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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 9564 of 2017

and

W.M.P. Nos. 10509 and 10510 of 2017

M/s.Florind Shoes (P) Ltd.,
Rep. by its Managing Director,
K.Shahid Mansoor,
M.C. Road, Solur Village,
Ambur Taluk,
Vellore District-635 802.

... Petitioner

-vs-

1. The Assistant P.F. Commissioner,
Employees Provident Fund Organisation,
S-1, TNHB, Phase-III,
Sathuvachari,
Vellore-632 009.

2. M/s.Rajih & Associates, Unit - 1,
No.6/44, Sri Ramapuram Road,
Kilachur Village, Pallikonda Taluk,
Vellore District-635 809.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in respect of its proceedings no. TB/VLR/74239/RECY/2016 dated 30.11.2016 and the consequential prohibitory order dated 16.03.2017 in proceedings no. TB/VL/74239/Recovery/2017/5320 and quash the same and further direct the First Respondent to refund the sum of Rs.5,04,867/- with interest to the Petitioner.

For Petitioner : Mr. S.Ravindran
Senior Counsel
For Mr. S.Bazeer Ahamed

For Respondents : Mrs. V.J.Latha [For R1]
R2 - No appearance



O R D E R

Heard Mr. S.Ravindran, Learned Senior Counsel appearing for the Petitioner and Mrs. V.J.Latha, Learned Counsel for the First Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent had issued show cause notices dated 30.11.2016 and 16.03.2017 under Section 8-F of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act' for short) for the recovery of the provident fund dues against the Second Respondents. According to the First Respondent, the amounts were payable by the Second Respondent to the Petitioner and the said amount would have to be attached for which the said show cause notices have been issued. It has been placed on record that the Petitioner had filed objections before the First Respondent in this regard contending that no amount was payable by the Petitioner to the Second Respondent, and on the contrary, a sum of Rs. 15,69,306/- was payable by the Second Respondent to the Petitioner. It has been further submitted that a sum of Rs.5,04,867/- has been recovered from the Petitioner through its banker by the First Respondent.

3. 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



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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 proceedings 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."

In view of the same, there is nothing which precludes the Petitioner from agitating the contentions raised in this Writ Petition in the enquiry before the First Respondent, who is bound to deal with each of the contentions raised by the Petitioner in the reply before coming to any ultimate conclusion, during the enquiry for which notice has been issued, and as such, there is no necessity to interfere with the impugned proceedings at this pre-mature stage of the matter.

4. Learned Senior Counsel appearing for the Petitioner has brought to the notice of this Court that the Petitioner is now in liquidation and Mrs. Ramela Rangasamy, Resolution Professional has been appointed as Liquidator by order dated 12.03.2019 in M.A. No. 164 of 2019 in CP/522/IB/2018 passed by the National Company Law Tribunal, Chennai Bench to represent the assets of the Company of the Petitioner.

5. Having regard to the aforesaid subsequent events after the filing of the Writ Petition, it is incumbent upon the First Respondent to issue notice to the said Liquidator of the Petitioner as well as to the Second Respondent and conduct enquiry affording full opportunity of personal hearing to the Petitioner and all interested parties, following the prescribed procedure in consonance with the principles of natural justice, deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate the



decision taken to the Petitioner under written acknowledgment. Though obvious, it is made clear that no view has been expressed by this Court on the correctness or otherwise on the merits of the controversy involved in the matter. In the event of any decision entailing adverse civil consequences, the Petitioner is not precluded from impeaching the same before the proper forum in the manner recognized by law.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

gd/Maya

To

The Assistant P.F. Commissioner,
Employees Provident Fund Organisation,
S-1, TNHS, Phase-III,
Sathuvachari,
Vellore-632 009.

Copy to

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Rep. by its Managing Director,
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2. M/s.Rajih & Associates, Unit - 1,
No.6/44, Sri Ramapuram Road,
Kilachur Village, Pallikonda Taluk,
Vellore District-635 809.

+1cc to Mr.V.J.Latha, Advocate, S.R.No.13161

W.P. No. 9564 of 2017

PA(CO)
UMA(15/06/2022)