



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 3851 of 2015

and

W.M.P. (MD) No. 1 of 2015

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Pattukottai Nagarachi Padhivu Petra Oppanthakarargal Sangam,
Represented by its Secretary,
Sankaran,
27, Mahendran Colony,
Sunnambukara Street,
Pattukottai,
Thanjavur District.

... Petitioner

-vs-

1. The Secretary,
Department of Ministry of Labour and Employment,
New Delhi.

2. The Commissioner,
Employees Provident Fund Organisation,
Tiruchirappalli Region,
Tiruchirappalli.

3. The Assistant Commissioner,
Employees Provident Fund Organisation,
Sub Regional Office,
Tiruchirappalli.

4. The Commissioner,
Pattukottai Municipality,
Pattukottai.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in pursuant to the order passed by the Fourth Respondent in his proceedings in Na.Ka.No.673/2014/A4 dated 02.03.2015 and quash the same.

For Petitioner : No appearance

For Respondents : Mr. C.Nandagopal (For R1 & R2)
Mr. V.S.Karthi
for M/s.VS.Karthi Associates
(For R3)
Mr. M.Kannan (For R4)



O R D E R
(through video conference)

Heard Mr. C.Nandagopal, Learned Counsel for the First and Second Respondents, Mr. V.S.Karthi, Learned Counsel for the Third Respondent and Mr. M.Kannan, Learned Counsel 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 Petitioner 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. It is in these circumstances that the Fourth Respondent had sent notice Na. Ka. No. 673/2014/A4 dated 02.03.2015 to its contractors to comply with the provisions of the Act.

5. The Petitioner, which is an association of contractors, has filed this Writ Petition challenging the said notice Na. Ka. No. 673/2014/A4 dated 02.03.2015 issued by the Fourth Respondent. This Court at the time of admission on 19.03.2015, had granted an order of interim stay of that notice for a period of four weeks. It must, at once, be pointed here that though the impugned order has been addressed to the Petitioner to inform its members, the Petitioner cannot be said to be aggrieved so as to challenge the same in view of the ruling of the Hon'ble Supreme Court of India in **Mahinder Kumar Gupta -vs- Union of India** [(1995) 1 SCC 85], holding that an Association cannot file Writ Petition seeking the cause of its individual members and does not



affect any legal right of that Association.

6. It is brought to notice that after the filing of the Writ Petition, 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.

7. 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.

8. 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.

9. 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.

10. In view of the aforesaid legal position, the Writ Petition, at the instance of the Petitioner, who does not have any *locus standi* to file the same for the relief claimed, cannot be entertained.

11. Learned Counsel for the Fourth Respondent submits that on account of the interim order passed in this Writ Petition, the Fourth Respondent was not able to provide necessary details of the contractual workers engaged through the members of the Association of the Petitioner before the Third Respondent, who has by Order Na. Ka. No. 1110/2014/E1 dated 13.05.2014 determined the liability of the Fourth Respondent under Section 7-A of the Act and that the Fourth Respondent has challenged that order in W.P. (MD) No. 10659 of 2014 before this Court and interim stay of that order has been



granted on 02.07.2014 in that Writ Petition.

In the result, the Writ Petition, which lacks any merit, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sm/vjt

Note: (i) Issue order copy by 15.09.2021.

(ii) 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

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Department of Ministry of Labour and Employment,
New Delhi.
2. The Commissioner,
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Tiruchirappalli.
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