



W.P.No.26406 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	8/12/2023
Delivered on	7/6/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.26406 of 2014

a n d

M.P.No.1 of 2014

Y. Udayashankar

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Petitioner

Vs

1. The Authorized Officer

Employees Provident Fund Organisation

Ministry of Labour and Employment

Regional Officer

37 Royapettah High Road

Chennai 600 014.

2. The Recovery Officer

Employees Provident Fund Organisation

Ministry of Labour and Employment

Regional Officer

37 Royapettah High Road

Chennai 600 014.

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Respondents

Prayer: Petition filed under Article 226 of the Constitution of India

for the issuance of a writ of certiorari to call for the records of the



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Proceedings in EPFCP 1 No.TN/CHN/Recy/CPI/TN/50726/Regl.2014

dated 16/9/2014 on the file of the second respondent and quash the same.

For petitioner ... Ms.Gopika Nambiar
for M/s.Govind Chandrasekar

For respondents ... Mr.T.R.Sundaram

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ORDER

This writ petition is filed seeking to quash the order dated 16/9/2014, passed in EPFCP 1 No.TN/CHN/Recy/CPI/TN/50726/Regl.2014 by the second respondent.

2. M/s.Exceed Technologies Pvt Ltd., was formed in the year 2004 to cater the growing demand for computer software and peripherals. In the year 2010, Mr.Davamani, Director of the said Company, resigned from Directorship, thereby, the petitioner was inducted as one of the Directors of the Company. However, his association with the Company was ceased in the year 2011. On 29/4/2014 and 3/6/2014, notices were given by the second respondent/ in favour of M/s. Exceed Technologies Private Limited, demanding to pay an amount of Rs.3,20,737/-.



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3. On 10/9/2014, petitioner has received a telephonic call from the second respondent/Recovery Officer of EPF Organisation to furnish the details regarding M/s. Exceed Technologies Private Limited as the previous notices issued could not have been served on the said Company. The petitioner has submitted the information as sought for by the second respondent. On 16/9/2014, second respondent has issued 'notice of demand to the defaulter' to the petitioner.

4. It is submitted by the petitioner that impugned notice dated 16/9/2014 is defective as the petitioner is an Ex-Director, and issuance of such notice is violative of Articles 14 and 21 of the Constitution of India and that the petitioner is running a risk of attachment of his movables and immovable properties by the respondents and thereby sought for the relief stated supra.

5. The Regional PF Commissioner – II, Employees' PF Organisation filed a counter affidavit stating that Exceed Technologies Private Limited was covered under EPF & MP Act, 1952 as per Code No.TN/50726. The said Company was required to pay the contribution to the respondents



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within 15 days of the close of every wage month. M/s. Exceed Technologies Private Limited has paid dues of EPF belatedly for the period 2007 - 2008, thereby, the said Company is liable to pay interest under 7 Q of the Act and damages under 14 B of the Act. An amount of Rs.2,40,200/- was levied as damages whereas Rs.80,537/- was levied as interest as per the Proceeding dated 21/8/2014 and the same has to be paid within fifteen days of the receipt of the order. However, the said Company has failed to pay the said amount. On account of failure of Exceed Technologies Private Limited, the Authorised Officer in exercise of his powers conferred under 8 B of the Act, issued a certificate to the Recovery Officer, specifying the amount payable by the Exceed Technologies Private Limited. The Recovery Officer, in turn issued certificate of proceeding which is a notice of demand to the defaulter to the said Company. However, the said demand notice returned unserved.

6. It is further mentioned in the counter affidavit that the respondents came to know that the petitioner Y.Udayashankar was looking after the affairs of the Exceed Technologies Private Limited in the capacity as a Director, thereby, notice of demand was sent to the petitioner. As per the data, the petitioner was allocated DIN (Directors' Identification



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No.02101521). It is further mentioned that as per Section 2 (e) (ii) of the EPF Act, the person who has the ultimate control over the affairs of the Establishment is the employer and the petitioner who was appointed as the Director of the Company was earlier appointed as Finance Manager, thereby, he is well aware of the Provident Fund dues. It is further stated in the counter affidavit that instead of explaining the status in the said Company to the Recovery Officer, the petitioner has approached this Court prematurely.

7. Heard Ms.Gopika Nambiar, learned counsel for the petitioner and Mr.T.R.Sundaram, learned counsel for the respondents.

8. Notices, dated 29/4/2014 and 3/6/2014 issued by the first and second respondents respectively were added to Exceed Technologies Private Limited. However, the impugned demand notice dated 16/9/2014 is addressed to the petitioner/Y.Udayashankar. It is to be noted that as on the date of issuance of notice, the petitioner was no more a Director. It is specifically mentioned by the petitioner that he has become the Director of the petitioner Company in the year 2010 and ceased to be the Director in the year 2011. However, while contradicting the same, the



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respondents 1 and 2 in their counter affidavit have mentioned that as per the record, the name of the petitioner was shown as Director with DIN No.02101521.

9. It is surprising to note that in the impugned demand notice, the petitioner Udayashankar is shown as ex-Director of Exceed Technologies Private Limited. That means, even as on the date of issuance of demand notice, respondents 1 and 2 are aware of the fact that the petitioner was no more a Director of Exceed Technologies Private Limited. Once, he is no more a Director of Exceed Technologies Private Limited, respondents 1 and 2 should not have issued show cause notice to the petitioner to pay Rs.3,20,737/-.

10. Even if the petitioner is a Director, still respondents 1 and 2 are expected to make out a case that the petitioner is incharge and has been attending day-to-day activities of Exceed Technologies Private Limited. There could be number of Directors in Exceed Technologies Private Limited. All the Directors are not liable to answer to the demand of the respondent. The only Director who is connected to the day-to-day activities alone is liable to answer the demand notices. The respondents



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1 and 2 have failed to place any material that the petitioner is a Director and that he has been taking care of day-to-day activities of Exceed Technologies Private Limited.

11. Further, the petitioner has joined Exceed Technologies Private Limited in the year 2010 and ceased to be the Director in the year 2011. The petitioner's statement of joining as Director in the year 2010, after resignation of Mr.Davamani has not been disputed by the respondents. Therefore, as on the date of alleged belated payments by Exceed Technologies Private Limited, the petitioner was nothing to do with Exceed Technologies Private Limited as he became the Director only in the year 2010, i.e., two years subsequent to belated payments.

12. In view of the above, this Court is of the view that the impugned notices issued in favour of the petitioner are irregular and thereby, the relief sought for by the petitioner can be granted.

13. In the result, this writ petition is allowed and the impugned order

dated 16/9/2014, passed in EPFCP 1



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No.TN/CHN/Recy/CPI/TN/50726/Regl.2014 is hereby quashed. No costs. Consequently, the connected Miscellaneous Petition is closed.

7/6/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
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