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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9174 of 2021

and

WMP.No.9713 of 2021

M/s.Hatsun Agro Product Ltd.,
Rep. by its Authorised Signatory-P.Sivasakthivel
V.Koot Road Pirivu,
Attu Pannai (Po), Periyeri Village,
Thalaivasal, Attur (Tk)
Salam- 636 112..

... Petitioner

-vs-

Assistant PF Commissioner,
Employees ' Provident Fund Organisation,
(Ministry of Labour, Govt. of India)
Regional Office,
S.J.Plaza, Swarnapuri,
Salem-636 004.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent to issue summons to the transporters and produce the Enforcement Officers K.Elangovan and J.J.Mydhili Dhevi for cross examination on behalf of the petitioner.

For Petitioner : Mr.S.Ravindran, Senior Counsel
for Mr.S.Bazeer Ahamed

For Respondent : Mr.R.Thirunavukkarasu

O R D E R

The petitioner has come forward with the present writ petition directing the respondent to issue summons to the transporters and produce the Enforcement Officers K.Elangovan and J.J.Mydhili Dhevi for cross examination on behalf of the petitioner

2. The case of the petitioner is that the petitioner is having a Milk Plant, in which milk is being processed and transported to various places. The Enforcement Officer of the



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Respondent gave a report dated 11.03.2019 arriving at a contribution at Rs.1,17,84,066/- for the period April 2016 to January 2019 in respect of transportation charges. By notice dated 20.08.2019, the Respondent held enquiry under Section 7A of the Act, based on the above Inspection report. Again another Enforcement Officer submitted a report dated 03.12.2019 enclosing statement demanding contribution to Rs.1,01,27,340/-. The petitioner found that the basis of calculation for arriving at contribution in terms of the report of the Enforcement officer was completely erroneous and therefore by letter dated 02.01.2020 requested the Respondent to produce the Enforcement Officer for cross examination by enclosing the Judgment of the Division Bench of this Court in the case of M/s.Srinivasan Associates Private Limited -vs- The Regional Provident Fund Commissioner-II, reported in 2019 (3)LLN 516. During enquiry held by the Respondent, the petitioner filed a questionnaire containing 16 questions to be answered by the Enforcement Officer. By letter dated 25.02.2020, the petitioner requested the Respondent to carry out the exercise of identification of employees on whose behalf the contribution is claimed by referring the Judgment of the Hon'ble Supreme Court in the case of Himachal Pradesh State Forest Corporation Versus Regional Provident Fund Commissioner reported in 2008 (5) SCC 756 and Judgment of the Madras High Court in the case of N.Krishnan Versus Employees Provident Fund Appellate Tribunal reported in 2019 LLR 461. Thereafter, the Enforcement Officer addressed a letter dated 16.03.2021 to the Regional Provident Fund Commissioner, stating that her calculation of dues cannot be questioned, when the matter is sub-judice and none of the judgments referred by the petitioner would applicable to the present enquiry. The Enforcement Officer also sought permission of the Regional Provident Fund Commissioner to examine the Security Officer/Chief Financial Officer incharge of the Petitioner-Establishment.

3. The grievance of the Petitioner is that the respondent is not allowing the Petitioner to cross examine the Enforcement Officers and also, refused to issue summons to the Transporters. It is further grievance of the Petitioner that there was no exercise of identification of employees before an order is passed under Section 7A of the EPF & MP Act. Aggrieved by the overall attitude of the Respondent, the petitioner sought for a suitable direction to the Respondent, by filing this writ petition.

4. Mr.S.Ravindran, learned Senior Counsel appearing for the petitioner submitted that no permission was granted to the Petitioner to cross examine the Enforcement Officer He further submitted that the statement made by the Regional Provident Fund Commissioner as found in the Daily Order Sheet dated 02.01.2020



to the effect that the act of raising query to the Inquiry Officer, who is considered to be a Judicial Officer as per the provisions of CPC, is nothing, but demeaning the Court proceedings, is only an observation. It is further stated that the statement made by the Enforcement Officer can be questioned and the said statement made by him in the written form has to be tested by way of cross examination and therefore, it is absolutely necessary that Enforcement Officer will have to be cross examined. He further pointed out that the Petitioner had given a list of 16 questions to be answered by the Enforcement Officer and Enforcement Officer will have to appear and answer those questions and further questions can also be posed by the Management for the purpose of cross examination.

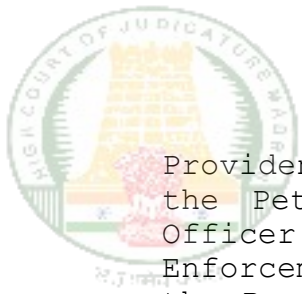
5. It is represented by Mr.R.Thirunavukkarasu, learned counsel for the respondent that the Regional Provident Fund Commissioner has to examine the Security Officer and Chief Financial Officer In-charge of the petitioner establishment. He further submitted that the Regional Provident Fund Commissioner has got wide powers as per the provisions of Civil Procedure Code, 1908 and the direction sought for by the Petitioner-Establishment to the Inquiry Officer to identify the employees is an infringement of the Proceedings of the inquiry.

6. Heard both sides. Perused the materials available on record.

7. The issue involved in this Writ Petition has been covered by the judgment of this Court in the case of M/s.Srinivasan Associates Private Limited Vs., The Regional Provident Fund Commissioner-II. The relevant portion of the said Judgment is extracted hereunder:

"8.Further, we do not agree with the said stand because, in the counter affidavit, the respondent has taken a stand that there is no useful purpose would be served by providing an opportunity to cross examine the Department Witness. Considering the fact that principles of natural justice have to be strictly adhered to, this Court is of the view that there should be a positive direction to the respondent to permit the appellant to cross examine the Department witness, who had conducted the inspection and drawn the reports dated 20.09.2018 and 25.01.2018."

8. In the present case, it is seen that the Employees



Provident Fund Organisation (EPFO) had not initially permitted the Petitioner-Establishment to cross examine the Enforcement Officer and thought as many as 16 questions were posed to the Enforcement Officer by means of communication dated 04.02.2020, the Respondent refused to answer those questions. This Court is of the view that mere reply to the questions posed by the Petitioner will not service any purpose, as the details of the employees have got to be identified by the person, who is going to depose on behalf of the E.P.F.O and therefore, the Enforcement Officer needs to be cross examined.

9. The Respondent sought for examination of the Security Officer/Chief Financial Officer Incharge of the petitioner establishment. Insofar as the said contention of the respondent is concerned, it is needless to mention that the Department is empowered to examine the Security Officer/Chief Financial Officer Incharge of the petitioner establishment by issuing necessary summons and whatever submission made will have to be tested by way of cross examination.

10. In view of what is stated hereinabove, this Writ Petition is ordered, with a direction to the respondent to issue summons to the Transporters and produce the Enforcement Officers K.Elangovan and J.J.Mydhili Dhevi for cross examination on behalf of the Petitioner. It is needless to mention that the Regional Provident Fund Commissioner is empowered to summon Transporters, Security Officers, Chief Financial Officer, who is Incharge of the Petitioner-Establishment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

arr/ar

To

The Assistant PF Commissioner,
Employees ' Provident Fund Organisation,
(Ministry of Labour, Govt. of India)
Regional Office,
S.J.Plaza, Swarnapuri,
Salem-636 004.

W.P.No.9174 of 2021

SKY(CO)
SB(05/08/2021)