



W.P.No. 15653 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No.15653 of 2020

and

W.M.P.No.19497 of 2020

The Commissioner,
Udagamandalam Municipality
Udagamandalam

.. Petitioner

Versus

1. The Regional Provident Fund Commissioner II
Recovery Officer,
Employees Provident Fund Organization,
Regional Office, Bhavishya Nidhi Bhavan.
Post Box No.3875,
Dr. Balasundaram Road,
Coimbatore 641 018.

2. The Manager
Indian Bank, Udhagamandalam Branch,
50, Commercial Road, Udhagamandalam 643 001.

3. The Manager
HDFC Bank
Udhagamandalam Branch,
Preethi Classic Towers,
Coonoor Road,



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Udhagamandalam, Nilgiris 643 001.Respondents

Prayer: This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus forbearing the first respondent from in any manner enforcing the collection of the alleged contributions towards Provident Fund Dues in purported exercise of powers under Section 8 of the EPF Act and seeking to recover the same from the bank accounts of the petitioner in any manner,

For Petitioner :Mr. P. Srinivas

For Respondent-1 :Mr.C.Kulanthaivel(Senior Counsel)

For Respondent - 3 : Mr.C. Mohan for Mrs. Kingpartidge

ORDER

This writ petition is filed seeking a writ of writ of Mandamus forbearing the first respondent from in any manner enforcing the collection of the alleged contributions towards Provident Fund Dues in purported exercise of powers under Section 8 of the EPF Act and seeking to recover the same from the bank accounts of the petitioner.

2. The facts of the case is that the first respondent issued notice under Section 7A of Employees Provident Fund and Miscellaneous Provision Act, 1952 on 08.05.2020 stating that Employees Provident



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Fund Act is applicable to the petitioner Municipality and by virtue of the same there was a arrears of amount from May 2016 to April 2017 to the tune of Rs.16,52,146/- from the petitioner. The grievance of the petitioner is that the assessment made with regard to the employees who are entitled to EPF is not proper. Some of the persons who were engaged in doing contract work were also included by the first respondent, but they were not entitled for EPF. Hence this writ petition.

3. The learned counsel for the petitioner submitted that the first respondent initially had even added the suppliers of Materials to the Municipality. He further contend that the outstanding amount was only the dues in respect of the workers engaged in the Amma Unavagams run on Public Welfare basis. The Udhagamandalam Municipality has two Amma Unavagams and they are being run through two separate self help groups and the said SHGs being associations of individuals, have not obtained registrations under the EPF Act. Furthermore, the employees have to remit 50% and the petitioner has to remit 50% under EPF Act. He also contend that due to pandemic situation the said Amma Unavagam Centres are supplying free food, due to which there is no income from them. At that time the petitioner failed to collect contribution from the



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workers and also remit the same and the same was also duly informed to the first respondent. However the first respondent failed to appraise the situation of the petitioner. Hence prays to allow this petition.

4. Per Contra, the learned counsel appearing for the respondents submitted that the liability of the employer towards its employees regarding deposit of EPF dues is a statutory liability cast on the employer under the Act and the employer commits a default in not complying with the statutory provisions, it is not open to the authorities to take a lenient view of such default. The liability of the employer/ management towards its employees cannot be exonerated with regard to the deposit of P.F dues. He further submitted that as per letter dated 28.01.2020 the amount due from the petitioner is Rs.17,92,557/-. Hence prays to dismiss this petition.

5. Heard both sides and perused the materials available on record.

6. Before adverting further it would be relevant to cite the relevant provisions of the EPf Act and the same is extracted hereunder:

*Section 2(f) of EPF and MP Act
1952 defines an employee as employee*



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means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who get his wages directly or indirectly from the employer and includes any person,

(i) Employed by or through a contractor in or in connection with the work of an 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

7. It is clear from the above definition that an employee of an Organization/Establishment includes the employees hired on contract basis or hired through contractor. Hence the averment of the petitioner that the principal employer is not responsible for Social Security benefits to their contractual employee is not acceptable.

8. Considering the facts of the case, this Court is inclined to issue a direction to the petitioner to settle the total dues in three installments to the first respondent whereas the total dues amount to Rs.17,92,557/- The first installment falls on 29th of August and the petitioner is directed to



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pay Rs.6,00,000/-in the first installment and Rs.6,00,000/- is to be paid in the second installment which falls on 30th of December and the remaining amount to be paid in the third installment which falls on or before 31st March.

9. With the above observations this writ petition is disposed of. No order as to costs. Consequently the connected miscellaneous petition is closed. However, if there is any deviation in the payment by the petitioner, the First Respondent is at liberty to take action against the petitioner in accordance with law.

22.06.2023

Speaking order : Yes/No
Neutral citation : Yes/No
Index : Yes/No
smn



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To.

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V.BHAVANI SUBBAROYAN, J.

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