IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2023

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THE HONOURABLE MR.JUSTICE **V.LAKSHMINARAYANAN**

W.P.Nos.7634 & 9030 of 2014

Datamatics Global Services Limited
Registered Office,
Unit No.117-120, SDF IV-SEEPZ,
Andheri (East),
Mumbai – 400 096. ... Petitioner in both W.Ps.

Vs

1. Regional Provident Fund Commissioner – II (C&R),
   Employees Provident Fund Organisation,
   Regional Office: Tambaram,
   No.3, Rajaji Salai,
   Chennai – 600 045. ... Respondent in both W.Ps.

2. The Branch Manager,
   ICICI Bank Limited,
   Free Press Building,
   Nariman Point,
   JRN Road,
   Mumbai. ... Respondent in W.P.No.7634 of 2014

Prayer in W.P.No.7634 of 2014: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the first respondent leading to the impugned order and quash the impugned order in Ref.No.TB/TAM/RO/ENF/T-1/60764/2014 dated 10.03.2014.

Prayer in W.P.No.9030 of 2014: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the respondent leading to the impugned order and quash the impugned order in Ref.No.TB/RO/TAM/ENF/T-1/60764/2014 dated 10.03.2014.

For Petitioner : Mr.M.Vijayan
(in both W.Ps.)
For Respondents : Mr.R.Vishnu
R1 in W.P.No.7634 of 2014
Sole Respondent in 9030 of 2014

COMMON ORDER

The petitioner was issued with a notice dated 20.01.2014 bearing reference TB/RO/TAM/Enf/T-1/60764/14, under Section 8F(3)(X) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, calling upon him to remit a sum of Rs.95,16,300/- for the alleged dues payable by one M/s.Tricom Infotech Solutions Limited.

2. As there was no response to the said letter, a reminder was sent within a month, i.e., on 20.02.2014. The petitioner responded to the said reminder stating that M/s.Tricom Infotech Solutions Limited was not their contractor and in any event, no dues are payable by the writ petitioner to M/s.Tricom Infotech Solutions Limited.

3. The entire texture of the case changed when the Managing Director of M/s.Tricom Infotech Solutions Limited, one Mr.Cheton Kothari appeared before the respondent/Department on 26.02.2014 and stated that he had transferred the business viz., M/s.Tricom Infotech Solutions Limited in favour of the writ petitioner. Yet again, the petitioner sent a reply to the respondent on 28.02.2014 and 07.03.2014 stating that there are no dues from M/s.Tricom Infotech Solutions Limited and there is no relationship of contractor and principal between themselves and M/s.Tricom Infotech Solutions Limited.

4. On the basis of the statement made by the said Mr.Chetan Kothari, proceedings were initiated under Section 17B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. Challenging the same, W.P.No.9030 of 2014 has been presented.

5. I have heard the learned counsel for the petitioner Mr.M.Vijayan, appearing on behalf of M/s.King and Partridge and Mr.R.Vishnu, learned counsel appearing for the respondent/Department.

6. Mr.Vijayan, learned counsel for the petitioner would submit that there is no relationship between M/s.Tricom Infotech Solutions Limited and the writ petitioner and he would very strongly assert that Section 17B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, will not apply because there has been no sale, transfer or gift or any other voluntary form of transfer from M/s.Tricom Infotech Solutions Limited to the writ petitioner.

7. On the contrary, Mr.R.Vishnu, learned counsel appearing for the respondent/Department would submit that there has been a transfer of a part of the establishment viz., Health Division from M/s.Tricom Infotech Solutions Limited to the writ petitioner and therefore, the Department is entitled to proceed under Section 17B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

8. The narration of the aforesaid facts indicates that the case of the garnishee proceedings has now changed in a proceedings, whereby the defaulting company had transferred a part of its assets in favour of the writ petitioner. The burden of proof that there has been a transfer of establishment lies heavily on the respondent/Department. It is their duty to show that:-

i. There has been a transfer of establishment in whole or in part;
ii. The said transfer is by way of sale, gift or license and;
iii. On the proof of 1 and 2 both M/s.Tricom Infotech Solutions Limited and the writ

petitioner would be jointly and severally liable for the dues which the learned counsel for the respondent/Bank would notify, in order to conclude that there has been transfer.

9. This Court is not willing to go through the documents or newspaper, as that is the job of the respondent to do so.

10. Apart from that, there is a serious violation of the principles of natural justice because the document that have been relied on by Mr.R.Vishnu, learned counsel for the respondent/Department today have not been put to the writ petitioner. Therefore, I am setting aside the order on the sole ground that the documents, on the basis of which the respondent came to a conclusion that Section 17B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, is attracted, were not put to the writ petitioner.

11. I have to state that pending proceedings, a sum of Rs.30,00,000/- has been paid by the writ petitioner to the respondent/Department. The said payment is made pursuant to an interim

order granted by this Court and the interim order was challenged by way of an appeal in W.A.No.556 of 2018 and that also went against the petitioner.

12. In the event the petitioner succeeds in the proceedings initiated under Section 17B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, then the petitioner is entitled for the refund of the said amount paid by the petitioner pursuant to the interim order of this Court.

13. Therefore, the respondent shall put the petitioner at notice and give a copy of the documents on the basis of which it has come to the conclusion that there is a transfer of establishment by sale or in any means whatsoever. On receipt of the same, this exercise shall be completed within a period of two weeks from today i.e., on 16.06.2023.

14. The petitioner is granted two weeks further time from the date on which it receives the record, to give a response to the respondent on the documents as well as with respect to invocation of Section 17B of the

Employees' Provident Fund and Miscellaneous Provisions Act, 1952. Once the response is received, the respondent shall give an opportunity to the petitioner and hear the petitioner and thereafter pass orders.

15. The said exercise must be completed within a period of four weeks thereafter. However, if the respondent feels that the petitioner is attempting to prolong/protract the matter, it may enter into an order in terms of Section 17B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

16. With these observations and directions, the impugned order passed by the respondent in W.P.No.9030 of 2014 is set aside and the case is remanded back to the respondent to issue an order afresh on merits and in accordance with law. Accordingly, the writ petition in W.P.No. 9030 of 2014 stands allowed. Consequently, W.P.No.7634 of 2014 stands allowed. No costs.

16.06.2023

Index : Yes/ No
Neutral Citation : Yes/No
Speaking/Non-speaking Order
rgm

Note: Issue Order Copy on 19.06.2023

To

Regional Provident Fund Commissioner – II (C&R),
Employees Provident Fund Organisation,
Regional Office: Tambaram,
No.3, Rajaji Salai,
Chennai – 600 045.

V.LAKSHMINARAYANAN, J.
rgm

W.P.Nos.7634 & 9030 of 2014

16.06.2023