



W.P(MD)No.15847 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 30.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15847 of 2020

and

W.M.P.(MD)No.13265 of 2020

M/s.Vasantham Agencies Private Limited,
Rep. by its Managing Director,
N.Monikandan,
No.47/6 Niyafi Complex,
Dennison Road, Nagercoil.

... Petitioner

Vs.

1.The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
No.66 Water Tank Road,
Nagercoil - 629 001.

2.The General Manager,
Bharat Sanchar Nigam Limited Bhavan,
Nagercoil.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned proceedings of the 1st respondent in No.TN/NGL/75452/14B/PDC-32/19 as well as the consequential



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impugned proceedings of the 1st respondent in
No.TN/NGL/75452/7Q/PDC-32/2020 both dated 19-10-2020 and quash
the same as illegal.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.M.Mahaboob Athiff,
Standing Counsel for R1.
Mr.D.Shanmugaraja Sethupathi,
Standing Counsel for R2.

ORDER

Heard the learned counsel on either side.

2.The petitioner is an assessee under Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The petitioner has been supplying manpower to BSNL. The case of the petitioner is that on account of delay in payment of their dues by BSNL, the petitioner committed delay in the matter of remitting provident fund contribution for their employees. The prime contention of the learned counsel for the petitioner is that the impugned order was passed on 19.10.2020, when the



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pandemic was at its peak. He also would claim that the petitioner was not given sufficient opportunity.

3.The learned standing counsel controverted all the claims putforth by the writ petitioner. My attention is also drawn to the recent decision of the Hon'ble Supreme Court reported in **(2022) 4 SCC 516 (Horticulture Experiment Station Gonikoppal, Coorg Vs. Regional Provident Fund Organization)**. The learned standing counsel's contention is that when once there is delay in remitting contribution, payment of interest as well as levy of damages are automatic and that the authority does not even have discretion in the matter. He also would argue that there is no need to establish the element of *mens rea*.

4.I however do not want to go into the rival contentions. It is well settled that the order passed under Section 7Q of the Act is not appealable. The interest component comes to Rs.1,67,479/-. The petitioner has already remitted a sum of Rs.1 Lakh and the organization can very well appropriate the same. The balance amount of Rs.67,479/- shall be paid within a period of four weeks from the date of receipt of a



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copy of this order. The petitioner is given liberty to challenge the order levying damages under Section 14B of the Act. The petitioner undertakes to file such an appeal within a period of four weeks from the date of receipt of a copy of this order. The appellate tribunal shall entertain the appeal without reference to limitation. Till the appeal is disposed of by the tribunal, the order levying damages shall not be given effect to.

5.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

30.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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Issue order copy on 03.04.2023.



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G.R.SWAMINATHAN, J.

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