



W.P.Nos.21150 and 23621 of 2014
and 11194 and 12899 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.21150 and 23621 of 2014

and 11194 and 12899 of 2015

&

and M.P.Nos.1, 2 of 2014, 1, 1, 2 of 2015

and W.M.P.No.21509 of 2021

W.P.No.21150 of 2014:-

K.Kannan

... Petitioner

-Vs-

1. The Commissioner,
Avadi Municipality,
Avadi.

2. The Regional Provident Fund Commissioner,
Employees Provident Fund Office,
TNHB Office, Muggappair East,
Chennai.

... Respondents

Prayer in W.P.No.21150 of 2014:- Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Certiorari, calling for the records relating to the impugned order of the first respondent in Roc.No.10998/2012/E1, dated 20.06.2014 and quash the same.



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W.P.No.23621 of 2014:-

Avadi Special Grade Municipality
Contractors Welfare Association,
represented by its Secretary G.Prakash,
Having office at No.1, Sannathi Avenue,
Paruthipattu, Avadi, Chennai-71,
(Regn. No.230/2011)

... Petitioner

-Vs-

1. The Commissioner,
Avadi Municipality,
Avadi.

2. The Regional Provident Fund Commissioner,
Employees Provident Fund Office,
TNHB Office, Muggappair East,
Chennai.

... Respondents

Prayer in W.P.No.23621 of 2014:- Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Certiorari, calling for the records relating to the impugned order of the first respondent in Roc.No.10998/2012/E1, dated 11.08.2014 and quash the same.

W.P.No.11194 of 2015:-

N.M.Ramamoorthy

... Petitioner

-Vs-

1. The Commissioner,
Kanchipuram Municipality,



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2. The Assistant Provident Fund Commissioner,
Sub-Regional Office,
Employees Provident Fund Organisation,
No.31, Filterbed Road,
Vellore.

... Respondents

Prayer in W.P.No.11194 of 2015:- Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Certiorari, calling for the records of the first respondent in his proceedings in Na.Ka.No.936/2014/B5, dated 27.11.2014 and quash the same.

W.P.No.12899 of 2015:-

Kanchipuram Perunagaratchi
Oppanthatharargal Munnetra Nala Sangam
represented by its President,
V.Parthiban
No.2, Lingappan Street,
Kanchipuram-631 502.

... Petitioner

-Vs-

1. The Commissioner,
Kanchipuram Greater Municipality,
Kanchipuram.

2. The Assistant Provident Fund Commissioner,
Sub-Regional Office,
Employees Provident Fund Organisation,
No.31, Filterbed Road,
Vellore.

... Respondents



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Prayer in W.P.No.12899 of 2015:- Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Certiorari, calling for the records of the first respondent in his proceedings in Na.Ka.No.936/2014/B5, dated 27.11.2014 and quash the same.

In W.P.No.21150 of 2014

For Petitioner : No appearance
For Respondents
R1 : Mr.R.Gophinath, Standing Counsel
R2 : Given up

In W.P.No.23621 of 2014

For Petitioner : No appearance
For Respondents
R1 : Mr.R.Gophinath, Standing Counsel
R2 : M/s Sunita Kumari, Standing Counsel

In W.P.Nos.11194 and 12899 of 2015

For Petitioners : Mr.K.M.Balaji
For Respondents
R1 : Mr.G.B.Rajesh, Standing Counsel
R2 : Mr.R.Thirunavukarasu

COMMON ORDER

The W.P.No.21150 of 2014 has been filed for the issuance of Writ of Certiorari, calling for the records relating to the impugned order of the first respondent in Roc.No.10998/2012/E1, dated 20.06.2014 and to quash the same.



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2. The W.P.No.23621 of 2014 has been filed for the issuance of Writ of Certiorari, calling for the records relating to the impugned order of the first respondent in Roc.No.10998/2012/E1, dated 11.08.2014 and to quash the same.

3. The W.P.Nos.11194 and 12899 of 2015 have been filed for the issuance of Writ of Certiorari, calling for the records of the first respondent in his proceedings in Na.Ka.No.936/2014/B5, dated 27.11.2014 and to quash the same.

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

5. The petitioners are registered Contractors and engaged in various works entrusted by the first respondent by awarding contract by tender. The first respondent used to assign contracts for civil construction work and maintenance works for the short duration of 30 to 90 days by floating tenders. The contract work would be done as per the terms and conditions of the contract with the help of their respective



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labourers. They have no permanent employees and depends upon the work allotted by each and every contractor, the skilled labourers will be engaged by them for the work. All the petitioners are being contractors and they are employer of the first respondent, the first respondent alone is the employer for all the work allotted to the petitioners, since the petitioners are not having any permanent employees. The petitioners are not covered as an employer under the definition of clause 2(e) of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, herein after called as the ("EPF and MP Act"). This Act is made applicable only if there is twenty or more persons employed under Section 1(3)(a) of the EPF and MP Act. There is no obligation either for the first respondent or for the petitioners to contribute the provident fund for their workers. The procedure contemplates a register number to be allotted to each member who is entitled to the benefit and this procedure cannot be followed in respect of person who works temporarily and serve several masters and therefore demanding contribution for such person is contrary to the spirit of the Act. Therefore, the contractors are not liable to pay their contribution. Further, that amount is deducted from the



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contractor's payment towards Labour Welfare Fund and the workers who are registered with the scheme would be directly paid the said amount on making a claim.

6. A perusal of the counter revealed that admittedly the petitioners have engaged their men who are employed in connection with the civil constructions and maintenance works undertaken on behalf of the first respondent, who are covered under the provisions of the EPF and MP Act. The Act is a piece of social welfare legislation intended for the benefit of poor workers to secure benefits to them in the evening of their life. Section 2(f) of the EPF and MP Act, defines “employee” as “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 gets his wages directly or indirectly from the employer, and includes any person- (1) 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 or under the standing orders of the establishment”.



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7. A perusal of the above definition is very clear that the term “any person” encompasses within itself all kind of workmen whether be it temporary/casual and whether directly employed or through labour contractor or otherwise. As such, persons engaged by the establishment through contractors are also 'employees' for the purpose of the Act. Accordingly, the first respondent establishment was apprised of the provisions of the Act with reference to the employees engaged through contractors and was required to comply with the provisions of the Act in respect of the said employees. The enquiry under Section 7A of the EPF and MP Act is in progress and the first respondent is yet to produce all the relevant records before the enquiry authority. The enquiry is yet to be concluded.

8. Therefore, the employees engaged by the petitioners are temporary labourers/ casual workers and they are also covered under the EPF and MP Act. That apart, the enquiry in terms of Section 7A of the EPF and MP Act provides an inherent mechanism to solve any dispute even regarding applicability of the Act/Scheme provisions to an



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establishment. Therefore, the petitioners could have individually represented their grievance to the second respondent.

9. A perusal of the order passed by the first respondent, thereby called upon the petitioners/Contractors to pay 13.61% towards their contribution and 12% from the employees contribution from the salaries paid and payable to the employers for the petitioners direct and indirect employees. The said contribution will include administrative cost of 1.10%, E.D.L.I scheme 0.5% along with administrative charge of 0.01% in total 25.61%.

10. Therefore, the proper recourse for the petitioners is that to submit the details of labourers engaged by them from 08.01.2011 till 31.03.2014 with all the particulars of their period of employment and the wages paid to them, before the second respondent. The second respondent, on receipt of the details furnished by the respective petitioners, shall determine the contribution amount payable by the petitioners in the relevant period. The second respondent is also directed



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to give an opportunity of hearing to the petitioners and pass orders on merits and in accordance with law.

11. With the above directions, these Writ Petitions are disposed of.

Consequently, connected Miscellaneous petitions are closed. No costs.

04.08.2023
(2/2)

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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To

1. The Commissioner,
Avadi Municipality,
Avadi.
2. The Commissioner,
Kanchipuram Greater Municipality,
Kanchipuram.
3. The Regional Provident Fund Commissioner,
Employees Provident Fund Office,
TNHB Office, Muggappair East,
Chennai.
4. The Assistant Provident Fund Commissioner,
Sub-Regional Office,
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G.K.ILANTHIRAIYAN, J.

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