



W.P.No.34990 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.34990 of 2022
and
W.M.P.No.34427 of 2022

S.Krishna Kumar

... Petitioner

Vs.

1.The Recovery Officer,
Regional Office Tambaram,
Employees' Provident Fund Organization,
No.3, Rajaji Salai, East Tambaram,
Chennai - 600 045.

2.The Authorised Officer,
Regional Office Tambaram,
Employees' Provident Fund Organization,
No.3, Rajaji Salai, East Tambaram,
Chennai - 600 045.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent pertaining to notice vide Lr.No.TN/RO/TBM/Recy/CP25/528/39849/2022-23 dated 09.11.2022 issued by the 1st respondent pursuant to the Certificate No.TBTAM2796/0039849/01/10/2019/511/35 dated 01.10.2019 and quash



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the same and pass further order.

For Petitioner : Ms.R.Revathy

For Respondents : R1 and R2 - No Appearance

ORDER

The petitioner has challenged the impugned show cause notice dated 09.11.2022 issued by the first respondent under the provisions of the Employees' Provident Fund Act.

2. The petitioner has raised the following grounds:

a) The notice is in violation of Principles of Natural Justice;

b) He is not liable to pay any dues of the Company. He contends that he was only a Nominee Director and therefore, the payment of Employees' Provident Fund (*Hereinafter referred to as EPF*) contributions by him on account of the Company which is in default will not arise;

c) The petitioner will also not come within the definition of Section 2 (e) of the EPF Act which defines an "employer";

d) The respondents are bound by the principles laid down in various decisions of the Honourable Supreme Court.



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3. Admittedly, the petitioner has challenged a show cause notice. The question, whether the petitioner will come within the definition of an "employer" or not, as defined under the EPF Act will have to be considered by the respondents based on the petitioner's reply to the impugned show cause notice. Even before final orders are passed, the petitioner has approached this Court prematurely.

4. The petitioner has already submitted a reply on 19.11.2022 to the impugned show cause notice. In the said reply, the contentions raised in this Writ Petition were also raised by the petitioner for absolving his liability from payment of EPF contributions on account of M/s.Sanraa Media Limited. Having already submitted a reply, the question of entertaining this Writ Petition at this stage will not arise. It is for the respondents to consider the reply submitted by the petitioner, on merits and in accordance with law and thereafter, decide as to whether the petitioner can be made liable for payment of EPF contributions or not.



5. The petitioner also relies upon decisions of the Honourable Supreme Court in support of his contentions that, as an alternate Director, who does not have any stake in the Company, he cannot be held liable. It is for the respondents to consider the same and decide as to whether the petitioner is liable to pay the EPF contributions on account of M/s.Sanraa Media Limited.

6. For the foregoing reasons, this Writ Petition is disposed of by directing the first respondent to pass final orders, on merits and in accordance with law, after giving due consideration to the petitioner's reply dated 19.11.2022 given to the impugned show cause notice, requesting for absolving the petitioner from any liability, within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner is also directed to send a copy of the decisions of the Constitution Courts in support of his stand that as an alternate Director, he cannot be held personally liable for the EPF contributions not paid by M/s.Sanraa Media Limited, within a period of two days from the date of receipt of a copy of this order to the respondents to enable them to consider the same before passing final orders.



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7. With the aforementioned directions, this Writ Petition is disposed of. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

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ABDUL QUDDHOSE. J.,

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