



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. 17715 of 2017

and

W.M.P. (MD) No. 14270 of 2017

WEB COPY

- 1.Rahamath Nisha
- 2.M.Mubin Barakath
- 3.M.Abdul Subakhan
- 4.M.Syed Ibrahim

... Petitioners

-vs-

1. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Ministry of Labour, Government of India,
Regional Office,
Lady Dock College Road,
Chinnachokkikulam,
Madurai-2.
2. The Recovery Officer / Regional Provident Fund,
Commissioner, Employees Provident Fund Organization,
Ministry of Labour, Government of India,
Regional Office, Lady Dock College Road,
Chinnachokkikulam,
Madurai-2.
3. The Enforcement Officer,
M-05 Division,
Employees Provident Fund Organization,
Ministry of Labour, Government of India,
Regional Office, Lady Dock College Road,
Chinnachokkikulam, Madurai-2.
4. The Commissioner,
Rameswaram Municipality,
Rameswaram,
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned notices issued by the second respondent to the petitioners in EPFCP-29 No.MD/MDU/91582/Recy/2017, dated 31.08.2017 and quash the same.

For Petitioners : Mr. A.Saravanan
For R-1 to R-3 : Mr. K.Muralisankar
For R-4 : Mr. M.Kannan



O R D E R

(through video conference)

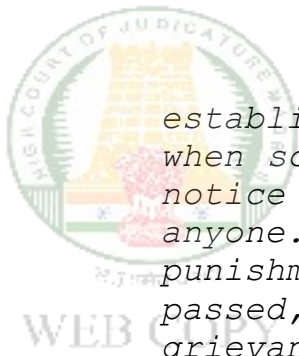
Heard Mr. A.Saravanan, Learned Counsel for the Petitioners, Mr. K.Muralisankar, Learned Counsel for the First to Third Respondents and Mr. M.Kannan, Learned Counsel for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioners in this Writ Petition are the legal heirs of one M.Mohamed Ali, who was the sole proprietor of M.K.M. Solid Waste Clearing Agency, against whom an order in File No. TN/MD/MDU/91582/Enf.C/Circle-15/M-5/15013/2016 dated 14.10.2016 had been passed by the First Respondent determining the sum of Rs. 59,82,053/- as liability towards provident fund dues for the period from December 2012 to May 2016 for his establishment. Coming to know of the demise of the said M.Mohamed Ali on 16.01.2013, the First Respondent has issued notices No. MD/MDU/91582/Recy/2017 dated 31.08.2017 to the Petitioners for recovery of the provident fund dues under the aforesaid order.

3. As it is evident that the impugned order is a show cause notice, the Petitioners are entitled to submit their explanation for the same. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in **Union of India -vs- Kunisetty Satyanarayana** [(2006) 12 SCC 28] that a charge memo or show-cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision, which read as follows:-

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide **Executive Engineer, Bihar State Housing Board -vs- Ramesh Kumar Singh** [(1996) 1 SCC 327], **Special Director -vs-Mohd. Ghulam Ghouse** [(2004) 3 SCC 440], **Ulagappa -vs- Divisional Commr., Mysore** [(2001) 10 SCC 639], **State of U.P. -vs- Brahm Datt Sharma** [(1987) 2 SCC 179], etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the charges and/or hold that the charges are not



established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

4. Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioners from raising the contentions in this Writ Petition in the reply to be submitted to the Second Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for this Court to interfere at this pre-mature stage of the matter.

5. The Petitioners shall submit their explanation for the impugned show cause notice to the Second Respondent with all supporting documents to substantiate their contentions by 31.10.2021. The Second Respondent shall immediately consider the explanation of the Petitioners. If the Second Respondent is not able to accept the explanation submitted by the Petitioners, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioners to explain their position in that regard. The Second Respondent shall pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken to the Petitioners under written acknowledgment.

In the result, the Writ Petition is disposed on the aforesaid terms. 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 Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Ministry of Labour, Government of India,
Regional Office,
Lady Dock College Road,
Chinnachokkikulam,
Madurai-2.
2. The Recovery Officer / Regional Provident Fund,
Commissioner, Employees Provident Fund Organization,
Ministry of Labour, Government of India,
Regional Office, Lady Dock College Road,
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3. The Enforcement Officer,
M-05 Division,
Employees Provident Fund Organization,
Ministry of Labour, Government of India,
Regional Office, Lady Dock College Road,
Chinnachokkikulam, Madurai-2.
- 4 The Commissioner,
Rameswaram Municipality,
Rameswaram,
Ramanathapuram District.

Copy to

1. Rahamath Nisha,
W/o. M.Mohamed Ali (Died),
76, Meenakshipuram Pallivasal Street,
Karaikudi,
Sivagangai District.
2. M.Mubin Barakath,
D/o.M.Mohamed Ali (Died),
76, Meenakshipuram Pallivasal Street,
Karaikudi,
Sivagangai District.



3. M.Abdul Subakhan,
S/o. M.Mohamed Ali (Died),
76, Meenakshipuram Pallivasal Street,
Karaikudi,
Sivagangai District.

4. M.Syed Ibrahim,
S/o. M.Mohamed Ali (Died),
76, Meenakshipuram Pallivasal Street,
Karaikudi,
Sivagangai District.

+1 CC to M/s.K.MURALI SANKAR, Advocate (SR-24612[F]
dated 30/07/2021)

+1 CC to M/s.M.KANNAN, Advocate (SR-24329[F]
dated 29/07/2021)

**W.P. (MD) No. 17715 of 2017
28.07.2021**

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