IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.5333 of 2020 &
W.M.P.Nos.6278 and 6279 of 2020

M/s Viprah Technologies Limited,
rep. By Managing Director,
Mr.C.K.Anantha Subramanian,
'Sri Kamakshi Krishna Anugruha,
S.F.No.79 /2-3-4, Aalampalayam Road,
Thekkalur, Tiruppur – 641 654 ... Petitioner

Vs.

The Regional Provident Fund Commissioner II &
Recovery Officer,
Regional Office,
Employees Provident Fund Organization,
Dr.Balasundaram Road,
Coimbatore – 641 018 ...Respondent

Writ Petition is filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent dated 12.03.2004 in Ref.No.D9/TN/CBE/28941/Cir.2(22)/Enf/04 and impugned order dated 04.07.2006 in Ref.No.TN/CB/28941/ENF/CC.22/2006 and corresponding recovery notice dated 23.01.2020 in Ref.No.TN/RO/CBE/Recovery/28941/CC-22/2020 and quash the same and consequently direct the respondent to reassess the dues according to law.

For Petitioner : Mr.B.Gopala Krishnan

For Respondent : Mrs.R.Meenakshi

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent dated 12.03.2004 in Ref.No.D9/TN/CBE/28941/Cir.2(22)/Enf/04 and impugned order dated 04.07.2006 in Ref.No.TN/CB/28941/ENF/CC.22/2006 and corresponding recovery notice dated 23.01.2020 in Ref.No.TN/RO/CBE/Recovery/28941/CC-22/2020 and quash the same and consequently direct the respondent to reassess the dues according to law.

2. The brief facts of the case are as follows:-

(i) The petitioner-Establishment is a public limited company, covered under EPF Act, 1952 and is in operation since 1986 by providing worldclass, cost effective & qualitative noise control, vibration and emission attenuation solutions and many custom engineered products. The petitioner establishment was under nonperforming for assessment of dues from 9/2002 and registered under BIFR in registration no.75/2006 & IDBI has been entrusted for restructuring the company affairs. The petitioner-establishment met with fire accident and employees have taken away the records of the company and the petitioner has given a police complaint against the above said employees. Further, the petitioner stopped its operations from 10/2005 onwards.

(ii) The said employees, who took away the records of the company are absconding and chosen to file a complaint with a malafide intention. On 12.03.2004, the respondent by way of corrigendum claimed a sum of Rs.4,53,336/- without mentioning the period of dues and the respondent without verifying the genuineness of the compliant initiated enquiry under Section 7A of EPF Act 1952. Though the representatives of the petitioner-management appeared before the enquiry officer and briefed the facts, the respondent without considering the facts passed the order dated 04.07.2006 determining contribution of sum of Rs.2,58,155/- for a period 09/2002 to 09/2005 and issued recovery notice dated 23.01.2020 to the petitioner for recovery of arrears.

(iii) The respondent assessed contribution in respect of the employees left for service and the apprentice, who are not at all employees under Section 2(f) of EPF Act, 1952. That apart, while issuing the order passed under Section 7A of EPF Act, the respondent fails to furnish the details of beneficiaries in annexure A and B, therefore, the impugned order dated 12.03.2004, impugned notice dated 04.07.2006 under Section 7A and recovery notice dated 23.01.2020 are not sustainable, hence this petition.

3. The learned counsel for the petitioner would submit that admittedly, the standing orders of the company were not certified at the relevant point of time. The respondent failed to take note of the case held by the **Hon'ble Supreme Court in Regional PF Commissioner, Mangalore Vs. M/s Central Aercanut & Co., Marketing and Processing Co-Operative Ltd., Mangalore [AIR (SC) 1971 2006 SCC 380**]. It is well settled law that the EPF Appellate Tribunal held that unless the Form No.2 and Form No.3A of ECR are filed properly, the impugned demand, if recovered by the respondent / authority on behalf of the assumed employees will not reach in

the account of the actual beneficiaries and the amount shall remain in suspense account. Therefore, pleaded to allow the present petition.

4. Per contra, the learned counsel for the respondent has filed a detailed counter and submitted that the petitioner-establishment is a habitual defaulter of provident fund contribution in respect of the employees. The dues of Rs.7,79,924/- was assessed vide Section 7A proceedings after affording reasonable opportunities and also based on the records submitted by the petitioner for the period from 04/1999 to 03/2000 and review of the proceedings was sought by the establishment under Section 7B of the Act, which was accepted and afforded. The review proceedings were issued on 28.02.2002 after giving adequate opportunities to the establishment to present their case and contentions were rejected and order under Section 7A was upheld.

5. The learned counsel for the respondent submitted that only after detailed enquiry, reconciliation statement had been sent to the petitioner by office communication dated 13.08.2013. The objections of the recovery of dues were replied by the Recovery officer, but the employer seeks legal

remedy to avoid coercive actions by the respondent and to prolong and protract the issues only to delay the process of remitting the dues to the EPFO in respect of its poor workers.

6. The learned counsel for the respondent further contends that the petitioner has deposited a sum of Rs.60 Lakhs at the time of demonetization period, therefore, it is clear that the petitioner is having capacity to remit the PF dues of its employees, but the petitioner is delaying it deliberately. Also the case of the petitioner is pending before the National Company Law Tribunal and the petitioner was directed by the respondent on 23.01.2020 that as PF dues are prior to the period of resolution / liquidation, PF dues needs to be paid on priority under Section 36 of the Code and the petitioner was given one week time, but the petitioner has filed the present Writ Petition challenging the proceedings of the respondent.

7. Lastly, the learned counsel for the respondent submits that as per EPF Scheme 1952, the Employees' Provident Fund Contribution should be paid by the petitioner for the employees engaged by him and the contribution so deducted from the employees with employers own

contribution should be remitted within 15 days of the following month, as per EPF scheme, 1952, thereby pleaded to dismiss the petition.

8. Heard the learned counsel on either side and perused the documents placed on record carefully.

9. It is necessary to extract Section 7(A) of the EPF Act, which is as follows:-

> "*[7A. Determination of moneys due from employers.—2*
>
> ***[****(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—*
>
> *(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and*
>
> *(b) determine the amount due from any employer under any provision of this Act, the Scheme or the 3 [Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he*

may deem necessary];

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses; and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

*(3) No order 4*** shall be made under sub-section (1), unless 5 [the employer concerned] is given a reasonable opportunity of representing his case. 6 [(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]*

7 [(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry: Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer."

10. It is seen that the authorities have found that the petitioner has not paid the amount and hence directed to remit the amount to the respective PF account of employees maintained by the State Bank of India, forthwith, by way of an impugned order dated 12.03.2004. The respondent also made it clear that belated remittance would attract levy of damages under Section 14B of the Act to the extent of the amount equal to the arrear, which shall not be less than such rates specified in the scheme. In addition, it is mentioned that the petitioner is liable to pay simple interest at the rate of

12% as per Section 7Q of the EPF & MP Act, 1952 and further, if the petitioner fails to comply with the above orders within 15 days of receipt of order, action would be initiated. Inspite of orders being passed in the year 2006, the petitioner has not chosen to pay the same. It is also seen that the petitioner has not chosen to challenge the impugned orders before the appropriate authority.

11. It is pertinent to note that the petitioner has deposited a sum of Rs.60,00,000/- [Rupees sixty lakhs only] during the time of demonetization, which is evident from the website of the Ministry of Corporate Affairs, while that being the case, it is clear that the petitioner is having capacity to deposit the said amount, therefore, the challenge made by the petitioner is not acceptable and the petitioner is liable to pay the said amount, which are statutory dues to be payable for the employees.

12. Considering the facts and circumstances of the case and taking note of the fact that the petitioner has paid a sum of Rs.60,00,000/- [Rupees sixty lakhs only] during the time of demonetization, however, failed to pay the statutory dues and there is no valid reason put-forth by the

petitioner for not paying the same and the petitioner has not challenged the impugned order of the respondent before the appropriate authority within the prescribed period and adopted delay-in-tactics method, hence this Court is of the view that the present Writ Petition is liable to be dismissed.

In view of the above, the present Writ Petition is dismissed and the petitioner is directed to pay the amount forthwith and the respondent is at liberty to proceed against the petitioner in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

21.06.2023

Index : Yes/No
Internet : Yes/No
Speaking order / non speaking order
ssd

To

The Regional Provident Fund Commissioner II &
Recovery Officer,
Regional Office,
Employees Provident Fund Organization,
Dr.Balasundaram Road,
Coimbatore – 641 018

V.BHAVANI SUBBAROYAN, J.,

ssd

W.P.No.5333 of 2020 &
W.M.P.Nos.6278 and 6279 of 2020

21.06.2023