



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2021

C O R A M

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THE HONOURABLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) Nos. 18243 and 19083 of 2014
and
M.P. (MD) Nos. 1 and 2 of 2014

W.P. (MD) No.18243 of 2014

Sree Angalamman Exports,
rep by its Proprietor,
No.5, Gowripuram Extension,
Anna Nagar 3rd Cross,
Karur-639 002.

... Petitioner

Vs.

The Assistant Provident Fund Commissioner,
Sub Regional Office,
P.B.No.588, Sree Complex,
'D' Block, No.18, Madurai Road,
Trichy-620 008.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari Mandamus, to call for the records relating to the order passed by the first respondent in No.Enf.B7/TN/TRY/44018/2014 dated 13.10.2014 and No.Enf.B7/TN/TR/44018/SRO-TRY/2014 dated 07.07.2014 and quash the same and consequently direct the respondent to conduct enquiry in the application dated 04.08.2014 for review under Section 7-B.

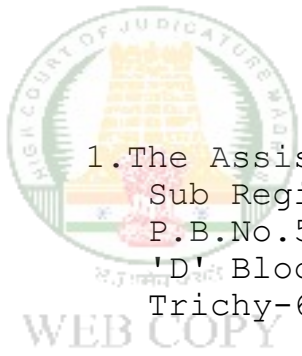
For Petitioner : Mr. J.Anandkumar
For Respondent : Mr. R.Rajagopal

W.P. (MD) No.19083 of 2014

Sree.Angalamman Exports,
rep by its Managing Director and
Chief Executive Officer,
No.5, Gowripuram Extension,
Anna Nagar 3rd Cross,
Karur-639 002.

... Petitioner

Vs.



1.The Assistant Provident Fund Commissioner,
Sub Regional Office,
P.B.No.588, Sree Complex,
'D' Block, No.18, Madurai Road,
Trichy-620 008.

2.The Branch Manager,
Karur Vysya Bank,
Karur.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari, to call for the records relating to the order passed by the first respondent in No.Enf.B7/TN/SRO-TRY/44018/2014 dated 13.11.2014 and quash the same.

For Petitioner : Mr. J.Anandkumar

For Respondents : Mr. R.Rajagopal (for R-1)

C O M M O N O R D E R
(through video conference)

Heard Mr. J.Anandkumar, Learned Counsel for the Petitioner and Mr. R.Rajagopal, learned Counsel for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Assistant Provident Fund Commissioner, Trichy, conducted an enquiry under Section 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF Act' for short) in respect of the establishment of the Petitioner and by Order No. Enf.B7/TN/TR/44018/SRO-TRY/2014 dated 07.07.2014 arrived at the conclusion that the job works like dyeing and bleaching, weaving, embroidery, processing printing, production label of stitches, stitching designing and packing etc., which are integral part of its business, had been entrusted to contractors and the provident fund contributions under the EPF Act amounting to Rs. 28,05,277/- for the period from April 2010 to March 2013 would have to be remitted for those contract labour through whom the said works had been carried out. It has been recorded in that order that despite the opportunity granted, the Petitioner had not produced any evidence and was merely protracting the proceedings indefinitely and the ultimate conclusion arrived in that order is based on available materials.

3. The Petitioner thereafter made an application for review dated 04.08.2014 under Section 7-B of the EPF Act with certain documents, but the Assistant Provident Fund Commissioner by an Order No.Enf B7/TN/TRY/44018/2014 dated 13.10.2014 rejected it. Aggrieved



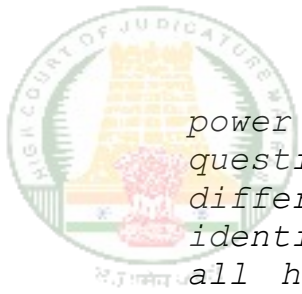
thereby, the Petitioner has assailed that order in the Writ Petition in W.P. (MD) No.18243 of 2014 before this Court.

4. Since consequential proceedings in No.ENF B7/TN/SRO-TRY/44018/2014 dated 13.11.2014 for recovery of the provident fund dues had been taken under Section 8-F of the EPF Act by attaching the bank account of the Petitioner with Karur Vysya Bank, Karur, the Petitioner has filed the Writ Petition in W.P. (MD) No. 19083 of 2014 challenging the same.

5. The question that arises for consideration in these Writ Petitions is whether the Assistant Provident Fund Commissioner, Trichy, is justified in rejecting the application for review filed by the Petitioner under Section 8-B of the EPF Act?

6. The only reason attributed by the Assistant Provident Fund Commissioner, Trichy, in the order No.Enf B7/TN/TRY/44018/2014 dated 13.10.2014 for not entertaining the Review Application made by the Petitioner is that it does not contain any specific discovery of new material or evidence with proof which he could not know or produce during the earlier enquiry in respect of the order No. Enf. B7/TN/TR/44018/SRO-TRY/2014 dated 07.07.2014 passed under Section 7-A of the EPF Act. A perusal of the application for review made by the Petitioner would show that the Petitioner has raised contentions that the contractors, who had been engaged for the job works in the establishment of the Petitioner, have separate provident fund code. It is, of course, true that the definition of 'employee' under Section 2(f)(i) of the EPF Act includes any person employed by or through a contractor in connection with the work of the establishment of the Petitioner. At this juncture, it must be recalled that in terms of Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 read with Rules 71 and 72 of the Tamil Nadu Contract Labour (Regulation and Abolition) Rules, 1975, the Petitioner as principal employer would have to ensure that the employees, who had worked through the contractors, have been paid their wages which includes the provident fund contributions in respect of the work done by them for the Petitioner. As its corollary, the Petitioner would be entitled to invoke Section 7-A(2) of the EPF Act to issue summons to the contractors to produce evidence regarding the details of the employment of the contractual workers and the provident fund contributions paid for them by those contractors, taking into consideration the dictum laid down by the Hon'ble Supreme Court of India in **Food Corporation of India -vs- Provident Fund Commissioner** [(1990) 1 SCC 68], where it has been ruled as follows:-

"9. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This



power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person."

This decision highlights that the real focus has to be on identifying the contractual workers, who had been engaged through the contractors by relevant evidence and ascertain the exact amount towards contribution for provident fund in respect of each of them. Viewed from this perspective, it is incumbent upon the Assistant Provident Fund Commissioner, Trichy, to examine the truth of the claim made by the Petitioner that the contractors engaged through the Petitioner have separate provident fund code as claimed and had remitted the provident fund dues, in the application for review. If it is shown that the contractors had remitted the provident fund contributions in respect of the contract labour for the work done for the Petitioner, it would obviously mean that the Petitioner cannot be fastened with the liability once again to pay the provident fund contributions for them. In the absence of evidence in that regard, it would naturally follow that the Petitioner has to bear the liability for the provident fund contributions of those contractual workers. There is no gainsaying that the enforcement machinery provided under the EPF Act should not be converted as a ploy just to fill up the coffers of the Employees Provident Fund Organization, where already several crores of rupees are reportedly lying unclaimed, losing sight of the beneficent objects of that labour welfare enactment.

7. Merely because there is provision to prefer appeal under Section 7-I of the EPF Act before the Appellate Authority, it cannot preclude the right of the Petitioner to make an application for review under Section 7-B of the EPF Act, when the conditions prescribed for the same are fulfilled. Similarly, the Petitioner has to be provided opportunity in the Review Application to explain that the new materials or evidence were not within his knowledge earlier before arriving at any conclusion in that regard. The submissions made by the Respondent to the contrary are without any merit.

8. The result of the foregoing discussion is that the impugned order No. ENF B7/TN/TRY/44018/2014 dated 13.10.2014 passed by the Assistant Provident Fund Commissioner, Trichy, rejecting the application for review made by the Petitioner under Section 7-B of the EPF Act at threshold without carrying out the aforesaid exercise, which cannot be sustained, is set aside and that Review Application is restored to the file of the Assistant Provident Fund



Commissioner, Trichy, to decide the same afresh following the prescribed procedure on merits and in accordance with law after taking into consideration the aforesaid observations made. The Writ Petition in W.P (MD) No.18243 of 2014 is ordered in the aforesaid terms.

9. In view of the order passed in W.P (MD) No.18243 of 2014, the recovery proceedings pursuant to the Order No.Enf.B7/TN/TRY/44018/2014 dated 13.10.2014 initiated under Section 8-F of the EPF Act shall be kept in abeyance and further course of action shall await the outcome in that Review Application. The Writ Petition in W.P (MD) No. 19083 of 2014 is disposed with the aforesaid clarification.

10. The parties shall bear their respective costs in both Writ Petitions. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

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Sub Assistant Registrar(CS)

ta/kv/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

The Assistant Provident Fund Commissioner,
Sub Regional Office,
P.B.No.588, Sree Complex,
'D' Block, No.18, Madurai Road,
Trichy-620 008.

Copy to

1. The Proprietor,
Sree Angalamman Exports,
No.5, Gowripuram Extention,
Anna Nagar 3rd Cross,
Karur-639 002.



2.The Branch Manager,
Karur Vysya Bank,
Karur.

WEB COPY

+2 CC to M/s.J.ANANDKUMAR, Advocate (SR-18456 & 18457[F] dated 04/05/2021)
+3 CC to M/s.DR.RAJAGOPAL, Advocate (SR-18462 & 18463[F] dated 04/05/2021)
+1 CC to M/s. Spl. Govt. Pleader(SR-18466[F] dated 04/05/2021)

W.P. (MD) Nos. 18243 and 19083 of 2014
30.04.2021

na (CO)
TR(18.06.2021) 6P 10C