



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 448 of 2018

and

W.M.P. (MD) Nos. 442 and 443 of 2018

V.Murugan

... Petitioner

-vs-

1.The Secretary,
Department of Ministry of Labour & Employment,
Government of India,
New Delhi.

2.The Commissioner,
Puliyangudi Municipality,
Tirunelveli.

3.The Assistant Commissioner,
Employment Provident Fund Organization,
Tirunelveli Region,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the 2nd respondent's impugned notice in Na.Ka.No.2161/2013/E1 dated 13.11.2017 and to quash the same within the period stipulated by this Court.

For Petitioner : Mr. A.Hajamohideen

For R1 : Mr. Vijayarajan,
Central Government Standing Counsel

For R2 and R3 : Mr. R.Ragavendran,
Counsel for Government of Tamil Nadu

O R D E R

(through Video Conference)

Heard Mr. A.Hajamohideen, Learned Counsel for the Petitioner, Mr. Vijayarajan, Learned Central Government Standing Counsel appearing for the First Respondent and Mr. R.Ragavendran, Learned Counsel representing the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the



2. The Central Government by Notification No. S.O. 30(E) dated 08.01.2011 in exercise of the powers conferred by Section 1(3) (b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as 'the Act' for short) specified the Municipal Councils and Municipal Corporations constituted under Article 243-Q(1)(b) and (c) of the Constitution of India employing 20 or more persons as a class of establishments to which that Act shall apply with effect from the date of its publication in the Official Gazette.

3. In furtherance thereto, the Commissioner of Municipal Administration by Letter No. 57084/2011/L3 dated 21.10.2014 addressed to all Commissioners of Municipal Councils has communicated the decision of the State Government that though the Municipalities/Corporations take up works through private contractors, the authorities concerned should ensure that the contractors pay the provident fund subscription of their employees duly to the Employees' Provident Fund Organization, otherwise, the responsibility for the same will be fixed on the concerned Municipalities/Corporations, which is the principal employer, if the contractors default in this regard.

4. It has also been borne out of the records that the Government of Tamil Nadu by Letter No.18823/MC5/2016-1 dated 19.08.2016 sent to the Commissioner of Municipal Administration required all the Municipal Councils in the State to comply with the provisions of the Act, to withdraw the Court cases, in addition to sharing the details of contractors/contracts awarded by them in the principal employer portal available in the website of Employees' Provident Fund Organization to facilitate the extension of social security benefits to all eligible persons.

5. That apart, yet another Letter ROC No. 1819/2016/L3 dated 19.10.2016 was sent by the Commissioner of Municipal Administration to all Municipal Commissioners to take necessary action in connection with implementation of the Act and the schemes framed thereunder in respect of employees of Municipalities and Corporations and send the report directly to the Employees Provident Fund Organization concerned.

6. It was clarified by the Government of Tamil Nadu in Letter No. 14070/ ME.3/2016-4 dated 20.12.2016 sent to the Commissioner of Municipal Administration that the Notification No. S.O. 30(E) dated 08.11.2011 issued by the Central Government shall cover all employees of establishments as per definition of 'employee' under Section 2(f) of the Act excluding the employees who are getting benefits of provident fund and pension according to the rules of the State Government or municipal laws, etc., and that the benefits under the Act have to be extended to all eligible employees.



7. It is beyond any pale of doubt that in terms of Section 2(f)(i) of the Act that any person employed by or through a contractor in connection with the work of the establishment would be an 'employee' falling within the coverage under the Act.

8. In that backdrop, the Second Respondent had issued Notice in Na. Ka. No. 2161/2013/E1 dated 13.11.2017 to the Petitioner, who was one of the contractor engaged by it, calling upon him to comply with the provisions of the Act. Aggrieved thereby, the Petitioner has filed this Writ Petition.

9. It is apparent that though the provisions of the Act were applicable to the establishment of the Second Respondent at the time when the contract was in force with the Petitioner, it had failed to comply with the statutory requirements, which has been sought to be enforced by the authorities under the Act, and the Second Respondent has required the Petitioner to comply with the same. As such, there does not appear to be any infirmity in the impugned order, warranting any interference by this Court in the exercise of the discretionary powers of judicial review under Article 226 of the Constitution of India.

10. In view of the aforesaid legal position, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition and informs that the Petitioner would co-operate with the Second Respondent to furnish necessary particulars of the contract labour for submitting the same to the Third Respondent. He has also filed a memo dated 20.07.2021 to that effect, which is placed on record.

Accordingly, the Writ Petition is dismissed as withdrawn with the aforesaid clarifications. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ns/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.



To

1.The Secretary,
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2.The Commissioner,
Puliyangudi Municipality,
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3.The Assistant Commissioner,
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+1 CC to M/s.K.MURALI SANKAR, Advocate (SR-23460[F] dated
22/07/2021)

W.P. (MD) No. 448 of 2018
20.07.2021

RD(15.09.2021) 4P 5C