IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.703 & 704 of 2017 and 34697 & 34699 of 2019
and
WMP.Nos.727 & 728 of 2017 and 35451 of 2019

M/s. American International School,
100 Ft. Road, Taramani,
Chennai – 600 113.
Rep. by its Chief Business Officer,
Mr.Alankrit V.Arora. ...Petitioner in W.P.Nos.703 & 704 of 2017

M/s.American International School,
100 Ft. Road, Taramani,
Chennai – 600 113.
Rep. by its Authorized Signatory.
...Petitioner in W.P.Nos.34697 & 34699 of 2019

Vs.

1. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
37, Royapettah High Road,
Chennai – 600 014.

2. The Area Enforcement Officer,
Employees Provident Fund Organization,

37, Royapettah High Road,
Chennai – 600 014. ...Respondents in W.P.Nos.703 & 704 of 2017

3. The Regional Provident Fund Commissioner-II,
Employees Provident Fund Organization,
37, Royapettah High Road,
Chennai – 600 014.

4. The Recovery Officer,
Employees Provident Fund Organization,
37, Royapettah High Road,
Chennai – 600 014.
...Respondents in W.P.Nos.34697 & 34699 of 2019

Prayer in W.P.No.703 of 2017: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, to call for the records connected with the impugned orders ref No.TN/(39349)/D-20/MAS/PDC/2016 dated 28.10.2016 (and signed on 19.12.2016) passed by the 1st respondent under Section 7Q of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, which were received by the petitioner on 03.01.2017 and to quash the same.

Prayer in W.P.No.704 of 2017: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, to call for the records connected with the impugned orders ref No.TN/(39349)/D-20/MAS/PDC/2016 dated 28.10.2016 (and signed on 19.12.2016) passed by the 1st respondent under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, which were received by the petitioner on 03.01.2017 and to quash the same.

Prayer in W.P.No.34697 of 2017: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, to call for the records connected with the demand notice under reference

No.E.P.F.C.P.1 No.TN/CHN/Recy/CP1/TN/39349/D20/Regl/2019 dated 02.12.2019 issued by the 2nd respondent directing the petitioner to make payment of Rs.12,34,08,435/- within fifteen days from the date of service of the notices and quash the same.

Prayer in W.P.No.34699 of 2017: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, to call for the records connected with the notice under reference Ref No.CHN/Recy/TN/39349/Regl/2019 dated 02.12.2019 issued by the 1st respondent directing the petitioner to make payment of Rs.12,34,08,435/- within fifteen days from the date of service of the notice and quash the same.

In W.P.Nos.703 & 704 of 2017:

For Petitioner : Mr.Sanjay Mohan, SC for Mr.Shardul Amarchand

For Respondents : Mr.V.Sundareswaran

In W.P.Nos.34697 & 34699 of 2019 :

For Petitioner : Mr.Sanjay Mohan, SC for Mr.Allwin Godwin

For Respondents : Mr.V.Sundareswaran

COMMON ORDER

Since the issue involved in all these Writ petitions are interconnected, they are disposed of by way of this common order.

2. The case of the petitioner is that, in pursuance to the Notification

dated 01.10.2008 issued by the Ministry of Labour and Employment Department, the petitioner extended the benefits of provident fund and pension schemes to all international workers with effect from 01.11.2008 by contributing 12% of the gross salary of such overseas employees. The petitioner was also making the contributions towards deposit linked insurance scheme and administrative charges from 30.1.2009 on the basic component of the salary paid to their overseas employees, which constituted 25% of the entire salary component. When that be so, the petitioner received a letter dated 15.2.2012 from the 2nd respondent informing that an inspection would be held at the petitioner's establishment and sought for production of documents. After the inspection on 15.2.2012, the petitioner also received a notice dated 24.2.2012 from the 1st respondent stating that in respect of overseas employees, the petitioner made contributions towards provident fund on the basic wages, and that the other components such as earned personal allowance, additional allowance, etc., had been omitted and that the petitioner had not remitted the contributions as per Section 6 read with Section 2(b) of the Act and directed the petitioner to show cause as to why action should not be initiated against them. In furtherance to the notice dated

12.4.2012, the 1st respondent initiated an inquiry under Section 7A of the Act and issued summons to the petitioner to appear and produce documents with regard to failure to remit contributions from November 2008. The 2nd respondent inspected the petitioner establishment once again on 01.6.2012 and submitted a report stating that it found subterfuge of wages in respect of international workers of the petitioner for the period from November 2008 to March 2012 and that of the regular workers from April 2010. The 2nd respondent provisionally assessed that a sum of Rs.14,01,64,370/- was due and payable by the petitioner towards provident fund, employee's pension scheme, deposit linked insurance scheme, both employees' and employer's contributions under various heads for both the international workers and the Indian workers from November 2008 to March 2012. During the course of proceedings before the 1st respondent, the petitioner made detailed submissions by sending various letters dated 31.7.2012, 29.8.2012 and 18.12.2012. Further, by letter dated 28.5.2013, the 1st respondent informed the petitioner that the 2nd respondent revised the inspection report on the dues with regard to international and Indian workers. Ultimately, by order dated 09.7.2013, the 1st respondent passed an order determining a total amount of Rs.13,94,63,405/- as due and payable by the petitioner towards arrears of provident fund, employees' pension scheme, deposit linked insurance scheme, contributions and administrative charges for the period from November 2008 to November 2012. Subsequently, on 04.9.2013, 06.9.2013 and 12.9.2013, the petitioner made the entire payment as determined by the 1st respondent. However, to their shock and surprise, the 1st respondent issued a notice dated 28.4.2014 to the petitioner to show cause as to why an amount of Rs.58,47,697/- towards damages under Section 14B of the Act and another sum of Rs.31,28,807/- towards interest under Section 7Q of the Act for the delayed remittances for the period from 01.4.1996 to 03.1.2014 should not be levied. The petitioner made a request to the 1st respondent seeking to waive the amounts levied towards damages and interest on delayed remittances. However, the request was rejected and the 1st respondent passed an order dated 30.7.2014 levying a sum of Rs.58,47,697/- towards damages and another sum of Rs.31,28,807/- towards interest payable for the period from December 2008 to June 2013. Pursuant to the order dated 30.7.2014, the petitioner also made the entire payments on 04.8.2014 and 08.8.2014 respectively. Once again the petitioner received summons dated 04.5.2016 levying a sum of Rs.11,98,03,352/- towards damages and Rs.6,57,90,591/- towards interest for the belated remittances during the period from 01.4.2015 to 31.3.2016. In turn, the petitioner made written submissions dated 08.8.2016 and 12.10.2016 respectively, however, the 1st respondent, by order dated 28.10.2016 (signed on 19.12.2016) directed the petitioner to pay a sum of Rs.4,05,34,665/- towards interest under Section 7Q of the Act on belated remittances for the period from November 2008 to November 2015. Challenging the same, WP.No.703 of 2017 has been filed. Further, the 1st respondent, by another order dated 28.10.2016 (signed on 19.12.2016), directed the petitioner to pay a sum of Rs.8,28,73,770/- towards damages under Section 14B of the Act for the period from November 2008 to November 2015. Challenging the same, the petitioner filed WP.No.704 of 2017. The petitioner also received another show cause cum levy notice notice dated 09.10.2017 directing the petitioner to remit the amounts due towards penal interest under Section 7Q and penal damages under Section 14B of the Act, for which, the petitioner sent a reply dated 29.1.2018. It was also informed that this Court, in W.P. Nos.703 and 704 of 2017 filed along with another writ petition, granted an order of interim stay on 10.1.2017. Subsequent to that, the petitioner had not received any reply from the respondents. However, the petitioner received a notice of demand prior to attachment of movable and immovable properties and a show cause notice both dated 02.12.2019, directing the petitioner to pay a sum of Rs.12,34,08,435/-, the amount involved in W.P.Nos.703 & 704 of 2017 within 15 days by rejecting the contention of the petitioner on the ground that the order of interim stay was granted by this Court on 10.1.2017 in WP.Nos.703 and 704 of 2017 filed along with another writ petition only for a period of three weeks after relying the judgment of the Apex Court in the case of ***Asian Resurfacing Road Agency Pvt. Ltd. Vs. CBI*** [reported in ***2018 (6) SCC 299***] wherein it had been held that, where the matter remains pending for a longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order. Challenging the notice of demand dated 02.12.2019, WP.No.34697 of 2019 has been filed. Challenging the show cause notice dated 02.12.2019, WP.No.34699 of 2019 has been filed.

3. Learned Senior counsel appearing for the petitioner submitted that, admittedly, for alleged non payment of dues, the respondent initiated 7A proceedings as against the petitioner and passed order on 09.07.2013, directing the petitioner to pay a sum of Rs.13,94,63,405/- as due and payable by the petitioner towards arrears of provident fund, employees' pension scheme, deposit linked insurance scheme, contributions and administrative charges for the period from November 2008 to November 2012, which was paid by the petitioner by way of three instalments on 04.9.2013, 06.9.2013 and 12.9.2013. For the belated payment, the respondents initiated proceedings under Sections 7Q and 14B of the Employees Provident Fund and Miscellaneous Provisions At, 1952 (for short, the Act) for the period December 2008 to June 2013, and for which, the petitioner paid a sum of Rs.89,76,504/- by way of two instalments on 04.08.2014 and 08.08.2014. However, while issuing orders both dated 28.10.2016, the payment of dues made by the petitioner was not properly discussed and mechanically passed orders claiming interest and damages to the tune of Rs.4,05,34,665/- and Rs.8,28,73,770/- under Sections 7Q and 14B of the Act respectively, for the belated remittance for the period

November 2008 to November 2015, which is not sustainable.

4. Insofar as the Writ petitions in W.P.No.34697 & 34699 of 2019 are concerned, when W.P.Nos.703 and 704 of 2017 came up for admission on 10.1.2017, this Court granted an order of interim stay for a period of three weeks and as the same was not extended, the respondent directed the petitioner to pay interest and damages which is not sustainable, since when the interim order granted by this court is not vacated by filing appropriate vacate stay petition, it is presumed that the interim stay is in existence.

5. Per contra, the learned counsel appearing for the respondents submitted that, though the details of the payments made by the petitioner are not discussed in the impugned orders both dated 28.10.2016, however, only after analysing all the said facts, the present impugned orders came to be passed, which is perfectly in order and the same does not warrants interference of this Court.

6. Heard learned counsel on either side and perused the material

documents placed on record.

7. Admittedly, for non-payment of PF dues at the relevant point of time, the respondent initiated proceedings under Section 7A of the Act and it is equally not disputed that, pursuant to the same, the petitioner paid the demand amount by way of three instalments and for non-payment of the said amount on time interest and damages were sought to be levied and a show cause notice has come to be issued. However, it is the claim of the petitioner that, they have already paid a sum of Rs.89,76,504/- for the period from December 2008 to June 2013, by way of two instalments on 04.08.2014 and 08.08.2014 and the same was not taken into consideration while passing the impugned orders.

8. In view of the fact that the payments made by the petitioner have not been given due credit and it is further stand of the petitioner that there is no discussion about the same in the impugned orders. Such being the position, this Court is inclined to set aside the orders impugned herein and remand the matter to the 1st respondent for fresh consideration.

9. Accordingly, the orders impugned in W.P.Nos.703 & 704 of 2017 are set aside and the matter is remanded to the 1st respondent and the 1st respondent is directed to hear the petitioner afresh and pass appropriate orders after granting an opportunity of hearing to the petitioner. The petitioner is at liberty to produce all payment receipts and other documents to substantiate their claim so as to enable the 1st respondent to pass appropriate orders in accordance with law.

10. Insofar as the Writ petitions in W.P.Nos.34697 & 34699 of 2019 are concerned, when the matters came up for admission on 13.12.2019, this Court granted an order of interim stay restraining the respondents from proceeding further with the impugned show cause notices dated 02.12.2019 till disposal of WP.Nos.703 and 704 of 2017 and it is pertinent to that, the said W.P.Nos.703 and 704 of 2017 are disposed of only today (i.e.,of even date). Though the claim of the respondent is premised on the fact that the interim stay granted by this Court in W.P.Nos.703 and 704 of 2017 is only

for a period of three weeks, which has not been extended, the petitioner has to pay the demand amount, by relying upon the order of the Apex Court in *Asian Resurfacing case.* However, the fact remains that no steps were taken by the respondent to have the stay vacated. Therefore, the mere fact that there was no explicit order extending the stay after three weeks, it cannot be held that there was no stay, as on prima facie materials, the order of stay was granted. That being the undisputed position, the fact that order of stay was not extended by this Court cannot operate in detriment to the petitioner for no fault of the petitioner and in the absence of any diligent act on the part of the respondents to have the stay vacated, the petitioner alone cannot be made to suffer. In such view of the matter, the impugned order directing the petitioner to pay interest and damages cannot be held to be sustainable.

11. In view of the above, W.P.Nos.34697 and 334699 of 2019 are allowed and the orders impugned therein are set aside and the matter is remanded to the 1st respondent for fresh consideration and the 1st respondent is directed to issue fresh notice to the petitioner fixing the date, enabling the petitioner to produce all payment receipts and other proofs and thereafter,

the 1st respondent shall pass appropriate orders.

12. Accordingly, the Writ petitions are allowed in the aforesaid terms with the aforesaid observations and directions. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

08.08.2023
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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

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Employees Provident Fund Organization,
37, Royapettah High Road, Chennai – 600 014.

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M.DHANDAPANI, J.

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