



W.P.(MD).Nos.7951 and 20787 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.7951 and 20787 of 2014

and

M.P.(MD).Nos.1, 1, 2 and 2 of 2014

and

W.M.P.(MD).Nos.3864 and 3865 of 2022

W.P.(MD).No.7951 of 2014

M/s.Manoj Fire Works,
Represented by its Partner,
Senthil Kumar

... Petitioner

Vs.

1.The Assistant Provident Fund Commissioner,
Employee's Provident Fund Organization,
Regional Office,
Lady Doak College Road,
Chokkikulam,
Madurai.

2.The Recovery Officer,
Office of the Recovery Officer,
Employee's Provident Fund Organization,
Regional Office, Lady Doak College Road,
Chokkikulam,
Madurai – 625 002.



W.P.(MD).Nos.7951 and 20787 of 2014

3. The Enforcement Officer,
Employee's Provident Fund Organization,
Regional Office, Lady Doak College Road,
Chokkikulam,
Madurai – 625 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the proceedings of the first respondent dated 27.12.2013 in file No. TN/41876/MDU/Enf.B/Circle 22/22102/2013 and quash the same as illegal and further direct the first respondent to make re assessment on the basis of the representation given by the petitioner dated 10.02.2014.

For Petitioner : No Appearance

For Respondents : Mr.K.Murali Sankar

W.P.(MD).No.20787 of 2014

M/s.Manoj Fire Works,
Represented by its Partner,
Senthil Kumar

... Petitioner

Vs.

The Recovery Officer,
Office of the Recovery Officer,
Employee's Provident Fund Organization,
Regional Office, Lady Doak College Road,
Chokkikulam,
Madurai – 625 002.

... Respondent



W.P.(MD).Nos.7951 and 20787 of 2014

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the proceedings of respondent dated 28.10.2014 in TN/MDU/4187/Recy/CP162158/2014 and quash the same as illegal and further direct the respondent to make re-assessment on the basis of the representation given by the petitioner dated 10.2.2014.

For Petitioner : No Appearance

For Respondents : Mr.K.Murali Sankar

COMMON ORDER

The Writ Petition in W.P.(MD).No.7951 of 2014 is filed challenging the demand notice dated 27.12.2013.

2. The brief facts as stated in the affidavit are that the petitioner is engaged in manufacturing fireworks. There was a major fire accident in September 2012, where 30 persons were killed. The Explosive Department and Revenue Department inspected the petitioner's factory on 13.09.2012. Thereafter, there was a suspension of license and the factory was closed. After due satisfaction of the conditions, the factory was reopened in March 2013. Due to closure of factory, the employees who are enrolled in the Organization



W.P.(MD).Nos.7951 and 20787 of 2014

went to other factory and had not turned up for work. Hence, the petitioner had employed temporary workers on daily wage basis. The second respondent inspected the factory and based on the temporary muster roll book maintained for temporary workers, had issued impugned demand notice for sum of Rs. 4,08,785/-. The petitioner also submitted representation dated 10.02.2014 and prayed for details of assessment. But the respondents have not furnished the same. Without prejudice to the demand, the petitioner had paid Rs.50,000/- on 21.02.2014. Thereafter, on 09.03.2014, the second respondent issued attachment notice, after deducting Rs.50,000/- and called upon the petitioner to pay a sum of Rs.3,58,785/- failing which attachment proceedings would be initiated under Section 8(b) to 8(g) of the Act. The petitioner submitted a reply on 10.02.2014 and the same was not considered. The contention of the petitioner is that the demand of the respondents based on the muster roll, is highly illegal. The respondents failed to take note that the temporary muster roll does not contain names of persons who have been already enrolled under the Act. Moreover, for the said period, the factory was suspended and closed. The respondents have knowledge about the accident. In spite of the same, without furnishing any details of assessment, the respondents have passed an order quantifying the amount, thereafter issued warrant of attachment on 25.03.2014 to attach the movable and also proceeded further to sell the movables. The



W.P.(MD).Nos.7951 and 20787 of 2014

respondents have also freeze the account of one of the partner namely, Mr.A.Ravindran in SB.A/C No.61720507498 ICICI Bank of Sivakasi Challenging the said Act, the present Writ Petition is filed.

3. The petitioner also filed another Writ Petition in W.P.(MD).No.20787 of 2014. In this Writ Petition, the petitioner has challenged the impugned proceedings dated 28.10.2014, wherein, an attachment notice was issued restraining the petitioner from dealing with the property which has been attached.

4. The respondents have filed a Counter in W.P(MD).No.20787 of 2014 along with the Vacate Stay Petition. This Court has granted interim order dated 19.12.2014. In the interim order, this Court has already recorded that the petitioner has deposited an amount of Rs.2,25,402/- by demand draft vide letter dated 19.11.2014. The respondents have submitted in the counter to vacate the interim order based on the directions of Hon'ble Supreme Court in the case of *Asian Resurfacing of Road Agency Private Limited Vs Central Bureau of Investigation*. The respondents have only stated since it is a welfare legislation where the employees hard earned PF money should be paid by the petitioner



W.P.(MD).Nos.7951 and 20787 of 2014

without any default. The respondents have not stated anything about the accident that has been occurred.

5. Considering the rival submissions made by learned counsel for both the parties, this Court has given its anxious consideration. On perusing the affidavit, the respondents have not taken into account the explosive accident that has occurred in September 2012, where more than 30 persons were killed. After the accident, the Explosive Department and the Revenue Department have conducted an inspection and has submitted a report. It is a specific contention of the petitioner that the factory was closed and subsequently it was reopened after due satisfaction in the month of March 2013. In such circumstances, the respondents have failed to exercise their jurisdiction and the discretionary power. Simply because, the Act is a Welfare Legislation, the respondent cannot deny the accident and inability to pay the EPF payments.

6. For the reasons stated above, this Court is inclined to quash the impugned orders and hence the impugned orders are quashed. The case is remitted back to the respondents. The respondents are directed to conduct proper enquiry after taking into account the report submitted by the Explosive



W.P.(MD).Nos.7951 and 20787 of 2014

Department and the Revenue Department as well as by considering the petitioner's representation dated 10.02.2014. The respondents shall grant personal hearing to the petitioner. After proper enquiry as stated above, the respondents shall pass a speaking order. The said exercise shall be completed within a period of four (4) months from the date of receipt of a copy of this order.

7. With the above direction, the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

14.12.2022

Index : Yes / No
Internet : Yes/ No
Nsr



W.P.(MD).Nos.7951 and 20787 of 2014

To

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S.SRIMATHY, J.

Nsr

W.P.(MD).Nos.7951 and 20787 of 2014

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