BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.4121 of 2021 and
WMP(MD)Nos.3322 and 3323 of 2021

M.Abdul Wahab ...Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Marketing Corporation (TASMAC),
CMDA Tower -II,
Gandhi Irwin Road,
Egmore, Chennai – 8.

2.The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Ambasamudram Road,
Munneerpallam,
Tirunelveli District. ...Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Na.Ka.No.D4/28907/16, dated 04.02.2021 and quash the same as illegal.

For Petitioner : Mr.M.E.Ilango
for M/s.Ajmal Associates

For Respondent : Mr.Sivanesan

ORDER

The petitioner a contractor, who has transported the boxes to the respondent retail shops from the godown has filed this writ petition as against the memo issued by the 2nd respondent dated 04.02.2021. By this notice, the respondent management has directed the petitioner to remit a sum of Rs.9,91,204/- towards the employees provident fund contribution and Rs.18,89,774/- towards the interest and damages.

2.The main contention of the petitioner is that the petitioner has transported the boxes from the godown to the retail shops. They have not engaged any labourers, however, they have used the labourers who were available in the premises. There is no privity of contract between the petitioner and the labourers.

3.According to the learned counsel, the EPF Authority has initiated proceedings under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act [in short EPF Act] as against the TASMAC management and has also arrived at the quantum of amount which has to be paid towards the EPF contribution. The TASMAC management has also challenged this order passed under Section 7A of the EPF Act before the EPF appellate tribunal. While so, the management has now issued this memo calling upon this petitioner contractor to pay the EPF contribution, which has been claimed by the EPF authority, from this petitioner, one of the contractors, who has transported the boxes to the retails shops. According to him, apart from this petitioner, there were several other contractors, who were engaged by the TASMAC management for transportation of goods and the employees for whom the contribution is claimed, have worked for other contractors also. The petitioner has obtained this contract only for transportation of boxes from the year 2003 to 2006 and for this period, the notice was given on 04.02.2021, claiming EPF contribution. According to him there is no specific terms and conditions in the contract between the petitioner and the management. Therefore, without any specific clause in the contract, the management is not justified in claiming this contribution for the labours (loadman), from this petitioner contractor for the year 2006 that too in the year 2021. The learned counsel has also relied on the judgment of this court in WP.Nos.24409 of 2010, etc., batch dated 17.02.2011 in support of his contention.

5.The learned counsel appearing for the TASMAC by referring to clause 20 of the contract submits that the petitioner contractor is liable to pay the insurance for all the workmen and other employees engaged in the execution of the transportation order. Therefore, according to the learned counsel, there is implied mandate on the part of the contractor to pay the EPF contribution also for those who have engaged in the execution of the transportation order.

6.The learned counsel has also relied on Section 8A of the EPF Act and submits that in respect of an employee employed by or through a contractor, the EPF contribution may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor, under any contract or as a debt payable by the contractor. Therefore, according to the learned counsel, even when there is no specific clause in the contract, the management is entitled to recover this amount of contribution from those contractors, who have engaged the services of the loadman.

7.This court has considered the rival submissions made and also perused the materials placed on record.

8.The petitioner contractor has transported goods from the main godown to the various retails shops of the respondent TASMAC and this contract period was over in the year 2006 itself. Though Section 8A of the EPF Act enables the management to recover EPF contribution from the contractor, the circular has also been issued only on 23.06.2010. Therefore, this court is not inclined to accept the contention of the management that clause 20 of the contract is an implied one for the liability under the EPF Act. This circular was issued by the TASMAC for the recovery of EPF contribution and it was also challenged by some of the contractors in WP(MD)No.24409 of 2010, etc., batch and this court by order dated 17.02.2011 has dismissed those writ petitions by not interfering with the circular.

> "*6.In this context it is necessary to point out that TASMAC itself moved this court in WP.No.8659 of 2008 challenging the notice issued by the Provident Fund Department dated 29.02.2008. In that writ petition, they*

have made three contractors as party respondents. This court dismissed the said writ petition by citing Regulation 30 of the Employees Provident Fund Scheme, 1952 to the effect that even liability arising out of employees engaged through contract vests with the principal employer. Therefore, there is no scope for interfering with impugned notice. When once the stand of the respondent TASMAC is that the loading and unloading workers are not engaged by them, safeguard need be made insisting their respective contractors to get themselves registered under the Provident Fund Act as a separate employer, for the purpose of contributing the amounts towards EPF, in respect of Labour engaged by them.

9.Admittedly this circular has been issued only in the year 2010. In this case, the period of contract was from the year 2003 to 2006. There are no explicit terms and conditions in the contract. Moreover, the EPF contribution has been fixed under Section 7A of the EPF Act by the EPF Authority as against the management on 13.07.2007. The management has also filed an appeal before the EPF appellate tribunal and the same is pending before the appellate tribunal.

10.For the period of contract in the year 2003 to 2006, the memo has been issued claiming EPF contribution only in the year 2021. The contractor has been made liable by way of a circular in the year 2010. Even after that the management has not made any claim. On the ground of laches, this court is inclined to set aside the impugned order and accordingly, this writ petition is allowed. The impugned order is set aside. No costs. Consequently connected miscellaneous petitions are closed.

04.11.2025

DSK

To

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B.PUGALENDHI.J.,

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