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W.P.No.8447 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.08.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.8447 of 2024 and
W.M.P.Nos.9406 & 9407 of 2024

M/s.GMMCO Limited,
6, G.S.T.Road,
Chennai 600 016
Rep by Deputy Divisional Manager - Legal

... Petitioner

Vs.

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

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in proceedings No.TB/TAM/RO/CC.I/7B Review/TBTAM 0019698000/Int_Ord/2024, quash the order dated 14.02.2024 and direct the respondent to confine the proceedings to the issues involved in the order under Section 7A of EPF Act dated 21.02.2014 in proceeding No. TB/TAM/RO/19698/Enf/T-2/2014 and 09.07.2021 in proceedings



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No.TN/RO/TBM/ENF/CC-1/T-3/19698/2021.

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For Petitioner : Mr.G.Anand Gopalan for
M/s.Agam Legal

For Respondent : Mr.R.Thirunavukarasu,
Standing Counsel

ORDER

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in proceedings No.TB/TAM/RO/CC.I/7B Review/TBTAM 0019698000/Int_Ord/2024, quash the order dated 14.02.2024 and direct the respondent to confine the proceedings to the issues involved in the order under Section 7A of EPF Act dated 21.02.2014 in proceeding No. TB/TAM/RO/19698/Enf/T-2/2014 and 09.07.2021 in proceedings No.TN/RO/TBM/ENF/CC-1/T-3/19698/2021.

2. Heard Mr.G.Anand Gopalan, learned counsel for the petitioner, Mr.R.Thirunavukarasu, learned Standing Counsel for the respondent and perused the materials available on record.



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3. The case of the petitioner is that through the impugned order the respondent has passed an order requiring the petitioner to produce certain additional materials like books of accounts including the contractual employees engaged by the petitioner establishment during the 7B review period. For the sake of clarity, the operative portion of the order dated 14.02.2024 is extracted hereunder:

"33. In my considered opinion, the establishment is required to produce all the books of accounts including the contractual employees engaged by the establishment during the 7B review period, to complete the 7B proceedings and to allow the department to report the dues in respect of all the employees, otherwise the purpose and objective of the EPF & MP Act, 1952 will be defeated."

4. The learned counsel for the petitioner submitted that a review application was filed by the petitioner under Section 7B of the Employees' Provident Funds and Miscellaneous Provisions Act by challenging the orders of the respondent passed under Section 7A dated



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21.02.2014. It is further submitted that in the review application filed by the petitioner, the respondent cannot attempt to cull out any new facts and extend the matter beyond the scope of the orders passed under 7A of the Act.

5. However, the learned Standing Counsel for the respondent submitted that the respondent has got wide power under Section 7B of the Act and it is always open to the respondent to call for the additional details / additional documents and hence, the impugned order does not suffer from any illegality. The learned Standing Counsel attracted the attention of this Court to paragraph Nos.22 and 23 of the counter, wherein, it is stated as under:

"22. It is submitted that Section 7B is an enabling provision in the Act which is in place for the reason that any discovery of new and important matters and evidence which after the exercise of due diligence was not within the knowledge of authority or could not be produced by the employer at the time the order was made only can be considered and thus the respondent cannot be said to enlarge the scope of inquiry. The respondent is very well



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within his powers to call for any records which were not made available to him when the 7A order was made.

23. With regard to the averments in para 11 and 12, it is submitted that the respondent has passed an interim order dated 14.02.2024 directing that the petitioner shall produce the records in respect of all the employees, including the employees engaged by or through the contractors, to the department within fifteen days of receipt of the order, so that the department can verify the compliance status of all categories employees including those engaged by or through the contractors, on the eligible wages and accordingly, submit its report to the Inquiry Officer; for smooth conduct of the enquiry on the review applications submitted by the employer and issue a final order. The interim order does not prejudice the petitioner rights as such and the order of the respondent is very much in order and will pass the scrutiny of law."

6. Before proceeding to the merits of the matter, it is appropriate to understand the scope of 7B review under Section 7B of the Employees' Provident Funds and Miscellaneous Provisions Act. Any person who is



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aggrieved by an order made under Section 7A, but from which no appeal has been preferred, after discovery of any new and important matter or evidence after due diligence was omitted to be noticed, can take advantage of the above provision and set right the same by filing review application under Section 7B of the Act. For the sake of better understanding, the said provision is extracted hereunder:

"7-B. Review of orders passed under Section 7-A:

(1) Any person aggrieved by an order made under sub-section (1) of Section 7-A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order:

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground."



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7. The above proviso would entitle the petitioner or the respondent to exercise *suo moto* power to review his own order passed under Section 7A of the Act. Admittedly, the present review petition has been filed by the petitioner on the ground that an important legal position was omitted to be considered by the appropriate authority while passing the order under Section 7A. The respondent has passed the impugned order calling upon the petitioner to produce certain additional details on the premise that he has power even without the request from the petitioner to call upon additional details.

8. If 7B review has been *suo moto* taken up by the respondent authority, calling upon the petitioner to produce any additional details or documents is understandable. It is the petitioner who had come out with the review application and in that context, the respondent cannot at the best, review his own order and the materials already produced without making any further fishing exercise of calling upon the petitioner to produce additional details.



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9. In case the petitioner did not file any review application, then the orders already passed by the respondent would stand as such without any improvement. So the very object of the petitioner filing review application is expecting an order of confirmation / modification etc. The order requiring the petitioner to produce additional documents, when the petitioner himself has not raised any grounds on facts, but only on law, would only amount to redoing the very same exercise which was done by the respondent under Section 7A of the Act. Once 7A proceeding are over, the power of review of respondent is either by reversing the order in view of any apparent error or confirm the order already passed and to allow the petitioner to file an appeal in the event of the respondent not finding any change in the order already passed under Section 7-A of the Act. Since the review has not been taken *suo moto* exercise of power by the respondent, but at the instance of the petitioner, it is not right on the part of the respondent to cull out an additional details in the name of Sec 7B powers.



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10. In view of the above reason, this Writ Petition is allowed and the impugned order in proceedings No.TB/TAM/RO/CC.I/7B Review/TBTAM 0019698000/Int_Ord/2024 dated 14.02.2024 is set aside. The respondent is directed to dispose the review application and pass appropriate orders as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
gsk

27.08.2024

To

The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organisation,
Regional Office Tambaram,
3, Rajaji Salai,
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R.N.MANJULA, J.

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