IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.Nos.7015 & 7207 of 2020 and
W.M.P. Nos.8367 & 8614 of 2020

W.P.No.7015 of 2020

The Commissioner
Pammal Municipality
Pammal ... Petitioner

Vs.

1. The Central Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Bhavishya Nadhi Bhawan,
14, Bhikaji Cama Palace, New Delhi 110 066.

2. The Regional Provident Fund Commissioner-II
Employee Provident Fund Organisation,
Regional Office, Tambaram, Chennai 45.

3. The Enforcement Officer,
Employees Provident Fund Organisation,
3, Rajaji Salai, Tambaram
Chennai 600 045

4. The Syndicate Bank
Pammal Branch
Represented by its Manager,
5th Street, Krishna Nagar, Pammal
Chennai 600 075 ... Respondents

W.P.No.7207 of 2020

The Commissioner
Pallavapuram Municipality,
Pallavapuram ... Petitioner

Vs.

1. The Central Provident Fund Commissioner,
   Employees' Provident Fund Organisation,
   Bhavishya Nadhi Bhawan,
   14, Bhikaji Cama Palace, New Delhi 110 066.

2. The Regional Provident Fund Commissioner-II
   Employee Provident Fund Organisation,
   Regional Office, Tambaram, Chennai 45.

3. The Enforcement Officer,
   Employees Provident Fund Organisation,
   3, Rajaji Salai, Tambaram
   Chennai 600 045

4. The Indian Bank
   Chrompet Branch,
   Represented by its Manager,
   Baasyam Street, Radha Nagar, Chrompet
   Chennai 600 044 ... Respondents

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from in any manner seeking to enforce the demand of the 2nd respondent in the proceedings dated 29.11.2019 in TB/TAM/RO/CC-II/521/63257/2019 (01-2011 to 03-2016) and in No.TB/TAM/RO/CC-II/521/63257/2019 (04-2016 to 06-2016), proceedings dated 31.12.2019 in TB/TAM/ENF/CC-I/T-7/63256/Proceedings/2019 (period from April 2016 to June 2016) and 13.01.2020 in No.TB/AM/ENF/CC-I/T-7/63256/Proceedings/2019 (Period from January 2011 to March 2016), respectively, till the disposal of the

Appeals before the Central Government Industrial Tribunal cum Labour Court.

In W.P. No.7015 of 2020

For Petitioner	:	Mr. P. Srinivas
For R1 to R3	:	Mr.R. Vishnu, Standing Counsel

In W.P. No.7207 of 2020

For Petitioner	:	Mr. P. Srinivas
For R1 to R3	:	Mr.R. Thirunavukarasu, Standing Counsel

COMMON ORDER

The Writ Petitioner in W.P.No.7015 of 2020 is the Commissioner of Pammal Municipality and in W.P. No.7207 of 2020 is the Commissioner of Pallavaram Municipality.

2. The 2nd respondent namely The Regional Provident Fund Commissioner-I, Employees Provident Fund Organisation, Regional Office, Tambaram, Chennai, in exercise of the powers conferred under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act'), had determined the liability of the petitioners towards Provident Fund Contribution as detailed hereunder.

Order No. & Date	**Period**	**Liability**	**corresponding Writ Petitions**
TB/TAM/RO/CC-II/521/63257/2019 dt. 29.11.2019	January 2011-March 2016	Rs.1,09,69,233/-	7015/2020
TB/TAM/RO/CC-II/521/63257/2019 dt. 29.11.2019	April 2016-June 2016	Rs.8,59,952/-	7015/2020
TB/TAM/ENF/CC-I/T-7/63256/Proceedings/2019 dt. 31.12.2019	April 2016 - June 2016	Rs.42,65,957/-	7207/2020
TB/TAM/ENF/CC-I/T-7/63256/Proceedings/2019 dt. 13.01.2020	January 2011-March 2016	Rs.3,57,79,707/-	7207/2020

The Writ Petitioners were further directed to pay the entire amount within a period of 15 days from the date of receipt of a copy of the order, failing which the same would be recovered in the manner as prescribed under Section 8B to 8G of the Act.

3. Aggrieved over the orders passed by the respondent, the petitioners filed appeals before the Employees Provident Fund Appellate Tribunal Chennai along with waiver petitions to waive the mandatory payment of 75% of the Award as per Section 7(O) of the Act. Pending appeals, the present Writ Petitions are filed praying to issue a Writ of Mandamus

forbearing the 2nd respondent from in any manner seeking to enforce its demand as stated in Paragraph No.2.

4. Mr. P. Srinivas, learned counsel appearing for the writ petitioners contended that the 2nd respondent cannot recover the amounts under Section 7A of the Act as they have engaged persons only through different contractors and that the 2nd respondent should have proceeded only against those contractors. He therefore would contend that the entire proceedings of the respondent and the abovesaid orders of the Tribunal are liable to be set aside.

5. Per contra, Mr.R. Thirunavukarasu, learned Standing counsel for the respondent contended that the petitioner Municipalities were brought under the purview of the Act with effect from 08.01.2011 by virtue of the Central Government Notification No.S.O.30E dated 08.01.2011 extending the provisions of the Act to all 'Municipal Councils and Municipal Corporations constituted under sub-clauses (b) and (c) of clause(i) of Article 243Q of the Constitution of India, employing 20 or more persons. As the employer failed to report compliance under the Provisions of the Act and three Schemes framed thereunder, an enquiry

in terms of Section 7A of the Act was initiated and an inquiry was conducted. Thereafter the liability of the writ petitioner was quantified (as stated in paragraph No.2).

5.1. He drew the attention of this Court to Section 2F of the Act, which reads as under.

> **Section 2(f) in The Employees' Provident Funds and Miscellaneous Provisions Act, 1952**
>
> (f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of 7[an establishment], and who gets, his wages directly or indirectly from the employer, 8[and includes any person,—
>
> (i) employed by or through a contractor in or in connection with the work of the establishment;
>
> (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;] 9[(ff) "exempted employee" means an employee to whom a Scheme 5[or the Insurance Scheme, as the case may be,] would, but for the exemption granted under 10[***] section 17, have applied;

His contention is that it has been clarified by the Employees Provident Fund Organisation that the Central Government Notification No.S.O.30E dated 08.01.2011 would apply to all categories of employees of the establishment (as per the definition of under Section 2F of the Act) excluding the employees who are in enjoyment of Provident Fund and pensionery benefits according to the Rules of the Government, Municipalities, etc. He would therefore contend that Section 2F of the Act includes any person employed by or through a contractor in or in connection with the work of the establishment and in this case it was admitted that the employees were engaged through contractors for activities relevant and very much linked with the Municipality. Therefore his contention is that the Writ Petitioners are liable to pay the Provident Fund quantified by the respondent.

6. The exemption under the EPF Act would be available only in respect of those employees of the Petitioner to whom the Tamil Nadu Municipal Services Pension Rules, 1970 (hereinafter referred to as the TNMSP Rules for short) applies. However, the workers, who have been engaged through contractors employed by the Petitioner, are not entitled to get any benefit under the TNMSP Rules. In this context, it must be recalled here that the Hon'ble Supreme Court of India in ***Pawan Hans Limited vs Aviation Karmachari Sanghatana*** reported in ***(2020) 13 SCC 506*** has held that the exemption under Section 16(1)(b) and (c) of EPF Act cannot be availed when the establishment does not cover all its employees under any other Provident Fund Scheme. The Government of

Tamil Nadu realized this anamoly prevailing in the Municipalities across the State and issued directions to the concerned authorities as stated below:-

i. The Commissioner of Municipal Administration by Letter No. 57084/ 2011/L3 dated 21.10.2014 addressed to all Commissioners of Municipal Councils has communicated the decision of the State Government that though the Municipalities/Corporations take up works through private Contractors, the authorities concerned should ensure that the Contractors pay the PF subscription of their employees duly to the PF organization, otherwise, the responsibility for the same will be fixed on the concerned Municipalities/Corporations, which is the principal employer, if the Contractors default in this regard.

ii. The Government of Tamil Nadu by Letter No.18826/MC5/2016~1, dated 19.08.2016, sent to the Commissioner of Municipal Administration requested all the Municipal Councils in the State to comply with the provisions of the EPF Act, to withdraw the Court cases, in addition to share the details of Contractors/contracts awarded by them in the principal employer portal available in the website of Employees Provident Fund Organization to facilitate the extension of social security benefits to all the eligible persons.

iii. A letter in ROC No.1819/2016/L3, dated 19.10.2016, was sent by the Commissioner of Municipal Administration to all Municipal Commissioners to take necessary action in connection with implementation of the EPF Act and the schemes framed thereunder in respect of employees of Municipalities and Corporations and send the report directly to the Employees Provident Fund Organization concerned.

iv. A Letter No. 14070/ME.3/2016-4, dated 20.12.2016 was also sent by the the Government of Tamil Nadu to the Commissioner of Municipal Administration stating that the Notification No. S.O. 30(E) dated 08.11.2011 issued by the Central Government shall cover all employees of establishments as per definition of -employee- under Section 2(f) of EPF Act excluding the employees who are getting benefits of provident fund and pension according to TNMSP Rules of the State Government or municipal laws, etc., and that the benefits under the EPF Act have to be extended to all eligible employees.

v. The Commissioner, Municipal Administration had further sent a

Letter Na. Ka. No. 23701/2020/L~1 dated 05.02.2021 to all the Municipal Commissioners reiterating the requirements to comply with the provisions of the EPF Act, including the timely remittance of the contribution deducted from the bills of the contractors and failure to do so, would result in penal consequences.

6.1 The Ministry of Labour and Employment, Government of India by Letter No. S-35025/15-88-SS-II dated 08.01.1989 sent to the Central Provident Fund Commissioner has issued instructions on similar lines, which is extracted below:~

> *"(iv) There may be establishments which employ large number of casual/contingent staff who are not entitled to the benefit of provident fund or pension. The casual/contingent staff of such establishment will continue to be covered under the Act, but their regular employees who are entitled to the benefit of provident fund pension should be excluded from the purview of the Act."*

The Constitution Bench of the Hon'ble Supreme Court of India in ***Sant Ram Sharma vs. State of Rajasthan*** reported in ***AIR 1967 SC 1910***, had held as follows:

"7. ....It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

It would be relevant here to extract Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, which reads thus:

21.Responsibility for payment of wages.~

(1)A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2)Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3)It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4)In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by

deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.?

That apart, Rules 25(2)(iv), 71, 72 and 73 of the Tamil Nadu Contract Labour Rules, 1975, provides as follows:-

25. ....

(2) Every licence granted under sub-rule (1) or renewed under rule 29 shall be subject to the following conditions, namely:-

....

(iv) the rates of wages payable to the workmen by the contractor shall not be less than the rates prescribed under the Minimum Wages Act, 1948 (11 of 1948), for such employment where applicable and where the rates have been fixed by agreement, settlement or award, not less than the rates so fixed;

....

71. A notice showing the wage period and the place and time of disbursement of wages shall be displayed at the place of work and a copy sent by the contractor to the principal employer under acknowledgment.

72. The principal employer shall ensure the presence of his authorised representative at the place and time of disbursement of wages by the contractor to workmen and it shall be the duty of the contractor to ensure the disbursement of wages in the presence of such authorised *representative.*

73. The authorised representative of the principal employer shall record under his signature a certificate at the end of the entries in the Register of Wages or the 1Register of Wages-cum Muster Roll] as the case may be, in the following form:-

?Certified that the amount shown in column No. ... has been paid to the workman concerned in my presence on ..... at ...."

In the instant case the principal employer, the Writ Petitioner, should have verified that the contract labourers engaged through contractors are paid the eligible amount of wages and payment of Provident Fund Contribution on time and they cannot direct the respondent to proceed against the contractors who had engaged all the workers. The contention of the learned counsel for the writ petitioner that the respondent ought to have proceeded against the contractors and not against the present writ petitioners cannot be accepted for the simple reason that Section 2F of the Act includes any person employed by or through a contractor in or in connection with the work of the establishment and in the instant case all the workers come within the definition of Section 2F of the Act and the petitioner being the principal employer should pay the Provident Fund due to the employees. Moreover the employees were engaged through contractors for activities relevant and linked with Municipalities/Corporations. The Writ Petitioners had failed to make contribution as per Section 6 of the Act and they failed to fulfill the responsibilities as per Section 8A of the Act and the provisions of the scheme framed there under.

6.2. In the circumstances, the orders passed by the respondent cannot be found fault with. It is also seen that the Writ Petitioners filed appeals before the Employees Provident Fund appellate Tribunal, Chennai, along with waiver petitions mandated under Section 7(O) of the Act. Since this Court has held that the orders passed by the Regional Provident Fund Commissioner-II, Employees Provident Fund Organisation, Tambaram, Chennai, is perfectly in order, the present Writ Petitions are liable to be dismissed.

7. In the result, all the Writ Petitions are dismissed. No costs. Consequently connected Writ Miscellaneous Petitions are closed.

12.10.2023

bga
Index : yes/no
Speaking /Non speaking Order

To

The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organisation, Regional Office
3, Rajaji Salai, Tambaram
Chennai 600 045

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R.HEMALATHA, J.

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W.P.Nos.7015 & 7207 of 2020 and
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