IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.31400 of 2023 and W.M.P. No.31021 of 2023

The Commissioner
Maraimalai Nagar Municipality,
Maraimalai Nagar,
Chennai 603 209 ... Petitioner

Vs.

The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organisation, Regional Office,
3, Rajaji Salai, Tambaram,
Chennai 600 045 ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the Employees Provident Fund Appellate Tribunal in Appeal No. 257 of 2019 pertaining to the orders dated 31.07.2023, quash the same and consequently direct the Employees Provident Fund Appellate Tribunal to restore the Appeal No.257 of 2019 on its file.

For Petitioner : Mr. P. Srinivas
For Respondent : Mr.R. Thirunavukarasu,
Standing Counsel

ORDER

The Writ Petitioner is the the Commissioner, Maraimalai Nagar Municipality, Maraimalai Nagar, Chennai 603 209.

2. The respondent, the Regional Provident Fund Commissioner-I, Employees Provident Fund Organisation, Regional Office, Tambaram, Chennai, in exercise of powers conferred under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act'), vide his orders dated 30.10.2019 in TB/TAM/63253/Enf/CC-II/T-6/Proceedings/2019, had determined the liability of the petitioner towards Provident Fund Contribution as Rs.4,66,91,123/- for the Period from January 2011 to March 2016 . The Writ Petitioner was further directed to pay the entire amount within a period of 15 days from the date of receipt of a copy of the order, failing which the same would be recovered in the manner as prescribed under Section 8B to 8G of the Act.

3. Aggrieved over the orders passed by the respondent, the petitioner filed an appeal before the Employees Provident Fund Appellate Tribunal Chennai, in EPFA No.257/2019 along with waiver petition to waive the

mandatory payment of 75% of the Award as per Section 7(O) of the Act and the said petition was considered by the Presiding Officer of the Employees Provident Fund Appellate Tribunal Chennai. Accordingly the Writ Petitioner was directed to pay 35% of the Award amount payable by them. Since the Writ petitioner did not pay the said amount, the appeal was dismissed for non compliance of the said condition.

4. Aggrieved by the abovesaid orders, the present Writ Petition is filed.

5. Mr. P. Srinivas, learned counsel appearing for the writ petitioner contended that the respondent cannot recover the amounts under Section 7A of the Act as they have engaged persons only through different contractors and that the respondent should have proceeded only against those contractors. He therefore would contend that the entire proceedings of the respondent and the orders of the Tribunal are liable to be set aside.

6. Per contra, Mr.R. Thirunavukarasu, learned Standing counsel for the respondent contended that Maraimalai Nagar Municipality was

brought under the purview of the Act with effect from 08.01.2011 by virtue of the Central Government Notification No.S.O.30E dated 08.01.2011 extending the provisions of the Act to all 'Municipal Councils and Municipal Corporations constituted under sub-clauses (b) and (c) of clause(i) of Article 243Q of the Constitution of India, employing 20 or more persons. As the employer failed to report compliance under the Provisions of the Act and three Schemes framed thereunder, an enquiry in terms of Section 7A of the Act was initiated and an inquiry was conducted. Thereafter the liability of the writ petitioner was quantified (as stated in paragraph No.2).

6.1. The learned counsel for the respondent further drew the attention of this Court to Section 2F of the Act, which reads as under.

> **Section 2(f) in The Employees' Provident Funds and Miscellaneous Provisions Act, 1952**
>
> (f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of 7[an establishment], and who gets, his wages directly or indirectly from the employer, 8[and includes any person,—
> (i) 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 (52 of 1961), or under the standing orders of the establishment;] 9[(ff) “exempted employee” means an employee to whom a Scheme 5[or the Insurance Scheme, as the case may be,] would, but for the exemption granted under 10[***] section 17, have applied;

His contention is that it has been clarified by the Employees Provident Fund Organisation that the Central Government Notification No.S.O.30E dated 08.01.2011 would apply to all categories of employees of the establishment (as per the definition of under Section 2F of the Act) excluding the employees who are in enjoyment of Provident Fund and pensionery benefits according to the Rules of the Government, Municipalities, etc. He would therefore contend that Section 2F of the Act includes any person employed by or through a contractor in or in connection with the work of the establishment and in this case it was admitted that the employees were engaged through contractors for activities relevant and very much linked with the Municipality. Therefore his contention is that the Writ Petitioner is liable to pay the Provident Fund quantified by the respondent.

7. The exemption under the EPF Act would be available only in

respect of those employees of the Petitioner to whom the Tamil Nadu Municipal Services Pension Rules, 1970 (hereinafter referred to as the TNMSP Rules for short) applies. However, the workers, who have been engaged through contractors employed by the Petitioner, are not entitled to get any benefit under the TNMSP Rules. In this context, it must be recalled here that the Hon'ble Supreme Court of India in ***Pawan Hans Limited vs Aviation Karmachari Sanghatana*** reported in ***(2020) 13 SCC 506*** has held that the exemption under Section 16(1)(b) and (c) of EPF Act cannot be availed when the establishment does not cover all its employees under any other Provident Fund Scheme. The Government of Tamil Nadu realized this anamoly prevailing in the Municipalities across the State and issued directions to the concerned authorities as stated below:-

i. The Commissioner of Municipal Administration by Letter No. 57084/ 2011/L3 dated 21.10.2014 addressed to all Commissioners of Municipal Councils has communicated the decision of the State Government that though the Municipalities/Corporations take up works through private Contractors, the authorities concerned should ensure that the Contractors pay the PF subscription of their employees duly to the PF organization, otherwise, the responsibility for the same will be fixed on the concerned Municipalities/Corporations, which is the principal employer, if the Contractors default in this regard.

ii. The Government of Tamil Nadu by Letter No.18826/MC5/2016~1, dated 19.08.2016, sent to the Commissioner of Municipal Administration requested all the Municipal Councils in the State to comply with the provisions of the EPF Act, to withdraw the Court cases, in addition to share the details of Contractors/contracts awarded by them in the principal employer portal available in the website of Employees Provident Fund Organization to facilitate the extension of social security benefits to all the eligible persons.

iii. A letter in ROC No.1819/2016/L3, dated 19.10.2016, was sent by the Commissioner of Municipal Administration to all Municipal Commissioners to take necessary action in connection with implementation of the EPF Act and the schemes framed thereunder in respect of employees of Municipalities and Corporations and send the report directly to the Employees Provident Fund Organization concerned.

iv. A Letter No. 14070/ME.3/2016-4, dated 20.12.2016 was also sent by the the Government of Tamil Nadu to the Commissioner of Municipal Administration stating that the Notification No. S.O. 30(E) dated 08.11.2011 issued by the Central Government shall cover all employees of establishments as per definition of -employee- under Section 2(f) of EPF Act excluding the employees who are getting benefits of provident fund and pension according to TNMSP Rules of the State Government or municipal laws, etc., and that the benefits under the EPF Act have to be extended to all eligible employees.

v. The Commissioner, Municipal Administration had further sent a Letter Na. Ka. No. 23701/2020/L~1 dated 05.02.2021 to all the Municipal Commissioners reiterating the requirements to comply with the provisions of the EPF Act, including the timely remittance of the contribution deducted from the bills of the contractors and failure to do so, would result in penal consequences.

7.1 The Ministry of Labour and Employment, Government of India by Letter No. S-35025/15-88-SS-II dated 08.01.1989 sent to the Central Provident Fund Commissioner has issued instructions on similar lines, which is extracted below:~

"(iv) There may be establishments which employ large number of casual/contingent staff who are not entitled to the benefit of provident fund or pension. The casual/contingent staff of such establishment will continue to be covered under the Act, but their regular employees who are entitled to the benefit of provident fund pension should be excluded from the purview of the Act."

The Constitution Bench of the Hon'ble Supreme Court of India in ***Sant Ram Sharma vs. State of Rajasthan*** reported in ***AIR 1967 SC 1910***, had held as follows:

"7. ....It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

It would be relevant here to extract Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, which reads thus:

21.Responsibility for payment of wages.~

(1)A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2)Every principal employer shall nominate a

representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3)It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4)In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.?

That apart, Rules 25(2)(iv), 71, 72 and 73 of the Tamil Nadu Contract Labour Rules, 1975, provides as follows:-

25. ....

(2) Every licence granted under sub-rule (1) or renewed under rule 29 shall be subject to the following conditions, namely:-

....

(iv) the rates of wages payable to the workmen by the contractor shall not be less than the rates prescribed under the Minimum Wages Act, 1948 (11 of 1948), for such employment where applicable and where the rates have

been fixed by agreement, settlement or award, not less than the rates so fixed;

....

71. A notice showing the wage period and the place and time of disbursement of wages shall be displayed at the place of work and a copy sent by the contractor to the principal employer under acknowledgment.

72. The principal employer shall ensure the presence of his authorised representative at the place and time of disbursement of wages by the contractor to workmen and it shall be the duty of the contractor to ensure the disbursement of wages in the presence of such authorised representative.

73. The authorised representative of the principal employer shall record under his signature a certificate at the end of the entries in the Register of Wages or the 1Register of Wages-cum Muster Roll] as the case may be, in the following form:-

?Certified that the amount shown in column No. ... has been paid to the workman concerned in my presence on ..... at ...."

In the instant case the principal employer, the Writ Petitioner, should have verified that the contract labourers engaged through contractors are paid the eligible amount of wages and payment of Provident Fund

Contribution on time and they cannot direct the respondent to proceed against the contractors who had engaged all the workers. The contention of the learned counsel for the writ petitioner that the respondent ought to have proceeded against the contractors and not against the present writ petitioners cannot be accepted for the simple reason that Section 2F of the Act includes any person employed by or through a contractor in or in connection with the work of the establishment and in the instant case all the workers come within the definition of Section 2F of the Act and the petitioner being the principal employer should pay the Provident Fund due to the employees. Moreover the employees were engaged through contractors for activities relevant and linked with Municipalities/Corporations. The Writ Petitioner had failed to make contribution as per Section 6 of the Act and they failed to fulfill the responsibilities as per Section 8A of the Act and the provisions of the scheme framed there under.

7.2. In the circumstances, the orders passed by the respondent cannot be found fault with. It is also seen that the Writ Petitioner filed an appeal before the Employees Provident Fund appellate Tribunal, Chennai, along with waiver petition mandated under Section 7(O) of the

Act. Though the said waiver petition was considered by directing the present writ petitioners to deposit 35% of the Award amount, they did not comply with the orders consequent upon which the appeal was not admitted. Since this Court has held that the orders passed by the Regional Provident Fund Commissioner-II, Employees Provident Fund Organisation, Tambaram, Chennai, is perfectly in order, the present Writ Petition is liable to be dismissed.

8. In the result, the Writ Petition is dismissed. No costs. Consequently connected Writ Miscellaneous Petition is closed.

03.11.2023

bga
Index : yes/no
Speaking /Non speaking Order

To

The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organisation, Regional Office
3, Rajaji Salai, Tambaram
Chennai 600 045

R.HEMALATHA, J.

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