

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2020

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

W.P. No. 7595 of 2015
and
W.M.P. No. 1 of 2015

N. Panchasharam ... 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

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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 had 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. 22 of 2020 before the Appellate Authority, which is now pending.

9. The First Respondent had issued Notice in Roc. No. 6625/E3/2015 dated 10.03.2015 to the Petitioner, who was one of the contractors engaged by it, calling upon him to comply with the provisions of the Act and remit the Provident Fund dues called to avoid coercive action to deduct from from reserve funds or under the Revenue Recovery Act, 1894. Aggrieved thereby, the Petitioner has filed this Writ Petition.

10. It is apparent that though the provisions of the Act were applicable to the establishment of the First Respondent at the time when the contract was in force with the Petitioner, he had failed to comply with the statutory requirements, which has been sought to be enforced by the authorities under the Act, and the First Respondent has required the Petitioner to comply with the same. In that view of the matter, there does not appear to be any infirmity in the impugned order, requiring any interference by this Court in the exercise of the discretionary powers under Article 226 of the Constitution.

Accordingly, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

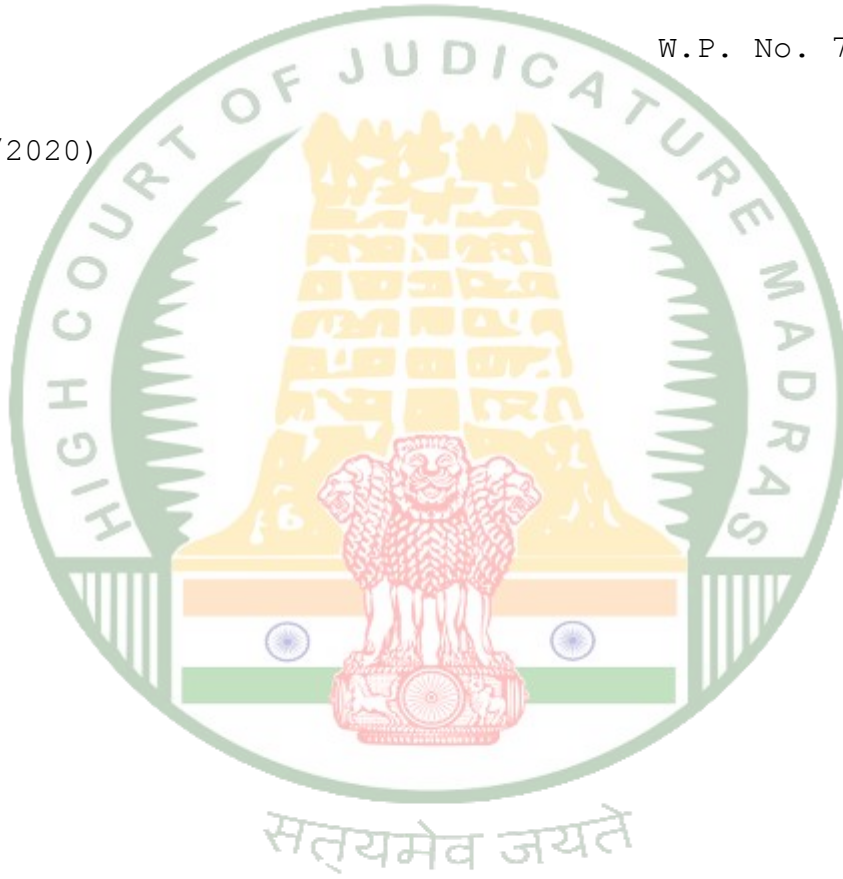
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To

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

W.P. No. 7595 of 2015

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



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