IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.26410 of 2016 and W.P.No.32565 of 2018
and
W.M.P.Nos.22663 of 2016, 37765 of 2018 and 2907 of 2019

M/s.Perfect Vending India Private Limited,
Represented by its Managing Director
Mr.Sanjeev Mohan,
1/46, Pandurangapuram,
Padi,
Chennai - 600 050. ... Petitioner in both W.Ps

Vs.

1. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
R-40, A-1, TNHB Office Complex,
Mogappair Road,
Mogappair East,
Chennai - 600 037. ... Respondents in both W.Ps

2. The Recovery Officer,
Ministry of Labour,
Government of India,
Employees Provident Fund Organization,
R-40, A-1, TNHB Office Complex,
Mogappair Road, Mogappair East,
Chennai - 600 037. ... 2nd Respondent in W.P.No.32565 of 2018

PRAYER in W.P.No.26410 of 2016 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned ex-parte proceedings passed by the respondent herein under Section 7B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 dated 13.07.2016 comprised in TN/SRO-AMB/6632/CC-I/Area3/Proceedings/2016 and to quash the same and consequently, direct the respondent herein to grant the petitioner an opportunity of personal hearing to adequately put forth their defence submissions.

PRAYER in W.P.No.32565 of 2018 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the impugned notice to show cause why a Warrant of Arrest Should Not Be issued dated 05.10.2018, E.P.F.CP.25 in TN/RO-AMB/66362/RRC-6813&7092/2018 and to quash the same insofar as the said notice proposing warrant of arrest had been issued without jurisdiction and without authority of law and in total violation to the principles of natural justice.

For Petitioner in both W.Ps : Mr.N.Viswanathan

For Respondents in both W.Ps : Mrs.Sunitha Kumar Standing Counsel

COMMON ORDER

W.P.No.26410 of 2016 has been filed by the petitioner / Establishment against the order passed by the respondent / EPF Authority under Section 7B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') dated 13.07.2016 and directing the respondent / EPF Authority to grant the petitioner an opportunity of personal hearing to put forth the defence.

2. W.P.No.32565 of 2018 has been filed to quash the order of the show cause notice as to why a warrant of arrest should not be issued against the petitioner dated 05.10.2018 by the second respondent.

3. Insofar as W.P.No.26410 of 2016 is concerned, the case of the petitioner is that the respondent / EPF Authority had issued a show cause notice seeking payment of regular dues of provident fund of the employees employed by the petitioner. An order dated 27.08.2015 was passed by the respondent / EPF Authority to pay the provident fund arrears of

Rs.28,17,718/-. Followed by attachment order of the petitioner Bank account dated 22.09.2015, a Review Petition under Section 7B(1) of the Act was filed by the petitioner on 23.09.2015. In the meantime, the petitioner filed W.P.No.32956 of 2015 directing the respondent to take up the Review Application. This Court, by order dated 15.10.2015 disposed of the said Writ Petition with a direction to the first respondent therein to take up the Review Application and pass orders within a period of six weeks from the date of receipt of the order. However, the impugned ex-parte order was passed by the respondent / EPF Authority on 13.07.2016 confirming the earlier order of attachment without affording the petitioner a reasonable opportunity of hearing.

4. The petitioner has filed W.P.No.26410 of 2016 challenging the ex-parte order. As a matter stood thus, the petitioner Establishment had became defuncted and failed to pay the EPF dues. It is also to be noted that this Court vide order dated 28.07.2016 passed an interim order of stay of the impugned proceedings in W.P.No.26410 of 2016 subject to the condition

that the petitioner Establishment shall pay a sum of Rs.5,00,000/- to show his bonafide. However, since the petitioner Establishment became defuncted, they were unable to pay the amount of arrears. Hence, the second respondent / Recovery Officer passed the impugned show cause notice dated 05.10.2018 proposing the arrest and imprisonment of the Managing Director of the Petitioner Establishment. Challenging the same, the second Writ Petition in W.P.No.32565 of 2018 has been filed.

5. The learned counsel for the petitioner Establishment contended that the second respondent has legally incompetent to issue the impugned show cause proposing warrant of arrest under Section 8(B)(1)(b) of the Act, without adverting Section 8(B)(1)(a) of the said Act by way of attachment and sale of movable and immovable property of the Establishment or the employer, which have not been done in this case.

6. The learned counsel for the petitioner have raised an additional grounds in the Review Application consequent to the judgment of this Court

in W.P.No.32956 of 2015 dated 15.10.2015. Among other grounds, the petitioner had mainly best his contentions on the ground that HRA, Transportation Allowances or Telephone Allowances do not at all fall within the ambit of the Act. Hence, the Enforcement Officer estimating the other allowances by including the other payments also is not appear to be proper or correct.

7. With respect to W.P.No.26410 of 2016, the learned Standing Counsel for the respondent contended that on the basis of the available records and the Enforcement Officer's dues statement that the dues were arrived at. After conclusion of the enquiry, by proceedings dated 24.08.2015, the employer was directed to remit the assessed dues within fifteen days of receipt of the proceedings. However, the employer did not pay the dues instead filed a Writ Petition in W.P.No.32956 of 2015 against the order passed under Section 8F of the Act. Thereafter, the employer was once again summoned to appear before the authorised Officer to represent his defence with new materials facts to redetermine the amount due for the

default period. However, the employer failed to appear in the above hearings. Only on the 4th hearing, i.e., on 12.04.2016, the employer appeared and informed that they declared the PF Contribution only on the salary component labelled as BASIC. He sought for further time for consequent of relevant records to explain or clarify the nature of allowance and special allowances. Thereafter, the case was adjourned more than seven hearings, out of which, the employer had attended one hearing. Even thereafter, the employer do not make submissions and hence, the enquriy was concluded ex-parte. Further, the assessed dues was not remitted by the employer within a prescribed limit and therefore, the authorities had passed an order of attachment of the Bank account of the petitioner Establishment.

8. With respect to W.P.No.32565 of 2018, the learned Standing Counsel for the respondents also contended that pursuant to the attachment order passed against the petitioner Establishment, it was informed by the Managing Director of the petitioner Establishment that he had resigned and he had no way connected with the Establishment. Hence, CP-1 (Certificate

Proceeding-1) was issued on 28.08.2017 to the Managing Director with a direction to pay the amount within fifteen days from the date of receipt of the notice, failing which, the recovery shall be made in accordance with the provision of Section 8B to 8G of the Act and the same was acknowledged by the petitioner on 06.09.2017. However, since the employer did not remit the dues after receiving of CP-1 notice, CP-2 (Warrant of Attachment of Movable Property) and CP-16 (Order of Attachment of Immovable Property) was issued through Enforcement Officer. Even thereafter, the Managing Director has not turned up for any solution regarding remittance of arrears payable by him. On 12.11.2018, the Managing Director informed in writing that their Establishment was shutdown due to unforeseen circumstances and not transacting any business for the last one year. The respondents had taken various steps to collect the arrear dues assessed against 14-B and 7-Q in form of issuing notice of demand to defaulter prior to attachment of movable and immovable property in EPF CP-1 and the same was received by the Managing Director on 06.09.2017. Only as a last resort, the second respondent had issued notice to show cause why a

Warrant of Arrest should not be issued in EPF CP-25 to the petitioner strictly as per law and without violation to the principles of natural justice. By raising the above contentions, the respondent EPF Authorities sought for dismissal of the Writ Petition.

9. I have heard the learned counsel appearing for the parties and have perused the materials placed before this Court.

10. It is well settled that EPF dues are statutory dues and has to be paid without fail. The Hon'ble Supreme Court in the case of ***Regional Provident Fund Commissioner Vs. Vivekananda Vidyamandir and others*** in ***Civil Appeal No.6221 of 2011, dated 28.02.2019*** had held that the employers cannot segregate 'special allowance' from basic wages for purpose of PF deductions. Here in the case in hand, the said segregation of allowances while arriving at the provident fund dues was one of the ground raised by the petitioner Establishment which has been answered by the Hon'ble Supreme Court. Moreover, the petitioner also cannot claim

immunity by violating the principles of natural justice, because the respondent / EPF Authorities had categorically stated in their counter affidavit that umpteen number of adjournments were given in order to facilitate the employer to provide documentary evidence and they have waited for a fairly good time to get the documents from the employer. However, the employer has not utilized any of the opportunities provided to them and hence have missed the bus. Even this Court while admitting the Writ Petition in W.P.No.26410 of 2016, had given an opportunity to the employer to pay only a sum of Rs.5,00,000/- and granted interim stay of order of attachment. The employer did not utilize that opportunity also which had resulted in passing of the subsequent order of show cause notice dated 05.10.2018. Only thereafter it seems that the petitioner has paid a sum of Rs.5,00,000/- in the year 2019 as stated by the petitioner Establishment in the additional typed set of papers. However, much water has flown under the bridge by that time and the second respondent had issued CP-25 warrant of arrest. Therefore, considering the above circumstances of the case, this Court is unable to entertain the Writ Petitions as they are devoid of merits.

11. Accordingly, these Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

18.07.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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