

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2020

CORAM

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

W.P. No. 7594 of 2015

and

W.M.P. No. 1 of 2015

Tambaram Nagaratchi Oppanthakararkal Sangam,
Rep. by its President Mr. A. Masilamani,
Having Office at No. 6/15, Bajanai Kovil Street,
Thiruneer Malai Road, Kadaperi, West Tambaram,
Chennai - 600 045
(Regn. No. 272/2007) ... Petitioner

-vs-

1. The Commissioner
Tambaram Municipality,
Tambaram.
2. The Regional Provident Fund Commissioner,
Employees Provident Fund Office,
TNHB Office, Muggappair East,
Chennai. ... 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 the impugned order of the
First Respondent in ROC No. 6625/E3/2015, dated 10.03.2015 and
quash the same.

For Petitioner : Mr. R. Kannan

For Respondents: Mr. P. Srinivas (For R1)
Standing Counsel

Mr. J. Sathyanarayanaprasad (For R2)
Standing Counsel

O R D E R
(through video conference)

Heard Mr. R. Kannan, Learned Counsel for the Petitioner, Mr. P.Srinivas, Learned Standing Counsel for the First Respondent and Mr. J.Sathyanarayanaprasad, Learned Standing Counsel for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Central Government by Notification No. S.O. 30(E) dated 08.01.2011 in exercise of the powers conferred by Section 1(3) (b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as 'the Act' for short) specified the Municipal Councils and Municipals Corporations constituted under Article 243-Q(1)(b) and (c) of the Constitution of India employing 20 or more persons as a class of establishments to which that Act shall apply with effect from the date of its publication in the Official Gazette.

3. In furtherance thereto, the Commissioner of Municipal Administration by Letter No. 57084/2011/L3 dated 21.10.2014 addressed to all Commissioners of Municipal Councils has communicated the decision of the State Government that though the Municipalities/Corporations take up works through private contractors, the authorities concerned should ensure that the contractors pay the Provident Fund subscription of their employees duly to the Employees' Provident Fund Organization, otherwise, the responsibility for the same will be fixed on the concerned Municipalities/Corporations, which is the principal employer, if the contractors default in this regard.

4. It has also been borne out of the records that the Government of Tamil Nadu by Letter No.18823/MC5/2016-1, dated 19.08.2016, sent to the Commissioner of Municipal Administration required all the Municipal Councils in the State to comply with the provisions of the Act, to withdraw the Court cases, in addition to share the details of contractors/contracts awarded by them in the principal employer portal available in the website of Employees Provident Fund Organization to facilitate the extension of social security benefits to all eligible persons.

5. That apart, yet another Letter ROC No.1819/2016/L3, dated 19.10.2016 was sent by the Commissioner of Municipal Administration to all Municipal Commissioners to take necessary action in connection with implementation of the Act and the

schemes framed thereunder in respect of employees of Municipalities and Corporations and send the report directly to the Employees Provident Fund Organization concerned.

6. It was clarified by the Government of Tamil Nadu in Letter No. 14070/ ME.3/2016-4, dated 20.12.2016 sent to the Commissioner of Municipal Administration that the Notification No. S.O. 30(E) dated 08.11.2011 issued by the Central Government shall cover all employees of establishments as per definition of 'employee' under Section 2(f) of the Act excluding the employees who are getting benefits of provident fund and pension according to rules of the State Government or municipal laws, etc., and that the benefits under the Act have to be extended to all eligible employees.

7. It is beyond any pale of doubt that in terms of Section 2(f) (i) of the Act that any person employed by or through a contractor in connection with the work of the establishment would be an 'employee' falling within the coverage under the Act.

8. It has been brought to notice that the concerned authority under the Act has initiated proceedings under Section 7-A of the Act against the First Respondent and determined the liability towards contribution of Provident Fund dues payable to the contract labourers engaged by it through contractors. It is represented by the Learned Counsel for the First Respondent that appeal has been preferred by the First Respondent against that order in E.P.F.A. No. 21 of 2020 before the Appellate Authority, which is now pending.

9. It is in these circumstances that the First Respondent had sent Notice in Roc. No. 6625/E3/2015 dated 10.03.2015 to the Petitioner to require the contractors, who are its members, to comply with the provisions of the Act. The Petitioner has filed this Writ Petition challenging the said Notice in Roc. No. 6625/E3/2015 dated 10.03.2015. It must, at once, be pointed here that though the impugned order has been addressed to the Petitioner to inform its members, the Petitioner cannot be said to be aggrieved so as to challenge the same in view of the ruling of the Hon'ble Supreme Court of India in Mahinder Kumar Gupta -vs- Union of India [(1995) 1 SCC 85], holding that an Association cannot file Writ Petition seeking relief espousing the cause of its individual members and does not affect any legal right of that Association.

10. In view of the aforesaid legal position, the Writ Petition, at the instance of the Petitioner, who does not have any locus standi to file the same for the relief claimed, cannot be entertained.

Accordingly, the Writ Petition is dismissed. Consequently,
the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

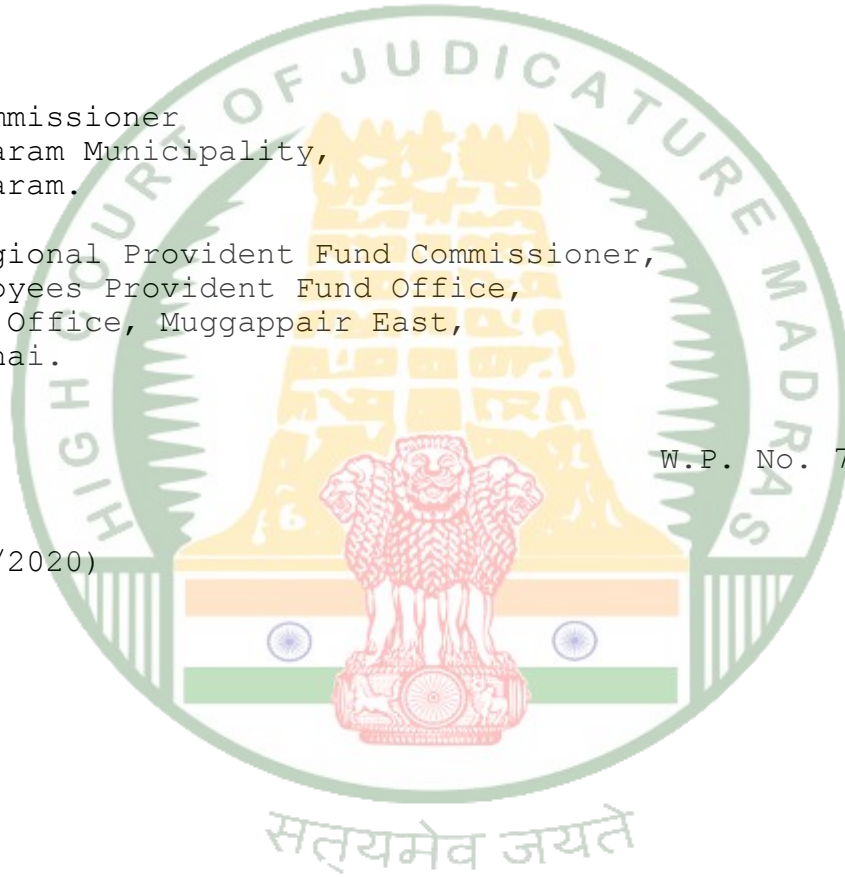
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To

1. The Commissioner
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2. The Regional Provident Fund Commissioner,
Employees Provident Fund Office,
TNHB Office, Muggappair East,
Chennai.

W.P. No. 7594 of 2015

RLD(CO)
GMY(29/09/2020)



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