



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

**W.P. (MD) No.14315 of 2011**

B.Sundari

... Petitioner

versus

The Assistant Provident Fund Commissioner,  
E.P.F. Organization,  
Sub-Regional Office,  
N.G.O. "B" Colony,  
Tirunelveli District.

... Respondent

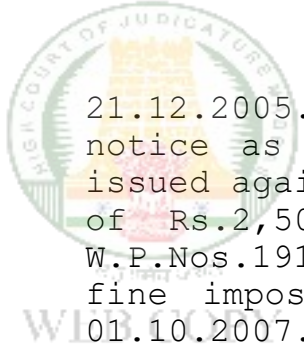
Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records of the impugned order of the respondent in File No.TN/TNY/55635/Enf./Circle 11/14105/2011 dated 07.12.2011 and quash the same.

|                |   |                                        |
|----------------|---|----------------------------------------|
| For Petitioner | : | Mr.Satheesh Kumar<br>for Mr.H.Arumugam |
| For Respondent | : | Mr.K.Muralishankar                     |

### **ORDER**

This writ petition has been filed seeking for the issuance of Writ of Certiorari, to call for the records of the impugned order of the respondent in File No.TN/TNY/55635/Enf./Circle 11/14105/2011 dated 07.12.2011 and quash the same.

2. The petitioner is the proprietor of transport concern namely "Veni Roadways" and owns one bus and one spare bus and six persons are employed in the said establishment. She is also a partner in the bus company, by name, Veni Bus Company. According to the petitioner, the partnership firm is a separate entity which has no connection with her proprietorship concern. There are 12 employees employed in the said partnership firm. But, in her establishment, namely, "Veni Roadways", there are six employees and the six employees will not come under the purview of Employees Provident Fund Act 1952 (hereinafter referred to as "the Act"). While so, the respondent issued summons dated 01.12.2005 on the basis of the report of the Squad Enforcement Officers dated 01.08.2005 directing the petitioner and her minor son to appear on 15.12.2005 along with the records pertaining to M/s.Veni/Krishnaveni Bus Service as partners of M/s.Veni/Krishnaveni Bus Service. Though they are not partners in the above said alleged establishment, they engaged a counsel to apprise the same, but, unfortunately, the counsel did not appear. Hence, the case was adjourned to



21.12.2005. In the mean time, the respondent issued a show cause notice as to why a non-bailable warrant of arrest should not be issued against them for their non-appearance and also imposed a fine of Rs.2,500/- on each. Hence, she filed writ petitions in W.P.Nos.191 to 194 of 2006, challenging the show cause notice and fine imposed and this Court also allowed the writ petitions on 01.10.2007.

3. Thereafter, the respondent sent summons for enquiry and her representatives appeared and sought time, but, later, they came to know that the proceedings initiated is not against her. Hence, she sent a letter dated 05.05.2008 explaining that there is no establishment in the name of M/s.Veni/Krishnaveni Bus Service and she is not connected with M/s.Veni/Krishnaveni Bus Service. However, without considering the same, the respondent passed an order dated 08.04.2009 directing the petitioner to file the statement and remit the contribution towards EPF from 25.07.2005. Challenging the same, the petitioner filed an appeal before the Employees' Provident Fund Appellate Tribunal in A.T.A.No.307(13) of 2009 and the same was allowed on 28.01.2011, setting aside the order of the respondent dated 08.04.2009 and the matter was remitted back to the respondent with a specific direction to find out the staff strength of the establishment and whether there exists financial, functional and managerial integrality between the establishment. Thereafter, the respondent once again issued notice and directed her to produce statements. She appeared through counsel and filed the written statement of particulars of employees and the buses owned by her. However, the respondent passed the impugned order dated 07.12.2011 directing the petitioner to pay a sum of Rs.44,74,905/- forthwith towards contribution of Employees Provident Fund, Employees Pension Fund and Insurance Fund Contributions and Employees Deposit Linked Insurance Administrative Charges for the period from 07/2005 to 09/2011. Challenging the same, the present writ petition has been filed.

4. The learned counsel appearing for the petitioner submitted that though appeal remedy is available to the petitioner under Section 7-I of the Act, at the distant point of time, the petitioner is not inclined to pursue the appeal remedy. He further submitted that though the appellate Tribunal issued a direction to the original authority to find out the staff strength of the establishment and whether there exists financial, functional and managerial integrality between the establishment, the respondent without ascertaining the same, proceeded with the enquiry and arrived at the conclusion as if M/s.Veni/Krishnaveni Bus service is covered under the EPF Act, which is no way connected with the petitioner's concern. Further, the petitioner has owned only one bus and apart from that, she owns a spare bus and except that, she did not have any bus. Without considering the same, the respondent passed the impugned order directing the petitioner to pay a sum of Rs.44,74,905/- forthwith towards contribution of Employees Provident

Fund, which is wholly unsustainable.

5. The learned counsel appearing for the respondent submits that the Inspecting authority called for the entire records from the Regional Transport Office and found that there are 30 buses standing in the name of the petitioner, her husband and two sons. Apart from that, in order to maintain the above 30 buses, they owned petrol bunk, repair shop for providing service to the buses owned by them. Based on the said report, the original authority arrived at a conclusion as if M/s.Veni/Krishnaveni Bus service is covered under the EPF Act and passed the impugned the order, which does not require any interference. Hence, he prayed for dismissal of the writ petition.

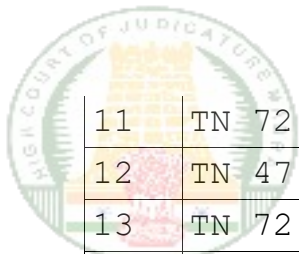
6. Heard both sides and perused the materials available on record.

7. The petitioner claims that she is the proprietor of transport concern namely "Veni Roadways" and owns one bus and one spare bus. In the said establishment, six persons are employed. Therefore, the said six employees will not come under the purview of the EPF Act.

8. On the contrary, the respondent claims that the Inspecting authority called for report from the Regional Transport Office, Tirunelveli, Tenkasi, Tuticorin and the respective transport office submitted the details of the buses owned by the petitioner.

9. On perusal of the detailed report submitted by the respective Regional Transport Office, it appears that there are 30 buses and all buses were owned by the petitioner and her husband and her two sons, which are as follows:

| Sl. No. | Details of Buses | Route                                    | Owner           |
|---------|------------------|------------------------------------------|-----------------|
| 1       | TN P 3033        | Town Pillaiyar temple to Narasinganallur | B.Sundari       |
| 2       | TN D 5796        | Cheranmahadevi to Thriupudai Marudhur    | B.Sundari       |
| 3       | TN 59 N 0399     | Melapalayam to Alangulam                 | B.Balakrishnan  |
| 4       | TN 45 N 0582     | Palai Market to Melakulam                | B.Balakrishnan  |
| 5       | TDT 9066         | Junction to Poolankudiyiruppu            | B.Balakrishnan  |
| 6       | TN 72 D 2666     | Town to Karungulam                       | B.Balakrishnan  |
| 7       | TN 67D 7845      | Spare Bus                                | B.Balakrishnan  |
| 8       | TN 34 - 9457     | Spare Bus                                | B.Balashanmugam |
| 9       | TN 28 Y 7388     |                                          | B.Sundari       |
| 10      | TN 69 B 3252     |                                          | B.Sundari       |



|    |              |                                     |                   |
|----|--------------|-------------------------------------|-------------------|
| 11 | TN 72 J 7989 |                                     | B.Sundari         |
| 12 | TN 47 R 6752 |                                     | B.Sundari         |
| 13 | TN 72 J 9949 | Town to Pappiapuram                 | B.Sundari         |
| 14 | TN 72 A 1080 | Spare Bus                           | B.Sundari         |
| 15 | TN 72 J 2949 | High Ground to Pappiapuram          | P.Balasubramanian |
| 16 | TN 72 J 2959 | Pettai Hindu College to Pappiapuram | P.Balasubramanian |
| 17 | TN 72 L 5949 | Junction to Poolankudiyiruppu       | P.Balasubramanian |
| 18 | TN 72 L 5969 | Junction to Poolankudiyiruppu       | P.Balasubramanian |
| 19 | TN 45 E 2939 | Spare Bus                           | P.Balasubramanian |
| 20 | TN 72 P 7900 | Junction to Vellangulam             | P.Balakrishnan    |
| 21 | TN 72 J 9699 | Spare Bus                           | P.Balakrishnan    |
| 22 | TN 27 L 7591 |                                     |                   |
| 23 | TN 72 H 2949 | Pettai to Manappadaiveedu           | Veni Bus Company  |
| 24 | TN 72 J 9119 | Spare Bus                           | Veni Bus Company  |
| 25 | TN 23 N 0374 | Junction to Veppankulam             | Veni Bus Company  |
| 26 | TN 47 A 1199 | Junction to Veppankulam             | Veni Bus Company  |
| 27 | TN 47 R 6752 | In the name of M/s.Veni Bus Company |                   |
| 28 | TN 72 C 7227 | Balakrishnaveni Transport           |                   |
| 29 | TN 72 P 7949 | Balakrishnaveni Transport           |                   |
| 30 | TN 32 9193   | Balakrishnaveni Transport           |                   |

10. It is also relevant to mention that the residential address of the above said persons are mentioned as follows:

1. P.Balasubramanian,  
No.7, Subramaniaswamy Kovil Street,  
Kulavanikarpuram, Palayamkottai.

2. B.Sundari, W/o. Balasubramanian  
No.7, Subramaniaswamy Kovil Street,  
Kulavanikarpuram, Palayamkottai.

3. B.Balakrishnan, S/o.Balasubramanian  
No.7, Subramaniaswamy Kovil Street,  
Kulavanikarpuram, Palayamkottai.

4. B.Balashanmugam, S/o.Balasubramanian  
No.7, Subramaniaswamy Kovil Street,



Kulavanikarpuram, Palayamkottai.

11. Further, the petrol bunk and bus service work station engaged by the establishment is common and it is used only to fulfill the family needs to maintain the business.

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12. In order to disprove the said findings, no records were produced by the petitioner before this Court. In the absence of any material to the contra, mere assertion by the petitioner that she owns one bus and one spare bus alone cannot be the basis to interfere with the impugned order. Further, the original authority, after appreciating the entire records, has rightly passed the impugned order, which is on the basis of the materials placed before it and the petitioner not having placed any contra material, either before the original authority or this Court, the order passed by the original authority cannot be found fault with and this Court is not inclined to interfere with the impugned order. This Court has passed the above order only on the stand taken by the petitioner that though the appeal remedy is available, the petitioner, at the distant point of time is not inclined to avail the appeal remedy.

13. Accordingly, the writ petition is dismissed. However, liberty is granted to the petitioner to file an appeal before the appellate authority, if the petitioner is in possession of any contra materials to substantiate her claim. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Assistant Provident Fund Commissioner,  
E.P.F. Organization,  
Sub-Regional Office,  
N.G.O. "B" Colony,  
Tirunelveli District.

+1 CC to M/s.H.ARUMUGAM, Advocate ( SR-14601[F] dated 30/03/2021 )

+1 CC to M/s.K.MURALISANKAR, Advocate ( SR-14627[F] dated 31/03/2021

W.P. (MD)No.14315 of 2011  
29.03.2021

KB(18.06.2021) 5P 4C

<https://hcservices.ecourts.gov.in/hcservices/>