act, 1952 and quash the same.

For Petitioner : Mr. Prakash Adiapadam (in both W.P.s)

For Respondents : Mrs. V.J. Latha, Standing Counsel
(in both W.P.s)

WEB COPY

COMMON ORDER
(through video conference)

Heard Mr. Prakash Adiapadam, Learned Counsel for the
Petitioner and Mrs. V.J.Latha, Learned Standing Counsel
appearing for the Respondents and perused the materials placed
on record, apart from the pleadings of the parties.

2. In W.P. No. 5484 of 2020, the Petitioner has challenged the Order No. TN/ RO/PDY/PC/299/Comp/DIV-II/7A ORDER/2019-20 dated 09.10.2019 passed by the First Respondent under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act' for short) and consequential attachment Order No. TN/RO-PDY/PC/299/Comp/DIV-II/8F Order/2019 dated 18.11.2019 passed by the Second Respondent under Section 8-F of the Act. In W.P. No. 7016 of 2020, the Petitioner has challenged the Order No. TN/RO-PDY/PC/299/Comp/DIV-II/7A ORDER/2019-20/51 dated 18.02.2020 passed by the First Respondent under Section 7-A of the Act and consequential enforcement Order No. TN/RO/PDY/COMP/Div-II/PC/299/8F/2020 dated 09.03.2020 passed by the First Respondent under Section 8-F of the Act.

3. Learned Standing Counsel appearing for the Respondents, on instructions, states that the entire amount due by the Petitioner under the impugned orders have not been fully paid and the details in that regard are furnished in the following self-explanatory tabular column:-

W.P. No. 5484 of 2020

S. No.	Particulars	Amount due from July 2018 to March 2019	Details of remittance
1	Demand as per 7-A Order	Rs. 1,80,42,469/-	Nil
2	Remittances/ Attachments made	Rs. 28,42,469/-	8-F Attachment amount vide D.D. No. 228352 dated 02.03.2020.
3	Remittances/ Attachments made	Rs. 16,68,148/-	Pursuant to orders of Hon'ble High Court Madras dated 04.03.2020, the establishment has remitted a sum of Rs. 16,68,148/-.
4	Remittances/ Attachments made	Rs. 81,48,661/-	Online payment made by the establishment for the period from December 2018 to March 2019 during the month of May 2020.

5	Remittances/ Attachments made	Rs. 2,44,704/-	Payment made by the establishment vide D.D. No. 264766 dated 28.05.2020
6	Total amount of remittances	Rs. 1,29,03,982/-	Nil
7	Balance outstanding	Rs. 51,38,487/-	

W.P. No. 7016 of 2020

S. No .	Particulars	Amount due from April 2019 to September 2019	Details of remittance
1	Demand as per 7-A Order	Rs. 1,03,06,898/-	Nil
2	Remittances/ Attachments made	Rs. 11,000/-	Remitted by the establishment vide Banker's Cheque No. 930413 dated 16.03.2020.
3	Remittances/ Attachments made	Rs. 11,67,521/-	*Accounted out of 8- F Attachment of Rs. 51,89,637/- recovered vide D.D. No. 012768 dated 17.03.2020.
4	Remittances/ Attachments made	Rs. 1,02,60,948/-	Online payment made by the establishment for the period from April 2019 to September 2019 during the month of May 2020.
5	Total amount of remittances	Rs. 1,14,39,469/-	Nil
6	Balance outstanding	Rs. 11,32,571/-** (In excess)	This balance amount is being accounted towards the outstanding 7-A dues for the period from July 2018 to March 2019.

It is further explained that out of the attachment amount of Rs. 51,89,637/- recovered vide D.D. No. 012768 dated 17.03.2020, the arrear demand dues of earlier period for which recovery action taken vide CP4 Attachment Orders dated 15.11.2019 and 15.03.2020 have been accounted as below:-

(A) An amount of Rs. 12,71,922/- has been accounted towards 14-B dues for the period 2011-2012 as per the final orders dated 22.02.2019 of Central Government Industrial Tribunal, Chennai in EPFA No. 388/2017 which the Petitioner Establishment is supposed to remit the deposit amount within four weeks of receipt of the order, but the establishment has failed to pay the amount within the time limit specified in the order.

(B) An amount of Rs. 27,50,194 has been accounted towards 14-B dues for the period from April 2012 to February 2018.

The balance amount of Rs. 11,67,521/- has been initially accounted towards the dues under Section 7-A of the Act for the period from April 2019 to September 2019, but the Petitioner has subsequently during the month of May 2020, on its own, made online payment of Rs. 1,02,60,948/- almost covering the entire dues for the period from April 2019 to September 2019. Hence, the balance amount of Rs. 11,32,571/- has been adjusted towards the outstanding amount of dues under Section 7-A of the Act for the period from July 2018 to March 2019. Thus, the balance outstanding dues payable by the Petitioner establishment is Rs. 40,05,916/- for the period from July 2018 to March 2019.

4. In view of the aforesaid submissions made on behalf of the Respondents, Learned Counsel for the Petitioner states that the Petitioner would be satisfied if the arrears of provident fund dues accumulated are permitted to be remitted in 24 equated monthly installments.

5. In response to the query made, Learned Standing Counsel appearing for the Respondent has produced the Circular No. RRC/28(23)06/BIFR/23781 dated 11.02.2014 and the Circular No. RRC/28(23)06/BIFR/3345 dated 12.05.2014 issued by the Central Provident Fund Commissioner, containing the instructions approved by the Central Board of Trustees of the Employees Provident Fund Organisation in their earlier meetings to permit the arrears of provident fund dues accumulated to be remitted in monthly installments.

6. Learned Counsel for the Petitioner states that the Petitioner has submitted a representation dated 31.10.2019 for availing the said benefit of remitting the arrears of provident fund accumulated in 20 equated monthly installments, which has been received by the Respondents on 31.10.2019.

7. Having due regard to the aforesaid submissions made, this Court without expressing any view on the correctness or entitlement of the claim made by the Petitioner, requires the Competent Authority to duly consider the aforesaid representation dated 31.10.2019 made by the Petitioner with reference to the parameters stipulated in the aforesaid circulars, and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment. Before carrying out that exercise, if the Competent Authority is of the view that the Petitioner has not satisfied the prescribed requirements or eligibility criteria for that benefit, the deficiencies in that regard shall be informed in writing to the Petitioner requiring the same to be furnished within a time frame of not less than 10 working days that may be granted for that purpose. In the event of the Competent Authority being of the opinion that the Petitioner has not satisfied the same even thereafter, an enquiry shall be conducted affording an opportunity of personal hearing to the Petitioner to explain its position regarding such compliance. It is made clear that resort to coercive action for recovery against the Petitioner shall be deferred till the representation is disposed in the aforesaid manner.

Accordingly, the Writ Petitions are disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vjt

To

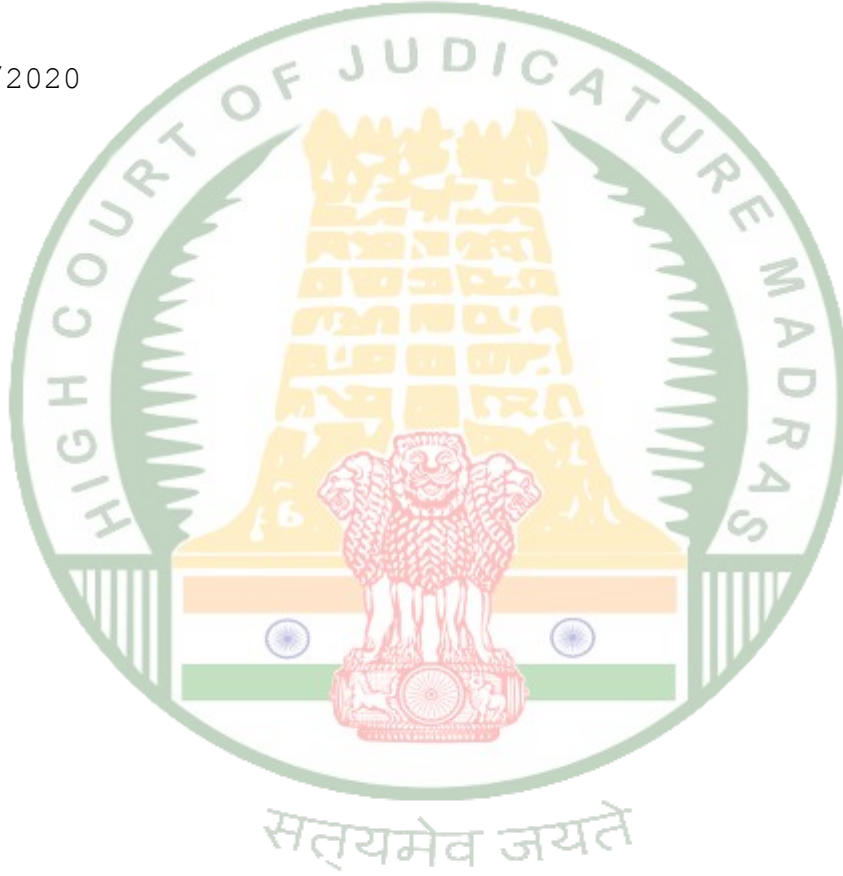
1. The Regional Provident Fund Commissioner - II/OIC,
Employees Provident Fund Organisation, Regional Office,
No. 101, 100 Feet Road,
SreeVenni Commercial Complex,
Chozhan Nagar, Olandaikeerapalayam,
Puducherry - 605 004.
2. The Assistant Provident Fund Commissioner (COMP),
Employees Provident Fund Organisation, Regional Office,
No. 101, 100 Feet Road,
SreeVenni Commercial Complex,
Chozhan Nagar, Olandaikeerapalayam,
Puducherry - 605 004.

Copy to

The Managing Director,
M/s. The Pondicherry Co-op. Spinning Mills Ltd.,
Pondicherry-Villianur National Highways,
Thiruvandorkoil P.O.,
Thirubhuvanai,
Puducherry - 605 102.

W.P. Nos. 5484 and 7016 of 2020

NRJK (CO)
KKV/17/09/2020



WEB COPY