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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No. 12525 of 2020

M/s.Tharu and Sons
rep. by its
Managing Parter
Mr.Antony,
having office at Karipayi Road,
Rajagri Post, South Kalamassery,
Ernakulam - 683 104

.. Petitioner

Versus

1. Union of India represented by its
Principal Chief Medical Director,
MMC Complex, 4th Floor,
Southern Railway,
Park Town, Chennai - 600 003.
2. The Chief Medical Superintendent,
Chennai Division,
Southern Railway,
Egmore, Chennai - 600 008.
3. The Divisional Railway Manager,
NGO Annex, 1st Floor, Chennai Division,
Southern Railway, Park Town,
Chennai - 600 003

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified mandamus calling for the impugned letter dated 17.07.2020 issued by the second respondent and quash the same in so far as deducting the amount of 13.15% for EPF and 4.75% for ESI in the running bill for the billing period from 11.09.2019 to 31.01.2020 and consequently, direct the respondents herein to release the deducted amount of 13.15% for EPF and 4.75% for ESI in the running bill for the billing period from 11.09.2019 to 31.01.2020 to the petitioner together with interest at the rate of 24% till the date of realization.



3. The learned Senior counsel for the petitioner submitted that there is no clause empowering the respondents under the agreement to deduct the amount. Before proposing to deduct the amount, the petitioner was not given any opportunity to oppose such proposal. As per the notification dated 22.08.2014 of the Ministry of Labour and Employment, provident fund is deductible only if the employee receives less than Rs.15,000/- per month as salary from 01.09.2014. Before 01.09.2014, the minimum salary for deducting Provident Fund contribution was Rs.6,500/-. In the case of the petitioner, all the employees are receiving salary of more than Rs.15,000/- per month and therefore, they are ineligible for contributing under the Provident Fund Act. While so, in the impugned letter dated 17.07.2020, it was stated that "If the contractor is not eligible to remit the contribution towards EPF and ESI as per the Act, 13.15% for EPF and 4.75% for ESI will be deducted in the running bill. The learned Senior counsel for the petitioner also invited the attention of this Court to the The special condition of the NIT Header, Sl.No.5 which reads as follows:-

"5. If the contractor is not eligible to remit the contribution towards EPF and ESI as per the act, 13.5% for EPF and 4.75% for ESI will be deducted in the running bill of every month based on the total minimum wages for labourers and supervisors."

4. According to the learned Senior counsel for the petitioner, the above condition of NIT Header was misconstrued by the respondents. Actually, the petitioner firm was eligible in all aspects under PF Act, only, its employees were not eligible. Therefore, aforesaid deduction could not be made from the running bills.

5. The learned Senior Counsel appearing for the petitioner specifically raised a plea that while issuing the impugned letter dated 17.07.2020, the second respondent failed to consider the Contract Agreement dated 06.02.2020 signed by the petitioner as well as the respondents. He also brought to the notice of this Court that after the issuance of the impugned demand letter, the petitioner gave a detailed representation dated 07.08.2020 to the respondents explaining the special condition in Sl.No.5 of NIT Header, which is exemplary with regard to the issue on hand, however, the said representation was not considered by the respondents. Therefore, he prayed this Court to issue appropriate direction to the respondents, by confining the prayer, to consider the detailed representation given by the petitioner dated 07.08.2020 and to pass orders thereof.



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6. The learned Standing Counsel appearing for the respondents fairly submitted that the petitioner's representation would be duly considered by the respondents and appropriate orders would be passed, within a time frame fixed by this Court.

7. Heard the learned counsel on both sides and perused the materials placed before this Court. Considering the limited relief sought by the petitioner, coupled with the submissions made by the learned counsel on both sides, without examining the validity of the order dated 17.07.2020, this Court directs the second respondent to consider the petitioner's representation dated 07.08.2020 and pass appropriate orders on merits and in accordance with law, preferably, within a period of six weeks from the date of receipt of a copy of this order.

8. With the above direction, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msr/rsh

To

1. Union of India represented by its
Principal Chief Medical Director,
MMC Complex, 4th Floor,
Southern Railway,
Park Town, Chennai - 600 003.
2. The Chief Medical Superintendent,
Chennai Division,
Southern Railway,
Egmore, Chennai - 600 008.
3. The Divisional Railway Manager,
NGO Annex, 1st Floor, Chennai Division,
Southern Railway, Park Town,
Chennai - 600 003

+1CC to Mr.P.T.Ramkumar, Advocate, Sr.No.46109

+1CC to Mr.K.Raja, Advocate, Sr.No.46078

WP No.12525 of 2020

PCH (CO)

K.RK. (18.10.2021)