

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

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

W.P. No. 12282 of 2020

and

W.M.P. Nos. 15077 and 15079 of 2020

M/s. Puducherry Management and Productivity Council (PMPC), represented by Secretary-cum-General Manager, District Industries Centre, NSIC Compund, Industrial Estate, Thattanchavady, Pondicherry - 605 009. Petitioner

-vs-

1. Central Government Industrial Tribunal-cum-EPF Appellate Tribunal at Chennai represented by Shri Dipti Mohapatra, Presiding Officer, 'B' Wing, 1st Floor Shastri Bhawn, 26, Haddows Road, Chennai - 600 006.
2. Regional Provident Fund Commissioner-II/OIC, Regional Office, No. 101, 100 Feet Road, Sree Venni Commercial Complex, Cholan Nagar, Olandaikeerapalayam, Puducherry - 605 004. Respondents

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 First Respondent and quash the order No. EPFA 122/2019 dated 21.02.2020; of Second Respondent and quash the order No. TN/RO/PDY/PC/1555/Comp/Div-II/7A/Order/2019 - 20/408. dated 10.06.2019.

For Petitioner : Mrs. N. Mala
Government Pleader (Puducherry)

For Respondents: R1 - Tribunal
Mrs. V.J.Latha,
Standing Counsel (for R2)

O R D E R
(through video conference)

Heard Mrs. N.Mala, Learned Government Pleader appearing for the Petitioner and Mrs. V.J.Latha, Learned Standing Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had preferred an appeal before the Second Respondent under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act' for short), against the order No TN/RO/PDY/PC/1555/Comp/DIV-III/7A ORDER/2019-20/408 dated 10.06.2019 passed by the Second Respondent determining the liability of the Petitioner for Provident Fund dues for the period from November 2012 to May 2018 for Rs. 6,77,417/- under Section 7-A of the Act. In terms of Section 7-O of the Act, the Petitioner is required to deposit 75% of the amount that has been determined in the order impugned in the appeal as condition for entertaining the same and the First Respondent for reasons to be recorded in writing has discretion to waive or reduce to that amount. The Petitioner had filed an application for such waiver stating as follows:-

"5. At this juncture, it is pertinent to state that the Appellant submits that it is a not-profitable organization purely funded by the Government of Puducherry. It is engaged in imparting various Management Training Programmes to the Employees working in various Industrial Establishments in the Union Territory of Puducherry. It is humanly impossible to deposit 75% of the amount due from the Appellant as per the impugned order in order to avail the right to appeal provided under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952."

3. The First Respondent by an order dated 14.08.2019 had reduced the amount required to be deposited from 75% to 40% on or before 14.10.2019. The Petitioner did not satisfy with that requirement and ultimately the appeal has been dismissed for such non-compliance by order dated 21.02.2020. Aggrieved thereby, the Petitioner has filed the Writ Petition challenging that order.

4. Learned Counsel for the Petitioner contends that the persons for whom contribution has been claimed by the Second Respondent are not employees of the Petitioner, whose activities are fully funded by the Government of Union Territory of Puducherry and as such, it is not possible for the Petitioner to deposit any amount for entertaining the appeal. The question as to whether the persons for whom contribution of Provident Fund has been claimed are employees of the Petitioner is a factual dispute that would have to be decided while disposing the appeal and the requirement to deposit 40% balances equities.

5. Insofar as the contention regarding funding from the Government of Union Territory of Puducherry is concerned, it was entirely the responsibility of the Petitioner to make such request to the Government of Union Territory of Puducherry to sanction funds for the pre-deposit, but there is no satisfactory explanation as to what steps had been taken by the Petitioner in that regard so far. When the Learned Counsel for the Petitioner was required to ascertain as to whether the Petitioner is willing to deposit the said 40% of the amount for entertaining the appeal atleast now, it is informed that it is not possible furnish any such undertaking. In this context, it would be useful to refer to the ruling of the Hon'ble Supreme Court of India in Shyam Kishore -vs- Municipal Corporation of Delhi [(1993) 1 SCC 22], where the law relating to prescribing pre-deposit as condition for entertaining an appeal under a statute has been explained in the following words:-

"44. It seems to us the words of Section 170(b) are capable of a broader interpretation. A perusal of Section 170 shows that the section uses three different expressions "heard or determined", "brought" and "admitted" in relation to an appeal and some significance is to be attached to the use of the expression "heard or determined". In like situations, other statutes such as the one considered by this Court in Lakshmiratan Engineering Works Ltd -vs- Assistant CST (AIR 1968 SC 488) and those contained in certain other enactments like the Bombay and Calcutta Municipal Acts specifically prohibit the very entertainment of the appeal if the tax is not paid. When the D.M.C. Act has carefully avoided the use of that word, we must give full effect to the differential wording. Also, the absence of a language in clause (b) of the proviso similar to that in clause (a) - which indicates that an appeal filed beyond the period of limitation will not stand admitted unless the delay is condoned - also warrants an inference that the payment of disputed tax is not a condition precedent to the entertainment or admission of the appeal. In the present statutory context, it sounds plausible to say that such an appeal can be admitted or entertained but only cannot be heard or disposed of without pre-deposit of the disputed tax. Such an interpretation will provide some much-needed relief from the harshness of the provision. These are not days in which the calculation of the property tax is simple and uncomplicated; the determination of the annual value of the property, except when based on the actual rent received from the property, involves various subjective factors and, not unoften, there is a wide gulf between the tax admitted to be due and the

tax demanded. Sometimes, to compel the assessee to pay up the demanded tax for several years in succession might very well cripple him altogether. This apart, an assessee may not be able to deposit the tax while filing the appeal but may be able to pay it up within a short time, or at any rate, before the appeal comes on for hearing in the normal course. There is no reason to construe the provision so rigidly as to disable him from doing this. Again, when an appeal comes on for hearing, the appellate judge, in appropriate cases, where he feels there is some great hardship or injustice involved, may be inclined to adjourn the appeal for some time to enable the assessee to pay up the tax. Though it will not be expedient or proper to encourage adjournment of an appeal, where it is ripe for hearing otherwise, only on this ground and as a matter of course, an interpretation which leaves some room for the exercise of a judicial discretion in this regard, where the equities of the case deserve it, may not be inappropriate. The appellate judge's incidental and ancillary powers should not be curtailed except to the extent specifically precluded by the statute. We see nothing wrong in interpreting the provision as permitting the appellate authority to adjourn the hearing of the appeal thus giving time to the assessee to pay the tax or even specifically granting time or instalments to enable the assessee to deposit the disputed tax where the case merits it, so long as it does not unduly interfere with the appellate court's calendar of hearings. His powers, however, should stop short of staying the recovery of the tax till the disposal of the appeal. We say this because it is one thing for the judge to adjourn the hearing leaving it to the assessee to pay up the tax before the adjourned date or permitting the assessee to pay up the tax, if he can, in accordance with his directions before the appeal is heard. In doing so, he does not and cannot injunct the department from recovering the tax, if they wish to do so. He is only giving a chance to the assessee to pay up the tax if he wants the appeal to be heard. It is, however, a totally different thing for the judge to stay the recovery till the disposal of the appeal; that would result in modifying the language of the proviso to read: "no appeal shall be disposed of until the tax is paid". Short of this, however, there is no reason to restrict the powers unduly; all he has to do is to ensure that the entire tax in dispute is paid up by the time the appeal is actually heard on its merits. We would, therefore, read clause (b) of Section 170 only as a bar to the hearing of the appeal and its

disposal on merits and not as a bar to the entertainment of the appeal itself.

45. If the provision is interpreted in the manner above suggested, one can steer clear of all problems of constitutional validity. The contention on behalf of the Corporation to read the provision rigidly and seek to soften the rigour by reference to the availability of recourse to the High Courts by way of a petition under Articles 226 and 227 in certain situations and the departmental instructions referred to earlier does not appear to be a satisfactory solution. The departmental instructions may not always be followed and the resort to Articles 226 and 227 should be discouraged when there is an alternative remedy. A more satisfactory solution is available on the terms of the statute itself. The construction of the section approved by us above vests in the appellate authority a power to deal with the appeal otherwise than by way of final disposal even if the disputed tax is not paid. It enables the authority to exercise a judicial discretion to allow the payment of the disputed tax even after the appeal is filed but, no doubt, before the appeal is taken up for actual hearing. The interpretation will greatly ameliorate the genuine grievances of, and hardships faced by, the assessee in the payment of the tax as determined. Though an assessee may not be able to acquire an absolute stay of the recovery of the tax until the dispute is resolved, he will certainly be able to get breathing time to pay up the same where his case deserves it. If this interpretation is placed on the provision, no question of unconstitutionality can at all arise."

View from that perspective coupled with the recalcitrant conduct of the Petitioner, there does not appear to be any infirmity in the decision-making process followed by the First Respondent requiring interference by this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution.

6. In fine, the Writ Petition, which is devoid of merits, cannot be admitted and stands dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

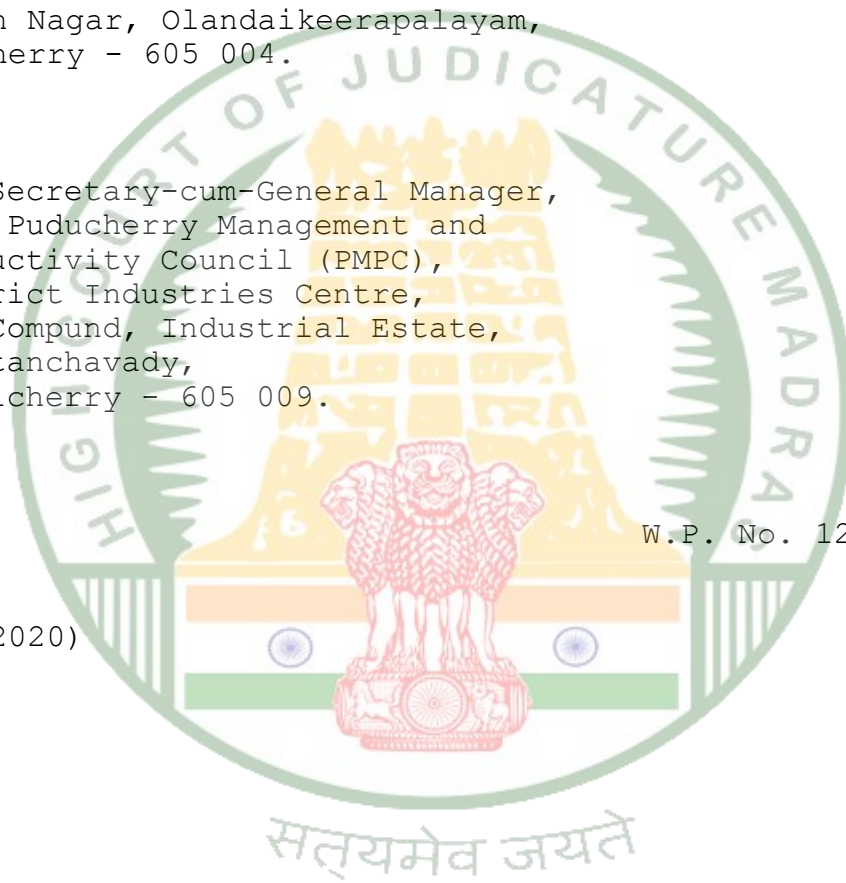
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Puducherry - 605 004.

Copy to

The Secretary-cum-General Manager,
M/s. Puducherry Management and
Productivity Council (PMPC),
District Industries Centre,
NSI Compound, Industrial Estate,
Thattanchavady,
Pondicherry - 605 009.

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SPD(CO)
SP(29/10/2020)



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