

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

CORAM

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

W.P. No. 21443 of 2018

and

W.M.P. Nos. 25190 and 25191 of 2018

N.Natarajan

... Petitioner

-vs-

1. The Commissioner
Kancheepuram Corporation
Kancheepuram.

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

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the order passed by the First Respondent in its proceedings in Na.Ka. No. 7962/2017/E1 dated 02.07.2018 and quash the same as illegal.

For Petitioner : Mr. T.A.Ebenezer

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

Ms. V.J.Latha (For R2)

Standing Counsel

O R D E R

(through video conference)

Heard Mr. T.A.Ebenezer, Learned Counsel for the Petitioner, Mr. P.Srinivas, Learned Counsel for the First Respondent and Ms. V.J.Latha, 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 PF subscription of their employees duly to the PF 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 brought to notice 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. In this backdrop, the Assistant Provident Fund Commissioner, Regional Office, Vellore after conducting enquiry under the relevant provisions of the Act, by order No. TN/VL/92215/EPF/2017-18 dated 21.06.2018 determined that a sum of Rs.77,02,544/- as payable by the First Respondent, viz., Kancheepuram Municipality, towards the dues under the Act for the period from January 2011 to March 2014 in respect of the employees engaged through or by the various contractors, and required the First Respondent to remit that amount into respective statutory fund within 15 days of its receipt.

9. The First Respondent had then issued the notice Na. Ka. No. 7962/2017/E1 dated 02.07.2018 to the Petitioner, who was one of the contractors engaged by it during the aforesaid period for carrying out civil works, calling upon him to pay a sum of Rs.3,77,933/- towards the share of dues under the Act in terms of the assessment made for the contract workers employed through him on the premise that though it is the principal employer for the purpose of the Act, the jural relationship of employer and employee was actually between the Petitioner and those workers and as such, the Petitioner is bound to reimburse the First Respondent of that expense incurred. The explanation dated 16.07.2018 thereto by the Petitioner was not accepted by the First Respondent in its reply dated 27.07.2018. Aggrieved thereby, the Petitioner has filed this Writ Petition.

10. It is apparent from the aforesaid materials borne out of record that though the provisions of the Act were applicable to the establishment of the First Respondent at the time when the contract was entered by it with the Petitioner, they had failed to comply with the statutory requirements, which has been sought to be enforced by the authorities under the Act.

11. The pivotal attack of the Petitioner on the demand of the First Respondent to pay the dues under the Act is that there was no provision in the contract between them during the relevant period requiring the Petitioner to bear the same, especially when according to him, subsequent contracts entered by the First Respondent with other contractors contained such clause. It must, at once, be pointed out that the Petitioner has not even produced that contract entered by him with the First Respondent in this Writ Petition, much less the other contracts with third parties referred by him. The First Respondent in its Counter-Affidavit has emphatically denied the contentions of the Petitioner. This would obviously reflect that the nature of controversy involved falls within the realm of disputed questions of fact relating to private rights which have to be decided after recording of evidence of parties on their rival

contentions and could not be effectually adjudicated by invoking the public law remedy following summary procedure under Article 226 of the Constitution of India. In the aforesaid circumstances, it is not possible to entertain this Writ Petition.

In fine, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Maya/vjt

To

1. The Commissioner
Kancheepuram Corporation
Kancheepuram.
2. The Assistant PF Commissioner (Compliance)
Employees Provident Fund Organization
Regional Office S-1, TNHB Phase III
Sathuvachari, Vellore - 9.

W.P. No. 21443 of 2018

NMI (CO)
RMP (31/08/2020)

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