



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2021

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No.11381 of 2013
and
M.P. (MD) No.1 of 2013

Devi Textiles,
Rep by its Proprietor,
Mr.T.Vijayarajan,
S/o.Mr.K.Thavasianantham,
Door No.1/382, Sankaralinga Moopanar Street,
Samusigapuram, Rajapalayam Via,
Virudhuangar District-626 102.

... Petitioner

Vs.

1.The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
Regional Office,
Bhavishyanidhi Bhavan,
Post Box No.1, Lady Doak College Road,
Chokkikulam, Madurai-625 002.

2.The Squad Enforcement Officers,
District Office,
Employees' Provident Fund Organization,
AKM Complex,
Virudhunagar Road, Sivakasi.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent in reference No.M-11/TN/MD/91267/Applicability/ENF'B'/2012, dated 07.06.2012 and consequently direct the first respondent to make an enquiry under Section 7-A of the Act, by giving an opportunity to the petitioner to place necessary documents and explanation.

For Petitioner : Mr. J.Alaguram Jothi

For First Respondent : Mr. V.S.V.Venkateswaran



ORDER

(through video conference)

Heard Mr. J.Alaguram Jothi, Learned Counsel for the Petitioner and Mr. V.S.V.Venkateswaran, Learned Counsel for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. According to the Petitioner, as only 11 persons had been employed by him, which is below the minimum limit of 20 persons, his establishment does not attract the applicability of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'EPF Act' for short). However, the First Respondent has mistakenly proceeded as if 25 persons have been employed in the establishment of the Petitioner in the month of April 2011 and has issued the Order No. M-11/TN/MD/91267/Applicablity/ENF'B'/2012 dated 07.06.2012 to him, which is challenged in the Writ Petition.

3. The impugned order is evidently a show cause notice for which the Petitioner has been required to submit his explanation. It has been brought to notice that the Petitioner has also submitted reply dated 01.11.2012 for the same. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in **Special Director -vs- Mohammed Ghulum Ghouse** [(2004) 3 SCC 440], **Secretary, Ministry of Defence -vs- Prabhash Chandra Miradha** (AIR 2012 SC 2250) and **Life Insurance Corporation of India vs. A.Masilamani** [(2013) 6 SCC 530] that a show cause notice cannot be challenged before completion of enquiry and proceedings cannot be interdicted till the logical conclusion is reached. In view of the same, there is no necessity to interfere with the impugned proceedings at this pre-mature stage of the matter.

4. The Petitioner shall appear before the First Respondent for the enquiry at 11.00 a.m. on 22.07.2021 with all supporting documents to substantiate his contentions. If the First Respondent is not in a position to take up the matter on that date, he shall inform the Petitioner of the adjourned date of hearing in the prescribed manner. It is incumbent upon the First Respondent to conduct enquiry affording full opportunity of personal hearing to the Petitioner following the prescribed procedure in consonance with the principles of natural justice, deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment. Though obvious, it is made clear that no view is expressed by this Court on the correctness or otherwise on the merits of the controversy involved. In the event of any decision entailing adverse civil consequences, it would be certainly open to the Petitioner to impeach the same before the proper forum in the manner recognized by law.



5. In the result, the Writ Petition is dismissed with the aforesaid clarifications. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ns/ta/dm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

Copy to

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+1 CC to M/s.J.ALAGURAAM JOTHI, Advocate (SR-17224[F]
dated 23/04/2021)

W.P. (MD) No.11381 of 2013
22.04.2021

kmv (CO)

TR(18.06.2021) 3P 5C

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