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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.03.2021

Delivered on : 29.06.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.No.786 of 2021

and

W.M.P.Nos.846 & 847 of 2021

P.Rayin

... Petitioner

vs.

1.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Regional Director Head of Municipal Administration,
Kumaran Shopping Complex,
Near Tiruppur Railway Station,
Kumaran Road,
Tiruppur - 641 601.

3.The Commissioner,
Nelliyalam Municipality,
Nilgiris District.

4.Employees Provident Fund Organization,
2nd Floor, Main Bazar Road, Upper Bazar,
Uthagamandalam,
Nilgiris,
Tamil Nadu - 643 001.

... Respondents

[R.4 impleaded vide order dated 11.03.2021 made in WMP.No.7028 of 2021]

PRAYER : Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records of the third respondent relating to the impugned Tender Notice dated 18.12.2020 bearing No.2308/2020/C1 and quash the same and consequently, direct the third respondent to issue a fresh tender notice for the works stated in the notice, in compliance with the norms to be followed in such cases.



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For Petitioner : Mr.T.Mohan
for Mr.A.Praveen Kumar

For Respondents: Mr.P.S.Siva Shanmuga Sundaram,
Special Government Pleader
for R.1 & R.2

Mr.P.Srinivas,
Standing Counsel for R.3

Mrs.Meenakshi,
Standing Counsel for R.4

ORDER

This writ petition is filed by a Contractor as against the tender notice in Na.Ka.No.2308/2020 dated 13.12.2020 issued by the third respondent Municipality calling for bids to execute certain works at the Municipality.

2. The grievance of the petitioner is that the third respondent has included a clause in the tender notice that the EPF [Employee Provident Fund] registered contractors alone can participate in the tender. Learned Counsel appearing for the petitioner submitted that though the petitioner is a registered contractor, he will be getting works depending upon the bids. Therefore, he is not having any permanent employees or workers for execution of the works and not covered under the EPF Act. After obtaining the tenders, workers will be engaged on daily basis, depending upon the availability. Therefore, he cannot be compelled to register under the EPF Act.

3. Learned Counsel for the petitioner further submitted that it is not the business for a contractor to have permanent workers anticipating award of contract from the authorities and there is no provision or rule either under the District Municipalities Act or under the Tamil Nadu Transparency in Tenders Act, enabling the third respondent to insist upon such a condition for award of contract. He further submitted that such a condition has not been incorporated by the third respondent in an earlier tender notification issued in December, 2020 and only to eliminate the petitioner from participating in this tender, such condition has been incorporated.

4. Learned Standing Counsel appearing for the third respondent Municipality submitted that the Central Government by notification dated 08.01.2011 has notified that the EPF Act shall apply to all Municipalities and only the employees of a Municipality, who are under a pensionable service, are exempted



from the EPF Act. He further submitted that pursuant to the notification, the regional authorities of EPFO [Employee Provident Fund Organisation] have issued proceedings against Municipalities and levied EPF contribution for all the civil works carried out by the Municipalities. The labour component is fixed as 25% of the total value of the work and the EPF Authorities are levying the employer employee contribution, insurance and other administrative charges, totalling about 20% of the labour component and the respondent / Municipality has been imposed levy of Rs.65,35,217/- as EPF contribution for the civil contracts carried out through the Contractors. Out of this Rs.65,35,217/-, the value of the petitioner and his relatives alone is Rs.32,65,000/-.

5. Learned Standing Counsel further submitted that pursuant to the notification issued by the Government of India dated 08.01.2011, the Commissioner of Municipal Administration by letter dated 21.10.2014 in No.57084/2011/L3 informed that though the Municipal Corporations take up works through private Contractors, the local bodies should ensure that the Contractors pay the EPF subscription of their employees duly to EPFO, otherwise, the responsibility for the same will be fixed on the concerned Municipalities / Corporations. A further instruction was issued vide letter dated 19.08.2016, in No.18823/MC5/2016-1, that the Contractors have to be identified and also the workers engaged by them and the benefits of EPF Act should be ensured to the workers. Therefore, the third respondent has incorporated such a condition in the tender conditions. In fact, it is not necessary that the Contractors should maintain all the workers permanently, but, only such workers who are engaged by them and are paid with the wages on either daily basis or on piece work basis can be benefitted. The Contractors would have to make the contributions only for the actual number of workers and for the actual number of days engaged by them. He further submitted there are 75 Contractors registered with the third respondent and 53 Contractors have already obtained EPF code by registering with EPFO. The petitioner and his relatives have not yet obtained the registration from EPFO.

6. Heard the submissions of the learned Counsel appearing for the respective parties and perused the documents placed on record.

7. It appears that this Clause has been inserted pursuant to the notification of the Government of India and on the directions of the Commissioner of Municipal Administration. The Government of India by notification in No.S.O.30(E), dated 08.01.2011, which was issued on the powers conferred under Section 1(3)(b) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, specified that all the



Municipal Councils and Municipal Corporations constituted under Article 243-Q(1)(b) & (c) of the Constitution of India employing 20 or more persons as a class of establishments to pay the contribution under the EPF Act, with effect from the publication in the official gazette. Pursuant to the same, the Commissioner of Municipal Administration, by letter dated 21.10.2014 in No.57084/2011/L3, addressed all the Commissioners of Municipal Councils that the authorities of the Municipalities and Corporation should ensure that the Contractors pay the provident fund subscription of their employees to the EPFO, otherwise, the responsibility for the same will be fixed on the concerned Municipality or Corporation.

8. It appears that a further communication was also issued by the Commissioner of Municipal Administration in ROC.No.1819/2016/L3 dated 19.10.2016 and in Letter No.14070/ME.3/2016-4, dated 20.12.2016. In the letter dated 20.12.2016, the Commissioner of Municipal Administration, by referring to the notification in No.S.O.30(E), dated 08.11.2011 issued by the Government of India, directed all the Municipal Commissioners that it shall cover all employees of establishments as per definition of 'employee' under Section 2 (f) of the EPF Act, excluding the employees who are getting benefits of provident fund and pension, according to TNMSP Rules of the State Government or Municipal Laws, etc., and that the benefits under the EPF Act have to be extended to all eligible employees.

9. One of the Municipality, namely, Vedaranyam Municipality, filed a writ petition challenging the notification of the Central Government in S.O.30(E), dated 08.01.2011, before this Court in W.P.No.31742 of 2016. The same was disposed of by this Court on 01.10.2020, as follows:

"9. It is imperative from these statutory provisions that the Petitioner has to ensure that those of its employees, who are not covered by the TNMSP Rules, are extended the benefits under the EPF Act with effect from 08.01.2011 when the said Notification issued by the Central Government came into force and that the records maintained by the Contractors for the wages disbursed to the contract labour, when they were employed in the establishment of the Petitioner, would be the basis for determining the contribution of provident fund dues under the EPF Act. As a corollary, it would follow that the Petitioner as Principal Employer, who ought to have verified that the contract labour engaged through Contractors had been paid eligible amount of wages in time, cannot shirk responsibility to find out the employees and workers concerned for remitting dues under the EPF Act for the relevant period, and the Petitioner



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would be entitled for this purpose to make an application under Section 7~A(2) of the EPF Act before the concerned authority in the Employees Provident Fund Organization to issue summons to the Contractors to produce evidence regarding the details of the employment of the contractual workers, and necessary orders would have to be passed in that regard taking into consideration the dictum laid down by the Hon'ble Supreme Court of India in Food Corporation of India ~vs~ Provident Fund Commissioner [(1990) 1 SCC 68], where it has been ruled as follows:~

"9. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person."

In short, the real focus has to be on identifying the contractual workers, who had been engaged through the Contractors, by relevant evidence and ascertain the exact amount towards contribution for provident fund in respect of each of them. There is no gainsaying that the enforcement machinery provided under the EPF Act should not be converted as a ploy just to fill up the coffers of the Employees Provident Fund Organization, where already several crores of rupees are reportedly lying unclaimed, loosing sight of the beneficent objects of that labour welfare enactment.

10. In view of the foregoing discussion, the proper recourse to be followed in this case is to require the Petitioner as well as the Contractors engaged by it to give details of the contract labour engaged from 08.01.2011 onwards with full particulars of their period of employment and actual amount of wages paid to them. After carrying out the aforesaid exercise of identifying the contractual workers engaged by the Petitioner through Contractors for the period from 08.01.2011 onwards, the concerned authority of Employees Provident Fund



Organization shall determine the contribution amount that would have to be paid in respect of each of the contractual workers engaged in the establishment of the Petitioner for the relevant period."

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10. In view of the notification of the Central Government and the directions of the Commissioner of Municipal Administration, the third respondent Municipality has incorporated the condition of 'EPF registered contractors alone can participate' as one of the conditions in the tender notification, which, this Court, in view of the aforesaid decision, does not find fault with. Therefore, this Court is not inclined to interfere with the impugned tender notice.

11. In fine, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mrm/gk

To

- 1.The Commissioner of Municipal Administration,
Ezhilagam, Chepauk, Chennai - 600 005.
- 2.The Regional Director Head of Municipal Administration,
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Near Tiruppur Railway Station,
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2nd Floor, Main Bazar Road, Upper Bazar,
Uthagamandalam, Nilgiris,
Tamil Nadu - 643 001.

+1cc to Mr.M.Meenakchi, Advocate, S.R.No. 29938

+1cc to Mr.P.Srinivas, Advocate, S.R.No. 30425

W.P.No.786 of 2021

GPL(CO)
GN(20/07/2021)