



WP(MD)No.6903 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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and

WMP(MD)Nos.5448, 5449, 5550 of 2017 and 5729 of 2022

M/s.Kizhakkedathu Cashew Industries
Bhagavathioorkonam,
Tholady, Melapalai,
Kanyakumari District
through its Proprietor

...Petitioner

Vs

1.The Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Regional Office, Water Tank Road,
Nagercoil – 629 001,
Kanyakumari District.

2.The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Regional Office, Water Tank Road,
Nagercoil – 629 001,
Kanyakumari District.

3.The Manager,
Canara Bank,
Kottarakkara Branch,
Kollam District,
Kerala.

...Respondents



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PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records from the file of the 2nd respondent herein in No.TN/NGL/7932/14B/3/PDC(3)/2016, dated 26.04.2016 and in No.TN/NGL/7932/7Q/3/PDC(3)/2016, dated 26.04.2016 issued to the erstwhile company M/s.Sree Vinayaga Cahsew Company and consequent recovery order issued to the 3rd respondent in No.TN/NGL/7932/PDC/8F/2017 dated 28.03.2017 against the petitioner concern and to quash the same and also direct the 2nd respondent to provide an opportunity to the petitioner by way of conducting a fresh enquiry and to decide the matter on merits and also to direct the 3rd respondent to operate the Bank Account of the petitioner.

For Petitioner : Mr.C.Karthikeyan

For Respondent : Mr.J.S.Murali

Nos.1 & 2 Standing Counsel

ORDER

The petitioner a cashew nut company has challenged the orders passed by the EPF authority under Section 14-B, Section 7-Q and Section 8-F of the Act that the Employees Provident Fund and Miscellaneous Provident Funds Act [herein after shall be referred to as 'the Act'] that the petitioner has purchased a company viz., Sree Vinayaga



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Cashew Company on 20.05.2015. For the liabilities of the said company towards the EPF contribution for the period from February 1999 to December 2014, an enquiry was conducted by the EPF authority under Section 14-B of the Act by issuing show cause notice to the Vinayaga Cashew Company on 04.02.2016 and an order has been passed on 26.04.2016 as against the said company. Thereafter based on the order passed on 26.04.2016, the respondents have initiated proceedings under Section 8-F of the Act and passed an order dated 28.03.2017 as against the present company. Therefore, the petitioner has approached this Court

2.The learned Counsel for the respondent EPF authority submits that notice was issued to the company, where it was functioning, sufficient opportunity was provided and only thereafter the order under Section 14-B of the Act was passed on 26.04.2016. He also submits that before initiating the proceedings under Section 8-F of the Act, they have issued notice to the petitioner / new owner about the liability, on 22.02.2017. Even then the petitioner has not taken any steps either to file an application before the EPF authority or to file an appeal as against the order dated 26.04.2016. Therefore, they have proceeded under



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Section 8F of the Act, based on the order dated 26.04.2016 and passed the order dated 28.03.2017.

3.This Court considered the rival submissions and perused the materials placed on record.

4.The writ petition is filed as against the orders passed by the EPF authority under Section 14-B, Section 7-Q and Section 8-F of the Act. It appears that the proceedings under Sections 14-B of the Act was initiated as against the previous management Sree Vinayaga Cashew Company by issuing notice on 04.02.2016 by fixing a date of enquiry. There was no representation on behalf of the said company in the enquiry. Therefore enquiry was adjourned to 14.03.2016 and 04.04.2016. Thereafter the order levying damages under Section 14-B of the Act has been passed on 26.04.2016 and a separate order has also been passed under Section 7-Q of the Act levying interest. Admittedly the petitioner had purchased this property from one Vinayaga Cashew Company on 20.05.2015. The grievance of the petitioner is that he was not aware of the proceedings initiated by the respondents as against the previous



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management and therefore, they could not participate in the enquiry.

Based on the ex-parte order passed as against the previous company, the proceedings under Section 8-F of the Act has been initiated as against the petitioner company. Considering the peculiar circumstances of this case and that the petitioner was not provided with an opportunity in the earlier proceedings under Section 14-B of the Act, this Court is inclined to set aside the impugned orders and remit the matter for fresh consideration by the EPF authority by providing an opportunity of hearing to the petitioner/ new management. ***The petitioner shall appear before the respondent along with all required documents on 26.11.2024 without expecting a separate notice from the EPF authority.*** The respondents shall also provide sufficient opportunity to the petitioner and decide the liability in the light of the decision of the the Hon'ble Full Bench of this Court in ***Sun Pressing (P) Ltd represented by its the Managing Director, SIDCO Industrial Estate, Madurai Vs. The Presiding Officer Employees' Provident Fund Appellate Tribunal, Delhi*** reported in ***2024-1-Writ.L.R.801***.



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5.The writ petition is disposed of in the above terms. No costs.

Consequently connected miscellaneous petitions are closed.

23.10.2024

Internet : Yes / No

Index : Yes / No

DSK

To

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B.PUGALENDHI.J.,

DSK

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