



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.8231 of 2014

and

M.P. (MD) No.1 of 2014

WEB COPY

Sheik Abdul Kadar

... Petitioner

-vs-

1.The Secretary,
Department of Ministry of Labour & 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.The Commissioner,
Shencottai Municipality,
Shencottai,
Tirunelveli District.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the 4th Respondent's notice in Na.Ka.No.781/12/E1 dated 23.04.2014 and quash the same.

For Petitioners	:	Mr.A.Hajamohideen
For R1	:	Mr.Vijayarajan
		Central Government Standing Counsel
For R2 and R3	:	Mr.K.Murali Sankar
For R4	:	Mr.M.Ramachandran

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, Mr.K.Murali Sankar, Learned Counsel representing the Second and Third Respondents and Mr. M. Ramachandran, Learned Counsel appearing for the Fourth Respondent



and perused the materials placed on record, apart from the pleadings of the parties.

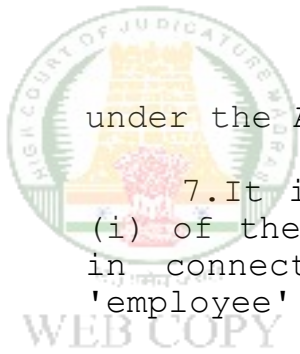
2.The Central Government by Notification No. S.O. 30(E) dated 08.01.2011 in exercise of the powers conferred by Section 1(3)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as 'the Act' for short) specified the Municipal Councils and Municipal Corporations 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 Central 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 Fourth Respondent had issued Notice in Na. Ka. No. 781/12/E1 dated 23.04.2014 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 Fourth 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 Fourth 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 Fourth Respondent to furnish necessary particulars of the contract labour for submitting the same to the Second and Third Respondents. 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 Petition is closed. No costs.

Sd/-

Assistant Registrar (T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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,
Department of Ministry of Labour & Employment,
New Delhi.

2. The Commissioner,
Employment Provident Fund Organization,
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Madurai.

3. The Assistant Commissioner,
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Tirunelveli Region,
Tirunelveli.

4. The Commissioner,
Shencottai Municipality,
Shencottai,
Tirunelveli District.

+1 CC to M/s.K.MURALI SANKAR, Advocate (SR-23456[F] dated
22/07/2021)

**W.P. (MD) No. 8231 of 2014
20.07.2021**

RS (16.09.2021) 4P 6C