



W.P.Nos.1475 and 1478 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.01.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.1475 and 1478 of 2023
and
W.M.P.Nos.1577 and 1575 of 2023

R.Kalaiselvan	...	Petitioner in W.P.No.1475 of 2023
M.Sivakumar	...	Petitioner in W.P.No.1478 of 2023

Vs.

1.The Regional Provident Fund Commissioner - II,
Recovery Officer,
Employees Provident Fund Organisation,
Regional Office, Steel Plant Road,
Thalavaipatti,
Salem - 636 302.

2.The Branch Manager,
State Bank of India,
Attur Branch,
Kamarajanar Road,
Attur - 636 102.

... Respondents in W.P.No.1475 of 2023



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1.The Regional Provident Fund Commissioner - II,
Recovery Officer,
Employees Provident Fund Organisation,
Regional Office, Steel Plant Road,
Thalavaipatti,
Salem - 636 302.

2.The Branch Manager,
State Bank of India,
Thalaivasal Branch,
No.6/613, NAP Complex Mummudi Bus Stop,
Thalaivasal Post,
Attur Taluk,
Salem - 636 112.

... Respondents in W.P.No.1478 of 2023

Writ Petitions filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari to call for the records of the 1st respondent relating to his prohibitory order dated 03.01.2023 passed in CB/RO-SLM/RECY/90319/S-V/CP-3/2022 and to quash the same.

For Petitioners : Mr.S.Senthil
in both Writ Petitions

For Respondents : Mr.Panneer Selvam
Standing Counsel for R1
in both Writ Petitions

COMMON ORDER

The issue involved in both these Writ Petitions are common and hence, a Common Order is passed in these Writ Petitions.



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2.The petitioner in W.P.No.1475 of 2023 has questioned the prohibitory order passed by the first respondent through proceedings dated 03.01.2023. Similarly, the petitioner in W.P.No.1478 of 2023 has also questioned the prohibitory order passed by the first respondent through the very same proceedings dated 03.01.2023.

3.The case of the petitioners is that the Educational Institution, namely, M/s.Raasi Polytechnic College, Namakkal, is being run by a Charitable Trust, called as M/s.Rajiv Gandhi Educational Charitable Trust. This Trust had 25 trustees and in the year 2016, there was a dispute among the trustees and a suit was also filed in this regard in O.S.No.28 of 2016 on the file of the Subordinate Court, Rasipuram and the same is pending.

4.The further case of the petitioner is that Supplemental Trust Deeds were created in the year 2017, even without convening the meetings of the Board of Trustees and the petitioners and five other trustees were removed from the trusteeship. Aggrieved by the same, a Scheme suit has been filed in O.S.No.55 of 2020 and the same is pending before the Principal District Judge, Namakkal.



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5.The grievance of the petitioners is that they have been thrown out of M/s.Rajiv Gandhi Educational Charitable Trust in the year 2017 itself and while so, they received the impugned prohibitory order passed by the first respondent dated 03.01.2023 stating that the trustees of the Educational Institution failed to pay the arrears of contribution amounting to Rs.8,04,912/- and hence, the Savings Bank Account of the petitioner was freezed and the petitioner was also directed to pay the dues within five days. Aggrieved by the same, these Writ Petitions have been filed before this Court.

6.When the matter came up for admission on 23.01.2023, the learned Standing Counsel appearing on behalf of the first respondent took notice and this Court passed the following orders:

"Mr. Paneer Selvam, learned Standing counsel takes notice for 1st respondent.

2. The main ground that has been raised in the present writ petition is that the 1st respondent has straight away issued prohibitory order under Section 8B of Employees Provident Funds and Miscellaneous



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Provisions Act, 1952, even without passing an order determining the amount due and payable under Section 7A of the Act and issuing a certificate under Section 8 of the Act.

3.The learned Standing counsel appearing on behalf of the 1st respondent seeks for time to take instructions in this regard. Post these writ petitions under the same caption on 31.01.2023. "

7.When the matter was taken up for hearing today, the learned Standing Counsel appearing on behalf of the 1st respondent produced the order passed by the first respondent in the 7A proceedings on 07.12.2018 and the Recovery Certificate that was issued on 05.04.2019. By relying upon these documents, the learned Standing Counsel submitted that the procedure was properly followed by the P.F. Commissioner and only thereafter, the prohibitory order came to be passed under Section 8B of Employees Provident Funds and Miscellaneous Provisions Act, 1952, (hereinafter referred to as "the Act").



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8.Per contra, the learned counsel appearing for the petitioners submitted that the petitioners were removed from the Trust and Supplemental Trust Deeds were created and registered in the year 2017 itself. In view of the same, the petitioners ceased to be the trustees and they were completely in the dark with regard to the proceedings initiated by the first respondent and the orders passed under Section 7A of the Act and the Recovery Certificate issued under Section 8 of the Act. It was further submitted that even after the first respondent had followed the procedure, the liability cannot be fastened against the petitioners since they are not the trustees of the concerned Educational Institution and even without conducting an enquiry, the prohibitory order has been passed in haste.

9.On carefully considering the submissions made on either side and the materials available on record, it is seen that there are registered documents which were registered as early as on 19.04.2017 and 01.09.2017, where it is found that the petitioners have been removed from the Trust along with some other trustees. Of course, the same has been challenged before the Competent Court and the same is pending. In



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the meantime, the petitioners no longer belong to the Trust in their capacity as trustees till their removal is interfered by the Competent Court.

10.The documents filed by the learned counsel for the first respondent shows that the Educational Institution, namely, M/s.Raasi Polytechnic College, Namakkal, was mainly represented by its Chairman and others and sufficient opportunity was given to the institution and only thereafter, the order came to be passed under Section 7A of the Act. By the time, this order was passed on 07.12.2018, the petitioners were no longer the trustees of the concerned Trust. This fact has not been informed by the existing trustees or the Chairman to the first respondent. Hence, after the orders were passed under Section 7A of the Act and the Recovery Certificate was issued under Section 8 of the Act, the prohibitory order has been issued under Section 8B of the Act as against all the trustees and the Bank Account has been freezed.

11.In the light of the *prima facie* materials that are available before this Court, this Court is inclined to give the petitioners an opportunity to appear before the first respondent and to establish that



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they were not the trustees of the concerned Trust and they had nothing to do with the Educational Institution when proceedings were initiated for recovery of the contribution and the order was passed under Section 7A of the Act on 07.12.2018. If the petitioners are able to satisfy the first respondent, the first respondent can proceed further to recover the contribution from the other trustees. By resorting to this procedure, the rights of the petitioners as well as the right of the first respondent to recover the contribution can be balanced.

12.In the light of the above discussions, the petitioners are directed to make a representation to the first respondent along with all the relevant documents within a period of two weeks from the date of receipt of a copy of this order. The first respondent on receipt of the same shall call the petitioners for an enquiry and shall ascertain the claim made by the petitioners thereafter. The first respondent shall take a decision and pass orders within a period of four weeks thereafter. Till this process is completed, the prohibitory order that was issued through proceedings dated 03.01.2023 shall be kept in abeyance, insofar the petitioners are concerned.



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These Writ Petitions are disposed of in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

31.01.2023

Neutral Citation: Yes/No
Index: yes/no
Speaking Order/Non-Speaking Order
mps

To

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N. ANAND VENKATESH, J.

mps

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