

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.05.2022

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11321 of 2022

and

WMP.No.10860 of 2022

M/s.Hindustan Motor Finance Corporation Ltd.,  
No.6, GST Road, St.Thomas Mount,  
Chennai- 600 016.

Rep. by its Deputy General Manager.

... Petitioner

vs

1. The Regional Provident Fund Commissioner,  
Employees Provident Fund Organisation  
Sub Regional Office Ambattur  
Mugappair Road, Mugappair East Chennai  
R-40, A1, TNHB Shopping cum Office Complex  
Mugappair Road, Mugappair East,  
Chennai- 600 037.

2. The Recovery Officer,  
Employees Provident Fund Organization,  
Sub Regional Office, Ambattur,  
Mugappair Road, Mugappair East Chennai  
R-40, A1, TNHB Shopping cum office complex  
Mugappair Road, Mugappair East,  
Chennai- 600 037.

... Respondents

Prayer: Writ Petition filed under Article 226 of the  
Constitution of India praying to issue a Writ of Mandamus,  
forbearing the Respondents from initiating any further  
proceedings in terms of its recovery notice issued by the 2nd  
Respondent in PRC No.:TNAMB1313/0018770/12/04/2016/204/35 dated  
11.04.2022.

For Petitioner : Mr.Anand Gopalan  
for M/s.T.S.Gopalan & Co

For Respondents : Mr.M.S.Viswanathan

O R D E R

The relief sought for in this Writ Petition is to forbear

the Respondents from initiating any further proceedings in terms of its recovery notice issued by the 2nd Respondent in PRC No.:TNAMB1313/0018770/12/04/2016/204/35 dated 11.04.2022.

2. The Petitioner M/s.Hindustan Motor Finance Corporation Ltd., established a car plant division at Tiruvallur, pursuant to an agreement signed with M/s.Mitsubishi Motor Corporation, Japan.

3. The Petitioner states that in the year 2014 by virtue of business transfer agreement M/s.Hindustan Motors Limited transferred the car plant as a going concern to the Petitioner along with all assets and liabilities. The transfer was ratified and approved by Government of Tamil Nadu vide G.O.Ms.No.6 of 22.01.2015..

4. The employees of the Petitioner Company were covered under the provisions of Employee Provident Fund Act, 1952 (in short 'the Act') and the Petitioner has been regularly remitting the contributions in respect of its employees. In respect of the car plant, it used to recruit apprentices in terms of model standing orders for a period of 3 years. As the apprentices/trainees were excluded employees in terms of paragraph 2(f) of EPF Scheme, they were not extended the provisions of the Act. At the instance of certain employees representing the Union, the Office of the first Respondent sent summons under Section 7A of the EPF Act claiming contribution in respect of apprentices for the period 1997-2004. The Petitioner objected the claim. The said claim created dispute between the Petitioner and the Respondents.

5. The learned counsel for the Petitioner mainly contended that they were regularly paying the contributions in accordance with the provisions of the Act. However, in respect of the apprentices they are not liable to pay the contributions. As far as employees are concerned, they have already settled Provident Fund in accordance with the scheme and there is no violation.

6. The learned counsel appearing for the Respondents objected the said contention by stating that the Petitioner was a chronic defaulter. Therefore, the petitioner is liable to be prosecuted under the provisions of the Act. The authorities have rightly initiated the action by affording opportunity and following the procedures and there is no infirmity as such. He further submitted that this Writ Petition is liable to be rejected.

7. Considering the arguments as advanced by the parties to the lis on hand, it is not in dispute that the issue is sub

judice before the Central Government Industrial Tribunal, Chennai. The Petitioner Company has filed a restoration petition to restore the main case which was already heard by the Tribunal and the orders are yet to be passed. Under these circumstances, it is contended that in the event of restoration, the petitioner will be getting an opportunity to adjudicate the issues on merits. Therefore, the attachment made by the Respondents at present would cause prejudice to the interest of the Petitioner Company and they will not be in a position to operate the bank accounts for settling the issues.

8. The learned counsel for the Petitioner reiterated that the attachment would cause greater prejudice as the Restoration petition has already been heard by the Tribunal and the issues are to be decided on merits after adjudication. The said factum is not in dispute between the parties. Under these circumstances, this Court is of the considered opinion that a balance is to be adopted in such circumstances between the parties and the interest of both the parties are to be considered. The Petitioner is unable to operate the Bank accounts to run the Company and settle the issues. Thus it is preferable that in the event of furnishing Bank Guarantee, attachment shall be released so as to allow the Petitioner to operate the accounts.

9. In view of the aforesaid facts and circumstances of the case, in order to facilitate the Petitioner to furnish Bank Guarantee, the Respondents are directed to release the attachment, for a period of seven bank working days from the date of receipt of a copy of this order. Thereafter, the Petitioner is at liberty to furnish Bank Guarantee to the tune of Rs.33,68, 853/-, within the said period of seven working days to the satisfaction of the Respondents. On such production of Bank Guarantee the Respondents shall release the attachment till the disposal of the case pending before the Central Government Industrial Tribunal. If the Petitioner fails to furnish Bank Guarantee, then the Respondents are empowered to again attach Bank Accounts immediately.

This Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Vacation Officer

//True Copy//

Sub Assistant Registrar

arr/nv

To

1. The Regional Provident Fund Commissioner,  
Employees Provident Fund Organisation  
Sub Regional Office Ambattur  
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+1cc to M/s.T.S.Gopalan & Co, Advocate, S.R.No.31662

W.P.No.11321 of 2022

SS(CO)  
SB(26/05/2022)