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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.13245 of 2021
and WMP.Nos.14054 & 14055 of 2021

M/s.Alpha Security Instruments (India) Private Limited
Rep.by its Authorised Signatory
Survey No.203/2a2, Seyyambakkam Road,
Kilacheri Village & Post,
Mappedu,
Thiruvallur - 631 402.

... Petitioner

-vs-

1. The Provident Fund Commissioner
Employment Provident Fund Organisation,
R-40, TNHB Shopping Complex,
Mugappair Road, Mogappair East,
Chennai 600 037.
2. The Assistant Provident Fund Commissioner,
Employment Provident Fund Organisation,
R-40, TNHB Shopping Complex,
Mugappair Road, Mogappair East,
Chennai 600 037.
3. The Enforcement Officer,
Employment Provident Fund Organisation,
R-40, TNHB Shopping Complex,
Mugappair Road, Mogappair East,
Chennai 600 037.
4. M/s.Mandator Facility Services,
Formerly Known as M/s.Upshot Utility Services,
Rep.by its authorised signatory
H-20, Jeevanandam Salai, 13th Sector,
K.K.Nagar, Chennai - 600 078.

... Respondents

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the impugned notice dated 04.03.2021 bearing number TN/RO/AMB/69168/CC-11/Area-04/2020 passed by the



second respondent and quash the same and to hold proper enquiry within the time frame as fixed by this Court.

For Petitioner : M/s.Nathan and Associates

For Respondents : Mr.J.Sathya Narayana Prasad
for R1 to R3

O R D E R

This writ petition has been filed, seeking to call for the impugned notice dated 04.03.2021 bearing number TN/RO/AMB/69168/CC-11/Area-04/2020 passed by the second respondent and quash the same and to hold proper enquiry within the time frame as fixed by this Court.

2. The case of the petitioner is that the petitioner is a Company, namely, M/s.Alpha Security Instruments (India) Private Limited, which is a private Company incorporated on 21.03.2011 and registered before the Registrar of Companies at Chennai. The petitioner Company right from the date of incorporation in the year 2011 have established a stall mark position in the Corporate. It is further averred that the petitioner Company follows a trustworthy and committed process in employing workers, which can be broadly classified into two levels, one being the direct recruitment and the other being the indirect or contractual employment as prescribed by the operation protocols of the Company, duly adhering to the employment laws of the land.

2.1. The petitioner further submits that when things were in such place, M/s.Mandator Facility Service (herein after referred as 4th respondent) the formerly known as M/s.Upshot Utility Services, is a partnership firm primarily engaged in Supplying manpower to industries, out of the cerulean rhapsodise approached the petitioner Company representatives making the proposal to provide employees for work. It is submitted that at the time of intercession, the 4th respondent had promised to provide manpower and labour for the Company and took full responsibility including the salary and the benefits of the said labourers in accordance to the statutory provisions. Being persuaded and carried away by the deceiving assurances given by the 4th respondent, the labourers of the 4th respondent started working in petitioner's premises under the complete direction and control of the 4th respondent, as prescribed by the operational protocols and agreed standards.

2.2. It is also averred that after the process of change of name of the 4th respondent from M/s.Upshot Utility Services to M/s.Mandator Facility Services coupled with the need of man



power, another subsequent agreement dated 01.01.2020 was executed between the petitioner Company and the 4th respondent wherein it was stated that the complete responsibility and control over the man power deployed in the premises will be retained solely by the 4th respondent. It is stated that around 50 contract labourers of the 4th respondent stationed in the premises of the Petitioner by the 4th respondent (hereinafter called as the defacto complainant) made a formal complaint before the Tamil Nadu Additional Chief Secretary on 10.09.2020 stating that the petitioner Company has employed them through the 4th respondent from the year 2012, and has not paid them the provident fund, but the fact remains that the petitioner Company is not responsible for payment of EPF and the said complaint was forwarded to the Labour Commissioner and the 1st respondent by the Tamil Nadu Additional Chief Secretary on 13.10.2020 in pursuance of the forwarded complaint, Assistant Provident Fund Commissioner, Employment Provident Fund Organisation (hereinafter called as the second respondent) issued a show cause notice dated 29.10.2020, to the petitioner, calling for the reasons for not remitting the Provident Fund amount for past eight months.

2.3. It is submitted that in pursuance of the show cause notice issued by the second respondent, the Petitioner Company made a representation before the 1st respondent on 05.11.2020, seeking time to reply to the show cause notice, as all the members of the Company were extremely shocked over the unreasonable and unjustified notice issued against them. It is pertinent to note that the petitioner Company, due to the reluctant attitude of the fourth respondent, was forced to terminate their services on 01.01.2020. The petitioner submits that a reply to the show cause notice dated 29.10.2020 was duly sent to the first respondent on 27.11.2020, wherein a proper clarification was given to the queries raised by the defacto complainant and were duly answered. It was made clear before the 1st respondent that the 4th respondent was registered with the Provident Fund Department and has an independent code number and therefore, 4th Respondent has to be treated as an 'independent employer' and the employees of the contractor cannot be treated to be employees of the principal employer. As per the clause in the agreement, the responsibility lies only with the 4th respondent for deployment and the petitioner further states that in spite of the reply dated 27.11.2020, the second respondent issued a notice dated 04.03.2021 bearing Number TN/RO/AMB/69168/CC-11/Area-04/2020 on the basis of the report prepared by the Enforcement Officer, Employment Provident Fund Organisation (the third respondent herein after) with a direction to clear the pending Provident Fund dues, aggrieved by which, the present writ petition has been filed.



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3. The learned counsel for the respondents submitted that the employees working under the petitioner are contract employees and that the contractors have been making the contribution. Without verifying the genuineness of the agreement entered into between the contractor and the Management, liability has been foisted on the Management.

4. This Court makes it very clear that it is the duty of the Principal employer to pay the amount and recover it from the contractor. Whenever notice is issued, EPF is expected to serve notice to the petitioner/Management but also to the contractor namely the fourth respondent with regard to any contribution that is going to be determined. In view of Section 7 I of the EPF Act, 1952 it is open to the petitioner to file an appeal before the Tribunal in view of the recent judgment of the Apex Court relaxing the limitation period (as the period, namely, from the date of filing the writ petition till a copy of this order is made ready, should be excluded for the purpose of computing the limitation) and the Management will be well within the time to prefer an appeal and that the appellate authority cannot say that an appeal has not been preferred within 120 days unless and until the order of Supreme Court is modified and period is going to be restricted.

5. With the above direction the writ petition is disposed of. No costs. Consequently connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

dpq

To:

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3. The Enforcement Officer,
Employment Provident Fund Organisation,
R-40, TNHB Shopping Complex,
Mugappair Road, Mogappair East, Chennai 600 037.

+1cc to M/s.Nathan and Associates, Advocate, S.R.No.30658

W.P.No.13245 of 2021
and WMP.Nos.14054 & 14055 of 2021

LN (CO)
RLP (23/08/2021)