



W.P. No. 3018 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 3018 of 2023

and

W.M.P. No. 3117 of 2023

M.K.Nasirudeen

... Petitioner

-VS-

1. The Commissioner of Municipal Administration,
No. 3, MRC Nagar,
R.A.Puram,
Chennai – 600 028.
2. The Regional Directorate of Municipal Administration,
Kumaran Shopping Complex,
Kumaran Nagar,
Tirupur – 641 603.
3. The District Collector,
The Nilgiris District,
Udhagamandalam,
The Nilgiris – 643 001.
4. The Commissioner,
Nelliyalam Municipality,
Office of the Nelliyalam Commissioner,
Pandalur,
The Nilgiris – 643 233.
5. The Commissioner,
Employee Provident Fund,
Bhavishya Nidhi Bhawan,
76, Balasundaram Road,
ATT Colony,
Gopalapuram,
Coimbatore – 641 018.



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6. P.Rayin Civil and Conveyance Contractor,
No. 11/375, Chungam,
Cherambadi,
Nilgiris District – 643 205.

(R6 is impleaded vide order dated 02.03.2023
in W.M.P. No. 6773 of 2023)

7. P.Rasheed

(R7 is impleaded vide order dated 31.08.2023
in W.M.P. No. 9790 of 2023)

8. P.Saleem

(R8 is impleaded vide order dated 31.08.2023
in W.M.P. No. 9983 of 2023)

9. Ashraf

(R9 is impleaded vide order dated 31.08.2023
in W.M.P. No. 9989 of 2023)

...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned Notification Na. Ka. EN. 6374/2022/E1 dated 06.12.2022 issued by the Fourth Respondent herein and quash the same and direct the Fourth Respondent herein to accept tender from the contractor filed with mentioned conditions in the tender notification including EPF account.

For Petitioner : Mr. B.Ramamoorthy

For Respondents : Mr. B.Vijay,
Additional Government Pleader
(for R1 to R3)

Mr. P.Srinivas (for R4)

Mrs. R.Meenakshi (for R5)

Mr. Meiyappan Mohan (for R6)



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Mr G.Adityaraj (for R7 to R9)



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ORDER

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Heard Mr. B.Ramamoorthy, Learned Counsel for the Petitioner, Mr. B.Vijay, Learned Additional Government Pleader appearing for the First to Third Respondents, Mr. P.Srinivas, Learned Counsel for the Fourth Respondent, Mrs. R.Meenakshi, Learned Counsel for the Fifth Respondent, Mr. Meiyappan Mohan, Learned Counsel for the Sixth Respondent and Mr. G.Adityaraj, Learned Counsel for the Seventh to Ninth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Central Government by Notification No. S.O. 30(E) dated 08.01.2011 in exercise of the powers conferred by Section 1(3)(b) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as 'the EPF Act' for short) specified the Municipal Councils and Municipal Corporations constituted under Article 243-Q(1)(b) and (c) of the Constitution of India employing 20 or more persons as a class of establishments to which that Act shall apply with effect from the date of its publication in the Official Gazette. In furtherance thereto, the Fourth Respondent, which is a 'Municipal Council', while calling for tender in the Notification No. Na. Ka. EN. 6374/2022/E1 dated 06.12.2022 for 17 works to



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be carried out in its establishment, had included a condition that the applicants should have been registered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (hereinafter referred to as 'the EPF Act' for short), and comply with the rules and regulations prescribed in that regard for the contract workers engaged by them.

3. It is the case of the Petitioner, who was an unsuccessful tenderer, that the Sixth to Ninth Respondents, who had been selected as the contractors for those 17 works in the said tender, have not been registered under the EPF Act and as they are not complying with the requirements of the said law, the said contracts awarded to them have to be cancelled.

4. This Court during the earlier hearing on 02.03.2023 had passed the following order:-

3. It is relevant to note that in the tender notification, such a condition has been incorporated by the Nelliya Panchayat, which has been challenged in a Writ Petition in W.P.No.786 of 2021. In the above Writ Petition, the said municipality has defended inclusion of such a condition in tender documents. Considering the notification and various letters issued in this regard, this Court held that the registered contractors who have subscribed to EPF alone can participate and dismissed the Writ Petition. The above Writ Petition has been dismissed on 29.06.2021. Thereafter, it appears that a notification has been



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issued for 17 works on 06.12.2022 incorporating similar conditions of EPF. However, the petitioner has not furnished any EPF number as required under 7 works in Serial No.3, 9, 10, 11, 12, 14 and 16 in the tender document. Despite the fact that no particulars have been given, which is against the tender conditions. The tender has been opened and the work Order has also been issued issued by the Municipal Engineer, who was placed incharge on the particular date, i.e., on 13.01.2023. Now, the Municipality, after realising the entire mistake, issued notice for cancelling the tender. However, the contractor had refused to receive the notice.

4. In such view of the matter, as there is violation of tender conditions and sixth respondent has also refused to receive the notice, there shall be an Order of interim stay of entire proceedings of the work order issued in respect of 7 items referred above.

5. The first respondent is directed to conduct enquiry in this regard as to how the work Order has been issued despite serious violation of Orders of this Court in W.P. No. 786 of 2021 and initiate necessary action against the concerned officials

6. The Commissioner of Nelliyalam Municipality is present before this Court today. Her presence is noted.

5. In furtherance to the aforesaid order, the Fifth Respondent has filed report dated 09.01.2024, which reads as follows:-

5. I submit that the establishment M/s. PadariRayin, the Sixth Respondent herein has been registered under the EPF & MP Act, 1952, with effect from 22.05.2023, with code No. CBCBE2925384. So far, no payment



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has been made from the date of coverage. The provisional dues payable by him is Rs. 1,39,33,846/-.

6. I submit that the establishment M/s. Rasheed PadariRayin, the Seventh Respondent herein has been registered under the EPF & MP Act, 1952 with effect from 22.05.2023, with Code No. CBCBE 2920261. So far, no payment has been made from the date of coverage. The provisional dues payable by him is Rs. 5,85,806/-.

7. I submit that the establishment M/s. PadariRayin, the Eighth Respondent herein has been registered under the EPF & MP Act, 1952 with effect from 22.05.2023, with Code No. CBCBE 2923292. So far, no payment has been made from the date of coverage. The provisional dues payable by him is Rs. 40,64,334/-.

8. I submit that the establishment M/s. Ashraf PadariHamsa, the Ninth Respondent herein has been registered under the EPF & MP Act, 1952 with effect from 22.05.2023, with Code No. CBCBE 2925378. So far, no payment has been made from the date of coverage. The provisional dues payable by him is Rs. 25,50,150/-.

9. I submit that as directed by the Regional Provident Fund Commissioner, the Enforcement Officer had visited the establishment of the Sixth to Ninth Respondents on 20.12.2023/22/12/2023 and met with all the Respondents, who are the proprietor of the establishments. Despite repeated requests made by the Enforcement Officers, the Respondents neither co-operated nor produced all the relevant records to verify the exact number of employees engaged by them, (i.e) the number of eligible employees and their names and other identifying details like Aadhaar, Date of Birth and address.



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10. I submit that the Enforcement Officer had also contacted Shri. Kumari Mannan, the Commissioner of the Nelliylam Municipality and Shri. Francis Xavier, the Commissioner, Gudalur Municipality and ascertained that work orders has been given to the Sixth to Ninth Respondents, who are a contractor of both the Municipalities. Further, details of Employees/workers engaged by the contractor could not be obtained from both the Municipalities. The Enforcement Officers had obtained Balance Sheet and Profit and Loss Account from their auditor at Ooty. Based on the Balance Sheet, the Enforcement Officers of the Fifth Respondent quantified provisional dues which are enclosed as annexures.

11. I submit that on perusal of the Balance Sheet, it is clear that the substantial payment has been made towards 'Labour Wages', 'Labour Welfare Expenses', 'Subcontract expenses' and 'Staff salary and Bonus' from 2019-20 to 2022-23, and for the period from April 2023 to December 2023, the work order details obtained from both the Municipalities has been considered.

a) A provisional dues statement (EPF Contribution) payable by M/s. PadariRayin, the Sixth Respondent (Code No. CBCBE 2925384) has been worked out and attached as Annexure – 1

Assumptions for preparing the dues are as follows:-

For the period from 2019-20 to 2022-23

Labour Wages	-	Entire amount taken as such.
Labour Welfare Expenses	-	Entire amount taken as such.
Subcontract Expenses	-	25% of Sub contract expenses as per CPWD Norms (Since type of work is not mentioned.
Staff salary and Bonus	-	Entire amount taken as such. (Since bifurcation of salary and Bonus not provided)



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For the period from April 2023 to December 2023

The work order amount details furnished by the Commissioner, Nelliyalam, Gudalur Municipalities.

Provided dues quantified **Rs. 1,39,33,846/-**.

b) A provisional dues statement (EPF Contribution) payable by M/s. Rasheed Pathari Rayin, (Code No. CBCBE 2920261) has been worked out and attached as Annexure – 2

Assumptions for preparing the dues are as follows:-

For the period from 2019-20 to 2022-23

Labour Wages - Entire amount taken as such.

Labour Welfare Expenses - Entire amount taken as such.

For the period from April 2023 to December 2023

The work order amount details furnished by the Commissioner, Nelliyalam, Gudalur Municipalities.

Provided dues quantified **Rs. 5,85,806/-**.

c) A provisional dues statement (EPF Contribution) payable by M/s. Padari Saleem (Code No. CBCBE 2923292) has been worked out and attached as Annexure – 3

Assumptions for preparing the dues are as follows:-

For the period from 2019-20 to 2022-23

Labour Wages - Entire amount taken as such.

Labour Welfare Expenses - Entire amount taken as such.

For the period from April 2023 to December 2023

The work order amount details furnished by the Commissioner, Nelliyalam, Gudalur Municipalities.

Provided dues quantified **Rs. 40,64,334/-**



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d) A provisional dues statement (EPF Contribution) payable by M/s. Ashraf Pathari Hamsa (Code No. CBCBE 2925378) has been worked out and attached as Annexure – 4.

Assumptions for preparing the dues are as follows:-

For the period from 2019-20 to 2022-23

Labour Wages - Entire amount taken as such.

Labour Welfare Expenses - Entire amount taken as such.

For the period from April 2023 to December 2023

The work order amount details furnished by the Commissioner, Nelliyalam, Gudalur Municipalities.

Provided dues quantified **Rs. 25,50,150/-**.

12. I submit that Enforcement Officers submitted the report before the Fifth Respondent that the Sixth to Ninth Respondents (employers) herein are not co-operating and avoiding production of records. They committed default in payment of EPF contribution for their Employees/Workers despite being legally obliged to pay the same, the Enforcement Officers have recommended to initiate an inquiry under Section 7A of the EPF & MP Act, 1952 against the Sixth to Ninth Respondents and the Commissioners of the Municipalities also to be summoned under Section 7A by the Authority for determining the dues payable.

In response, the Fourth Respondent has filed affidavit dated 09.01.2024, which reads as follows:-

3. It is submitted that the impleaded Respondents, who are the successful bidders in the contracts had been issued the work orders for the respective works on 13.01.2023 itself. Pursuant to the same, by the time, the present Writ Petition was taken up hearing and interim orders of stay of the 7 works was passed on 02.03.2023, they had completed a substantial portion of the



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work in the region of 70% to 85% of the works. All the said works were stopped pursuant to the interim orders granted by this Honourable Court. It is understood that some of the works are completed, subject to spot verification.

4. I further submit that the said works have all been stopped 'as is where is' and none of the said contractors have been given any payments relating to the said works.

5. I submit that, in order to ensure the compliance with the EPF requirements, the said contractors who had not submitted the EPF registration earlier will be paid the Bills for the works carried out by them only on the production of the proof that they have remitted the Dues to the EPF Organisation. Till such time as they produce the proof of the payment of the EPF contributions, the said Bills will not be released to them.

6. In addition to the same, the contractors have to ensure that they complete the entire works as per the Work Orders that have been issued to them in full and get the same certified by the Work Inspector, and the bills will be thereafter released to them on the production of the proof of remittance of the EPF contributions.

6. In view of the aforesaid submissions made by the Fourth and Fifth Respondents *viz-a-viz* the contentions raised by the Petitioner, it shall be the obligation of the Fourth Respondent to ensure that the Sixth to Ninth Respondents comply with the requirements of EPF Act by remitting the dues



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and in the event of their failure, the Fourth Respondent as Principal Employer in terms of Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, read with Rules 71 and 72 of the Tamil Nadu Contract Labour (Regulation and Abolition) Rules, 1975, to identify the contractual workers, who had been engaged through the Sixth to Ninth Respondents and ensure that the exact amount towards contribution for provident fund in respect of each of them is promptly remitted so that they are not deprived or delayed of their legitimate entitlements under the social welfare legislation. It is needless to add here that the Fourth Respondent, after carrying out the said exercise, is not precluded from taking appropriate action against the Sixth to Ninth Respondents for recovering the provident fund dues in the manner recognized by law.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

09.01.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

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To

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P.D. AUDIKESAVALU, J.

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