



WEB COPY



WP No.15923 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-11-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.15923 of 2019

And

WMP No.15729 of 2019

Hindustan Petroleum Corporation Limited,
Represented by its Head Human Resources,
Human Resources Department,
South Zone, 1, Gandhi Irwin Road,
Thalamuthu Natarajan Building,
3rd Floor, Egmore,
Chennai – 600 008.

..

Petitioner

vs.

1.Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office – S.J. Plaza,
Swarnapuri,
Salem – 636 004.

2.Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
No.37, Royapettah High Road,
Azad Nagar, Royapettah,
Chennai, Tamil Nadu 600 014.



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3. Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office – S.J. Plaza,
Swarnapuri,
Salem – 636 004.

4. Enforcement Officer,
Employees Provident Fund Organisation,
Regional Office – S.J. Plaza,
Swarnapuri,
Salem – 636 004.

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the first respondent and quash the impugned order No.CB/RO/SLM/COMP/GEN/HPCL/2019 dated 11.04.2019.

For Petitioner : Mr.M.Vijayan for
M/s.King and Patridge.

For Respondents : Mr.P.K.Panneer Selvam

ORDER

The notice issued by the first respondent under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952



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[hereinafter referred to as the 'Act', in short] in proceedings dated 11.04.2019, is under challenge in the present writ petition.

2. The petitioner is the Hindustan Petroleum Corporation Limited, which is the Government of India Company incorporated under the Companies Act, 1956 under the Administrative Jurisdiction of the Ministry of Petroleum and Natural Gas, Government of India, New Delhi.

3. The learned counsel for the petitioner states that the petitioner-Corporation is amenable to the Act, only in respect of the direct employees of the Corporation.

4. As far as the employees appointed by the Dealers are concerned, the petitioner-Corporation is not having any control. Therefore, the very notice issued by the first respondent is untenable.

5. It is contended that the first respondent has no jurisdiction to issue any such notice.



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6. At the outset, the learned counsel for the petitioner reiterated that the employees engaged by the Dealers are concerned, they have no control or employer-employee relationship exist or the principal employer. Thus the notice is not in consonance with the provisions of the Act and therefore the same is to be set aside.

7. The learned counsel for the respondents contended that under Section 7A of the Act, the Commissioner is empowered to decide the dispute arises regarding the applicability of the provisions of the Act, when established and to determine the due from any employer under the Act or the Scheme.

8. Therefore, the Authorities Competent, in order to provide an opportunity to the petitioner-Corporation issued the impugned notice and instead of responding to the notice, the petitioner has chosen to file the present writ petition. Thus, the present writ petition is liable to be rejected.



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9. The power of judicial review under Article 226 of the Constitution of India, cannot be expanded for the purpose of adjudication of disputed issues between the parties. The decision regarding the issues is yet to be decided by the Competent Authority under the provisions of the Act. The notice issued under Section 7A of the Act, is under challenge in the present writ petition.

10. When the Act, empowers the Commissioner to decide the dispute arising regarding the applicability of the Act itself, then the petitioner-Corporation has to place all their facts, grounds and other relevant documents before the Competent Authorities for the purpose of establishing their case.

11. No writ against the show cause notice is entertainable in a routine manner. No doubt, a writ can be entertained if the notice was issued without jurisdiction. However, in the present case, Section 7A of the Act, itself contemplates that all such issues can be decided by the Commissioner



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and under those circumstances, the petitioner-Corporation has to approach the Authorities in response to the impugned notice and place their case before the Authorities for the purpose of establishing the same.

12. The learned counsel for the petitioner made a submission that an opportunity for personal hearing is also to be provided for the purpose of placing all the records to explain the position of the petitioner-Corporation.

13. This being the factum established, the petitioner-Corporation is at liberty to submit their explanations/objections along with the documents, if any, to the respondents, within a period of four weeks from the date of receipt of a copy of this order and on receipt of the explanations/objections from the petitioner-Corporation, the respondents shall fix a date for personal hearing and inform the same to the Competent Authorities of the petitioner-Corporation and after providing the said personal hearing, the issues are to be decided on merits and in accordance with law uninfluenced by the averments set out in the counter-statement of



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the respondents filed in the present writ petition.

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14. With the abovesaid observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No.

Internet : Yes/No.

Speaking Order/Non-Speaking Order.

Svn

To

1.Regional Provident Fund Commissioner,
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Swarnapuri,
Salem – 636 004.

2.Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
No.37, Royapettah High Road,
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3.Assistant Provident Fund Commissioner,
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Svn

4.Enforcement Officer,
Employees Provident Fund Organisation,
Regional Office – S.J. Plaza,
Swarnapuri,
Salem – 636 004.

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