

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.27458 of 2017
and W.M.P.No.29344 of 2017

Tamil Nadu Generation and
Distribution Corporation Ltd.,
(Formerly known as Tamil Nadu
Electricity Board) Chennai Region/South
rep. by the Chief Engineer/Distribution,
No.144, Anna Salai, Chennai - 600 002. ... Petitioner

Vs.

1. The Regional Provident Fund Commissioner,
Office of the Regional Provident Fund Organisation,
37, Royapettah High Road,
Chennai - 600 014.
2. The Assistant Provident Fund Commissioner & Recovery Officer,
Office of the Recovery Officer,
Employees Provident Fund Organisation,
37, Royapettah High Road,
Chennai - 600 014.
3. The President,
Central Organisation of Tamilnadu,
Electricity Employees, 27, Mosque Street,
Chepuak, Triplicane, Chennai - 600 005.
4. The General Secretary,
TNEB Workers' Progressive Union,
P.60, 6th Avenue, Anna Nagar,
Chennai - 600 009.
5. The General Secretary,
Tamilnadu Electricity Workers Federation,
92, Guruvappa Street,
Chennai - 600 002. ... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of
the Constitution of India praying to issue a Writ of
Certiorarified Mandamus, to call for the records of the first

respondent in proceedings No.RO/CHN/'C'/EXEM/TN/5887/South, dated 29.09.2017 quash the same and direct the first respondent to entertain the review application of the petitioner in letter No.013563/160/CE/D/CSR/Sr.Admo/Adm/A2/F.EPF/17, dated 31.08.2017, further direct the first respondent to claim contribution only in respect of identifiable employees.

For Petitioner : Mr.Haroon Al Rasheed
for M/s.T.S.Gopalan & Co.,

For Respondent
Nos.1 and 2 : Mr.T.R.Sundaram

For Respondent No.4: Mr.Balan Haridas

O R D E R

The petitioner is the Tamil Nadu Generation and Distribution Corporation Limited. Initially, it was constituted in the name and style of "Madras State Electricity Board" under the Electricity Supply Act, 1948, on 01.07.1957. After transferring and vesting of the administration, the Company is now called as "Tamil Nadu Generation and Distribution Corporation Limited". By Notification dated 04.07.1956, the Employees Provident Fund Act was extended to the Petitioner's Company also. Thereafter, by Act 33 of 1988, sweeping changes were made to the EPF Act. By the amended Section 16(1)(c), the Act was made inapplicable to any establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits. The employees of the petitioner were enjoying either pension under the Liberalized Pension Scheme or enjoying the benefit of Contributory Provident Fund.

2. In view of the amendment, this Scheme ceased to apply to the employees of the petitioner Company. In view of the amendment, the petitioner faced lot of problems for the reason that they could not establish as to how many employees are working in various capacities. They engaged Contractors for jobs like digging the pit, erecting the concrete poles, stringing the wires and RCC yard and various other jobs to be given on contract. Therefore, they could not establish the number of workers. Hence, they filed an application before the Central Government under Section 16(2) of the EPF Act to exempt the Electricity Board from the operation of the Scheme for the period from 01.01.1988 to 31.03.2006. However, the application was kept pending without disposal and the Central Government

ultimately, has rejected the request made by the petitioner Company.

3. Challenging the order, the petitioner filed a Writ Petition in W.P.No.43867 of 2006 before this Court. In the meantime, the respondents 1 and 2 issued notice for enquiry under Section 7A of the EPF Act and passed orders. Ultimately, the claim made under Section 16 (2) of the EPF Act was decided against the petitioner at the level of the Hon'ble Supreme Court on 20.07.2017. Thereafter, the petitioner has approached the official respondents under Section 7B of the Act for review. The respondents 1 and 2 have rejected the petition filed for review on the ground that any revision should have been filed within a period of 45 days and the application filed beyond the period of limitation cannot be entertained.

4. In this background, the present Writ Petition challenging the rejection order has to be analyzed.

5. The fact being that the petitioner was not in a position to pay dues for the period between 01.08.1988 and 31.03.2006 is not disputed. The contention of the respondents 1 and 2 is that when there is an alternative remedy of filing an appeal available, the petitioner should have adopted that course and cannot maintain the review.

6. This Court is of the view that the petitioner has not participated in the enquiry under Section 7A of the Act. There was a serious dispute as to the claim made by the respondent with respect to the number of employees. The prayer made in the Writ Petition is that to clarify the number of employees, who are covered under the Act. Since the order under Section 7-A of the Act came to be passed in respect of all the employees irrespective of the fact as to whether they are covered under the Act or not? The petitioner's focus was only on the issue of exemption and the objection was restricted only on the aspect of jurisdiction of the authorities and there was no occasion to deal with the merits of the matter during the pendency of litigation.

7. Till the litigation reached its finality at the level of the Hon'ble Supreme Court, the petitioners had no necessity to challenge the order passed under Section 7-A of the Act. Had they won in the litigation and exemption was granted in their favour, there would have been no necessity to challenge the order at all. Once it was finally decided that the petitioners are not entitled to exemption, the cause of action arose for them to challenge the order. From the date of the judgment of the Hon'ble Supreme Court, the petition, filed for

review, is within time. Therefore, it shall be construed that the review application was filed in time and it shall not be rejected on the ground of limitation.

8. It is well settled by the Hon'ble Supreme Court that substantial justice shall be done and the rights of the parties shall not be affected on technicalities. It is also submitted by the learned counsel for the petitioner that the same request for the review has been accepted in respect of three other Districts and the Assessing Authorities entertained review applications and considered the same. Since the very same request has been accepted in respect of other Districts for the very same Petitioner Corporation, I am inclined to issue a direction to the respondents to entertain the review applications.

9. In view of the same, the impugned order passed by the first respondent in proceedings No.RO/CHN/'C'/EXEM/TN/5887/South, dated 29.09.2017 is set aside and a direction is given to the first respondent to entertain the review application filed by the petitioner, without insisting on the limitation period of 45 days and to pass orders, on merits and in accordance with law, after affording ample opportunity to the petitioner and the other necessary parties, as expeditiously as possible.

With the above direction, the Writ Petition is disposed of. There shall be no order as costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS.VI)

/True Copy/

Sub Assistant Registrar

To

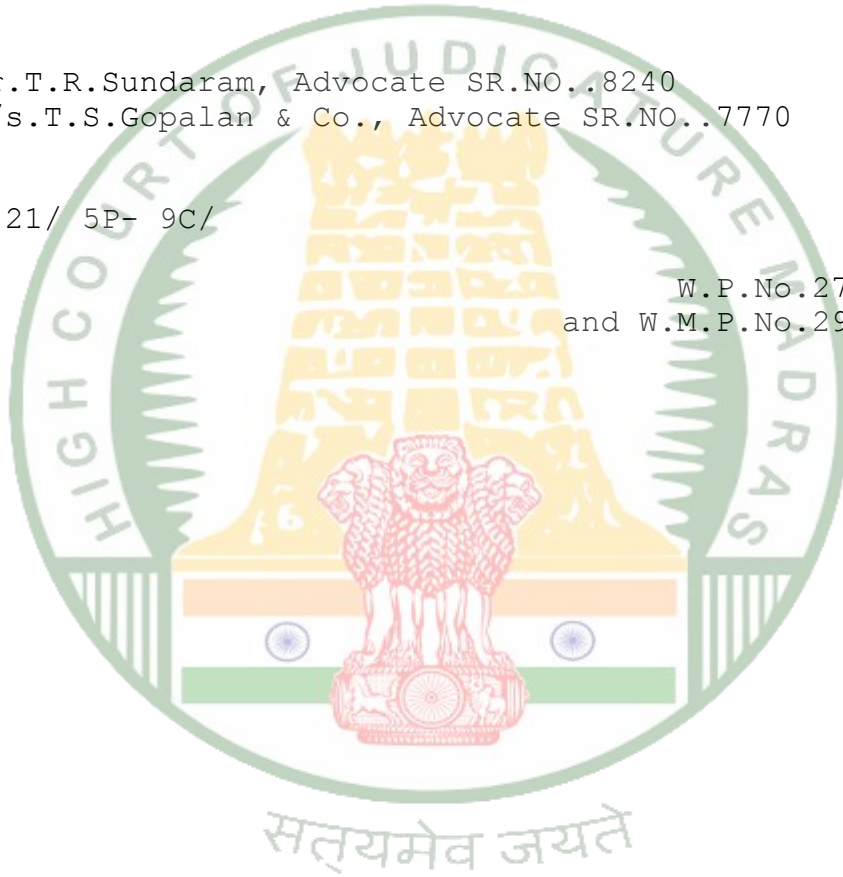
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+2cc to Mr.T.R.Sundaram, Advocate SR.NO..8240
+1cc to M/s.T.S.Gopalan & Co., Advocate SR.NO..7770

AKM/09.03.21/ 5P- 9C/

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