



W.P.No.21291 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.21291 of 2014

and

M.P.No.1 of 2014

The Regional Provident Fund Commissioner
Employees Provident Fund Organisation,
No.37, Royapettah High Road,
Chennai - 600 014.

.... Petitioner

vs

1. V.Rajaraman,
rep. by M/s. Sethuram Thiagarajan Engineers (P)LLtd.
No.25, Kovai Thiru Nagar,
Civil Aerodrome Post,
Coimbatore- 640 014.

2. The Presiding Officer,
Employees Provident Funds Appellate Tribunal,
7th Floor, No.60, Skylark Buildings,
Nehru Palace,
New Delhi - 110 019.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a
Writ of Certiorari to call for the records relating to the proceedings of the
2nd respondent Tribunal dated 24.12.2013 in ATA.No.200(13)2013 and



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quash the same.

For Petitioner : Mr.T.R.Sundaram
For Respondent : Mr.S.Ravindran
Senior Counsel
for Mr.S.Baseer Ahamed for R1
R2-Court.

ORDER

This Writ Petition has been filed challenging the impugned order passed by the 2nd respondent Tribunal dated 24.12.2013, allowing the appeal filed by the petitioner.

2. The case of the petitioner is that the first respondent establishment was a chronic defaulter in payment of contribution under the EPF Act. The 1st respondent defaulted in remittances of the statutory dues under EPF, EPF, FPF, EDLI and Administrative charges for the period June 1991 to July 1993 and from July 1994 to August 1995, for which, the petitioner department initiated 7A enquiry and after notice, determined the dues payable by the 1st respondent to the tune of Rs.1,23,309/-. Since the said dues were not paid by the 1st respondent, the petitioner department issued recovery certificate dated 08.03.1996 under Section 8C(1) of the Act for recovery of arrears and consequent interest payable under Section 7Q of the



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Act. Since the payments were not forthcoming from the 1st respondent, the 1st respondent was issued with show cause notice dated 28.02.2013 to show cause as to why warrant of arrest should not be issued and the hearing date was fixed on 18.03.2012 and thereafter, the matter was adjourned to 25.03.2013. While so, the 1st respondent filed ATA.No.200(13)2013 before the 2nd respondent Appellate Tribunal, challenging the warrant of arrest dated 28.02.2013 and obtained interim stay, vide order dated 21.03.2013. The 2nd respondent Tribunal, allowed the appeal by giving findings on the merits of the case which is totally without jurisdiction, illegal and contrary to the provisions of EPF Act. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned Senior Counsel appearing for the 1st respondent.

4. Learned counsel for the petitioner would submit that the 2nd respondent Tribunal has entertained an appeal in respect of which, the 2nd respondent does not have powers and thus, acted with material irregularity. The order passed by the 2nd respondent is cryptic and non speaking order. The appeal is not maintainable under Section 7-I of the Act and the 2nd respondent ought not to have entered the appeal. An appeal would lie before the 2nd respondent only as against the order made under Sections 1(3), 1(4),



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7A, 7B or 7C and 14-B of the EPF Act and that no appeal would lie as against an order passed under section 8B of the Act. The petitioner has not challenged the order under section 7A of the Act but has challenged only the show cause notice before the 2nd respondent. An order under Section 8 of the Act under the EPF Act is statutorily a non-appealable order under Section 7-I of the Act. The subject matter before the 2nd respondent was only recovery proceedings and not an order passed under section 7A of the Act and thus, the 2nd respondent ought not to have entertained the appeal and ought not to have passed an order on merits of the case which has direct bearing in the 7A order originally passed by the petitioner which has attained finality long ago.

5. Per contra, the learned senior counsel appearing for the 1st respondent would state that the 1st respondent resigned from the post of Director with effect from 20.08.1993. By notice dated 11.10.1994, the Enforcement Officer of the petitioner claimed from the 1st respondent, arrears of contribution in respect of Sethuram Thiagarajan Engineers(P) Ltd., Chennai, for the period March 1993 to February 1994. By reply dated 27.10.1994, the 1st respondent stated that he ceased to be the Director of the Company w.e.f. 20.8.1993 and he was not responsible for the alleged dues



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payable by the Company to the petitioner. But there was no response from the petitioner. The 1st respondent was under the bonafide impression that the petitioner has acceded to its response. After nearly two decades, the Recovery Officer of the petitioner issued show cause notice dated 28.02.2013 to the 1st respondent as to why he should not be committed to civil prison for non-payment of Rs.1,23,209/- pursuant to recovery certificate dated 08.03.1996. The 1st respondent challenged the said order before the 2nd respondent and the 2nd respondent in A.T.A.No.200(13) of 2013 allowed the appeal.

ii) Learned Senior Counsel would further submit that the Company was wound up in the year 2003 and no more in existence and the whereabouts of the employees were also not known. He would further submit that there is no reference made in the show cause notice about the reply dated 27.10.1994 sent by the 1st respondent for the notice dated 11.10.1994. Hence, he would pray to dismiss the writ petition.

6. This Court considered the submissions made on either side and perused the materials available on record.

7. It is seen that the 1st respondent has challenged only the show cause notice and not the order passed under section 7A of the Act. Thus, the



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petitioner has questioned the maintainability of the appeal before the 2nd respondent Tribunal. Further, in the show cause notice, there is no reference as to the reply dated 27.10.1994 sent by the 1st respondent for the notice of the petitioner department dated 11.10.1994 and the action taken in that regard. Therefore, this Court is of the opinion that the matter has to be remitted back to the 2nd respondent for fresh consideration as regards the aforesaid issues raised by the 1st respondent.

8. For the foregoing discussion, the impugned order dated 24.12.2013 is hereby set aside and the matter is remitted back to the 2nd respondent to pass orders afresh after giving reasonable opportunity to both parties. The said exercise shall be done by the 2nd respondent within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Speaking/Non-speaking order
vsi



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J.NISHA BANU,J.

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