BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.09.2022

DELIVERED ON : 07.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No. 14935 of 2012
and
M.P.(MD).No.1 of 2012

M/s.Tansi Project (NABARD)
Thirunarayanapuram North Street,
Kumbakonam,
Represented by Works Manager,
Tansi Engineering Works,
Tanjore. ... Petitioner

Vs

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
18-D, Block, Shree Complex,
Trichy – 8. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent in No/TN/76990/ENF/SRO-TRY/2012 dated 04.07.2012 confirming the order passed by the respondent in No.D4/TN/TR/76990/SRO-TRY/2011 dated 27.10.2011 and quash the same as illegal arbitrary and unenforceable consequently direct the respondent to take the review petition filed by the petitioner dated 18.06.2012 on its file and dispose of the same on merits.

For Petitioner	:	Mr.V.K.Vijaya Ragavan
For Respondent	:	Mr.N.Dilip Kumar, Standing Counsel for EPFO

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ORDER

This Writ Petition is filed to quash the order dated 04.07.2012 confirming the order dated 27.10.2011 and consequently direct the respondent to take the review petition filed by the petitioner dated 18.06.2012 on its file and dispose of the same on merits.

2. The brief facts as stated in the affidavit are that the petitioner is TANSI Project Engineering works which comes under TANSI Project (NABARD), Kumbakonam and covered under the Act and was given code number TN/76990. The respondent had initiated proceedings under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. But the petitioner has failed to remit the contribution and administrative charges for 5 non-enrolled employees towards Provident Fund. On 19.08.2011, the

Enforcement Officer in his inspection report has submitted the last drawn wages of 5 employees and on that basis, the respondent had passed the impugned order dated 27.10.2011 directing the petitioner to pay contribution charges of Rs. 1,25,432.25 for 5 employees for a period from February 2007 to July 2011.

3. The contention of the petitioner is that the Director of School Education, Chennai had placed orders to TANSI for manufacture and supply of furniture items for various Schools in the State of Tamil Nadu under 'NABARD' scheme. It was decided by the petitioner to manufacture and supply those items on war footings. Therefore, seven new project places were found namely, Guindy, Ambathur, Kumbakonam, Thiruverambur, Vellore, Palani and Rajapalayam projects were started. 14 units were identified for manufacture of furniture items and to complete the work quickly. The TANSI project at Kumbakonam was provisionally opened to execute the above said work vide proceedings dated 25.07.2007. In the said proceedings, it was clearly mentioned that after completion of the above work, the said project would be closed after intimating to the Corporate Office. After completion of work, the above project was ordered to be closed and no production activity was carried out in the unit with effect from 01.09.2011. The residual works which could not be completed were allocated to TANSI Engineering Works at Thanjavur vide proceedings dated 30.08.2011. In

view of the closure of the Kumbakonam unit, the claim made by the respondent for payment of EPF contribution is incorrect. Only one regular employee namely S. Panneer Selvam, Junior Superintendent had acted as Project Officer at Kumbakonam. After the closure of the unit, he was transferred to TANSI Furniture and Engineering Works at Cuddalore vide proceedings dated 09.09.2011. The Project Officer, Kumbakonam was requested to hand over raw materials, consumable including finished goods, work in progress and office records to TANSI Engineering Works at Thanjavur and the Manager of TANSI Engineering Works at Thanjavur is directed to take charge of stores and records of the defunct unit of Kumbakonam. The five employees were temporary employees of the unit and they were engaged purely on temporary basis as casual labourers in order to complete the work quickly. They did not work for the statutory period. Twenty or more workers were not employed in the unit at any point of time. In respect of regular employees, there is a common EPF code number TN6858 which is operated by the Corporate Office and all EPF contributions from both employer and employees in respect of regular employees were duly remitted through the above EPF code in the EPF account of employees. On closure of the unit on 01.09.2011, the temporary employees themselves had left the job without notice to the employer. The temporary employees' wages were drawn on voucher basis and the five temporary employees are 1. Tmt.P.Kavitha, 2.

Mr.K.R.Viswanathan, 3.Mr.R.Kalaiyarasan, 4.Mr.M.Sivalingam, 5.Mrs.B.Ramya. The first three employees had completed one year but with break in service.

4. The petitioner further contended that "employment" means that employment in the regular course of business of an establishment and would not include employment of a few persons for a short period on account of some pressing necessity or due to some temporary exigency. The under lying idea seems to be that the establishments having twenty or more employees on its muster role would be covered under the Act and the Act is inapplicable to the establishment which do not employ twenty or more persons for a period of one year. The impugned order was passed by the respondent on 27.10.2011 and the petitioner has filed a review petition before the respondent on 18.06.2012. The respondent had rejected the review petition on 04.07.2012 stating that the review is filed beyond the period of limitation of 45 days from the date of making the order and was not filed in the prescribed format. The further contention of the petitioner is that the respondent ought to have returned the review application, before rejecting the application and ought to have directed to file it along with condone the delay petition in in the prescribed format. Simply rejecting the review application is incorrect. Even if the petition is filed with the delay, the respondent being a quasi-judicial authority is having power to condone the delay

in filing and the respondent can review its order after considering the documents. The rejection of review application without considering on merits is absolutely incorrect. Hence, the present Writ Petition is filed.

5. The respondent has filed a counter affidavit stating that the Act is applicable to the petitioner establishment and the code number is TN/76990. The petitioner establishment has not enrolled 5 employees under the scheme from the date of joining. Hence, an inquiry was conducted under Section 7-A of the Act after giving ample opportunity to the employer establishment. The dues were determined as per the records submitted by the employer on 18.08.2011 and the code number is allotted with reference to the proceedings of the Chairman, TANSI limited vide proceedings dated 25.07.2007. The employees include Casual, Temporary, Permanent, Daily-rated, Hour-rated, Seasonal or regular who gets wages directly or indirectly from the employer or through a contractor. The classification of the employees would be determined through the wages received and it is not on the criteria whether the employee is permanent or temporary. The employees all over Tamil Nadu of TANSI who are transferable was allotted code number TN6858 in a centralised system at Chennai Regional Office. But the employees through contract i.e. unorganized system are to extended in TN/6858 itself, or anywhere in the code number, thus exist already or newly allotted by the

respective regional or sub-regional office of the Employees Provident Fund Organization. In the present case, the continued applicability at Mayiladuthurai in TN/4899-A is extended with a new code number TN/76990 for administrative convenience. A person engaged for a day would bring that employee within the purview of the Act as held in the case of ***G.V.Joship Vs. State of Mysore*** reported in ***AIR 1969 Mys 300:1969***. As per Section 1(5) of the Act, the purview of the Act will continue to be in effect even though the employee number is reduced below 20. When the project is closed, the officer concerned ought to prepare the applications of the employees for settlement, whose contribution is remitted with the respondent office. As long as the premises and the license exist to continue the work or project, the said number of employees falls below 20, the Act continues to apply under Section 1(5) has held in the case of ***Purex Laboratories (India) Private Limited, Bangalore Vs. The Regional Provident Fund Commissioner, Bangalore and another*** reported in ***1998 (1) CLR 295***. If the employees left the work place and joined in any other establishment is covered under the Act, their services can be clubbed. The petitioner is the branch of centralized system of TANSI at Chennai. The Managing Director is the authority in connection with assignment of work to work to/and its branches. The petitioner is not empowered to take any administrative decisions positively and the present project is declared by the Managing Director and not by the petitioner's establishment. As such, the order under Section 7A of the Act passed by the respondent authority on 27.10.2011 is valid. The Recovery Certificate under Section 8B has been forwarded by the authorized officer to the Recovery officer dated 09.05.2012. On 16.05.2012, a copy was marked to the petitioner's employer for information and necessary action. The Recovery Officer has proceeded to recover the amount by notice of demand to defaulter prior to attachment of movable and immovable properties for a value of Rs.1,25,432.25 on 16.05.2012. The review petition filed by the respondent on 18.06.2012 is correctly rejected. The Recovery Officer has proceeded to collect the amount as of arrears of land revenue and the petitioner establishment has alternative remedy to file an appeal before the Tribunal. If the unit was wound up, the petitioner might have sent the closure report to the Enforcement Officer, Kumbakonam to take the issue with regard to Section 2A of the Act with the Chairman and Managing Director, TANSI, Chennai. But he files the review petition before the respondent on 18.06.2012 and the present Writ Petition before this Court is totally contrary to the principles of justice. Hence, the respondent prayed to dismiss this Writ Petition.

6. Heard Mr.V.K.Vijayaragavan, learned counsel for the petitioner and Mr.N.Dilip Kumar, learned Standing Counsel for EPFO for the respondent and perused the records.

7. The contention of the respondent is that the review petition is not maintainable, since the review petition is filed beyond the period of limitation. The Act provides to file a review petition within 45 days from the date of making such order. Since the order was made on 27.10.2011, but the review petition was filed on 18.06.2012 which is beyond the period of 45 days prescribed under the Act. On perusal of the impugned order, the respondent has rejected the review petition based on the limitation only. Section 7(b) of the Act states the period of limitation and the review petition shall be filed within such time as may be prescribed in the scheme under para 79(a), under proviso it has been stated that no application of review of the order has been entertained until application for review is submitted within 45 days from the date of making such order. The scheme is not provided any delay condonation to the power to the authority. Under Section 7(b) of the Act, the authority has power to entertain the review application or he can *suo motu* review his own order, but there is no power for condoning the delay. Any Act or any rules if the condone delay authority is

granted, then there would be a provision granting power to the authority to condone the delay after recording the reasons. In the present Act, there is no such power granted to the authority. Therefore, as rightly pointed out by the respondent, the authority has no power to condone the delay, if the review application is filed beyond the period of limitation of 45 days. Hence, the respondent has rightly rejected the review application. Under Section 7(b), it also states that there is no appellate remedy available against the order rejecting the review citing the delay as a reason. However, appeal is provided, if any order is passed accepting the review application and the order is passed on merits. In this case, the review application was dismissed on delay alone. Hence, there is no right to file any appeal. Hence, the petitioner has come before this Court by invoking Article 226 of the Constitution of India. Therefore, the Writ Petition is maintainable under Article 226 of the Constitution of India.

8. The Act provides *suo moto* review power to the respondent and for the *suo moto* review, the Act or the Scheme has not provided period of limitation. In such circumstances, the authority is bound to use the suo moto review power without insisting on limitation.

9. The learned counsel appearing for the petitioner submitted that the petitioner Unit at Kumbakonam is a defunct unit and the Writ Petition was filed in the year 2012. At this stage, if the petitioner is directed to file an appeal before the Tribunal that too after lapse of 10 years the petitioner would be prejudiced. Hence in order to meet the ends of justice, this Court is directing to consider the case of the petitioner. The petitioner is at liberty to raise all grounds before the authority, submit all evidence and documents and the respondent shall afford an opportunity of hearing, thereafter pass a speaking order and the said exercise shall be completed within a period of (8) eight weeks from the date of receipt of the copy of the order.

10. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

07.12.2022

Index : Yes / No
Internet : Yes

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S.SRIMATHY, J

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To
The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
18-D, Block, Shree Complex,
Trichy – 8.

Pre-delivery Order made in
W.P.(MD).No. 14935 of 2012

07.12.2022