



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2021

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 2455 of 2014

and

M.P. (MD) No. 2 and 3 of 2014

1. S.Kumarasamy
2. Chinnathambi
3. S.Sudalaimuthu
4. S.S.Peer Mohammed
5. S.Balasubramanian
6. Somasundaram
7. S.Arunachalam
8. K.Sivaraman
9. U.Muthukumar
10. A.Sheik Mohammed ... Petitioners

-vs-

1. The Government of India,
Represented by its Secretary,
Department of Ministry of Labour and Employment,
New Delhi.
2. The Commissioner,
Employment Provident Fund Organization,
Madurai Region,
Madurai.
3. The Assistant Commissioner,
Employment Provident Fund Organization,
Tirunelveli Region,
Tirunelveli.



4. Tenkasi Municipality,
Represented by is Commissioner,
Tenkasi,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned notice of the Fourth Respondent in Na.Ka.No.4410/2013/P3, dated 25.10.2013, quash the same.

For Petitioners : No appearance

For R-1 : Mr. D.Gandhiraj,
Counsel appearing for the
Government of Tamil Nadu

For R-2 : No appearance

For R-3 : Mr. K.Murali Sankar

For R-4 : Mr. P.Athimoolapandian

O R D E R
(through video conference)

Heard Mr. D.Gandhiraj, Learned Counsel representing the First Respondent, Mr. K.Murali Sankar, Learned Counsel appearing for the Third Respondent and Mr. P.Athimoolapandian, Learned Counsel appearing for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. There is no representation for the Petitioners when the matter is called today.

3. 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 Municipals 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.

4. 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.

WEB COPY

5. 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 share 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.

6. 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.

7. 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 rules of the State Government or municipal laws, etc., and that the benefits under the Act have to be extended to all eligible employees.

8. 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.

9. It has been brought to notice that the concerned authority under the Act had initiated proceedings under Section 7-A of the Act against the Fourth Respondent and determined the liability towards contribution of provident fund dues payable to the contract labourers engaged by it through contractors.

10. The Fourth Respondent had issued Notice in Na. Ka. No. 4410/2013/B3 dated 25.10.2013 to the Petitioners, who were the contractors engaged by it, calling upon them to comply with the provisions of the Act and remit the Provident Fund dues called to avoid coercive action to deduct from reserve funds. Aggrieved thereby, the Petitioners have filed this Writ Petition.



11. It is apparent that though the provisions of the Act were applicable to the establishment of the Fourth Respondent at the time when the contract was in force with the Petitioners, they had failed to comply with the statutory requirements, which has been sought to be enforced by the authorities under the Act, and the Fourth Respondent has now required the Petitioners to furnish particulars in that regard. In that view of the matter, there does not appear to be any infirmity in the impugned order warranting interference by this Court in the exercise of the discretionary powers of judicial review under Article 226 of the Constitution.

In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are dismissed. No costs.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sm/vjt

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 to the Government of India,
Department of Ministry of Labour and Employment,
New Delhi.
2. The Commissioner,
Employment Provident Fund Organization,
Madurai Region, Madurai.
3. The Assistant Commissioner,
Employment Provident Fund Organization,
Tirunelveli Region, Tirunelveli.
4. Tenkasi Municipality,
Represented by its Commissioner,
Tenkasi, Tirunelveli District.

W.P. (MD) No. 2455 of 2014

15.07.2021

nsn(CO)

KB(15.09.2021) 4P 5C

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