



W.P.(MD) No.31083 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.31083 of 2024

and

W.M.P.(MD) Nos.26084, 26086 and 26088 of 2024

M/s.R.R.Infraa Construction,
Rep., by its Partner,
R.Murugaperumal,
Old No.4-C, New No.2,
Visalatchipuram,
Madurai-625 014.

... Petitioner

Vs.

1.The Regional Provident Fund Commissioner-I,
Regional Office,
Employees Provident Fund Organization,
1, Lady Doak College Road, Bhavishya Nidhi Bhavan,
Chokkikulam, Madurai-625 002.

2.The Enforcement Officer,
Employees Provident Fund Office,
Regional Office,
1, Lady Doak College Road,
Bhavishya Nidhi Bhavan,
Chokkikulam, Madurai-625 002.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the 1st respondent in No. TN/RO/MD/MDU/1544567/M-4/7A Inquiry/2024 dated 15.10.2024 and quash the same as illegal and consequently forbear the 1st respondent from proceeding further with the inquiry without impleading the sub-contractors as parties for the year 2014-2020 and summon them for the purpose of the enquiry in No.TN/RO/MD/MDU/1544567/ENF/M-4/7A-INQUIRY/2024 under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and pass order for fresh inspection Part-II.

For Petitioner : Mr.M.Kannan

For R1 : Mr.John Xavier

ORDER

Respondent No.1 initiated proceedings against the petitioner by issuing a notice under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the Act 1952”) and accordingly, the petitioner participated in the proceedings and because of certain disputes that arose during the course of enquiry, the petitioner approached this Court on an early occasion by filing W.P.(MD) No.



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13950 of 2022 and the proceedings under Section 7A of the Act 1952 remain stayed during the pendency of the said writ petition. The said writ petition was finally disposed of by order dated 26.04.2023 and thereafter, the proceedings under Section 7A of the Act 1952 again commenced. While so, the petitioner herein submitted an application seeking to implead some of the sub-contractors to whom the petitioner has entrusted a part of the work on sub-contract basis and who had executed the work on the ground that the Provident Fund contribution payable in respect of the said employees worked under the said sub-contractors is sought to be imposed on the petitioner and therefore, seeking to implead those sub-contractors to bring the relevant material before Respondent No.1 for proper adjudication of the matter. It is the said application that was rejected by Respondent No.1 by passing the impugned order dated 15.10.2024 on the ground that the petitioner herein, being the Principal employer, who has the responsibility to identify all such employees, is already a party to the proceedings and no useful purpose would be served by including the sub-contractors as parties to the case. It is aggrieved by the said order, the petitioner approached this Court by filing the present writ petition.



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2. A Co-ordinate Bench of this Court, while entertaining the writ petition, by order dated 10.01.2025, passed the following order:

“4.Considering the submissions made on either side, this Court is not inclined to defer the enquiry, however, the petitioner shall participate in the enquiry and provide all the informations with regard to the details of the sub-contractors, so as to enable the respondent to send notice to the sub-contractors and after receiving notice, they can also very well participate in the enquiry. Till then, the respondent is directed not to pass any final orders. After hearing the sub-contractors and completion of the enquiry, if the respondent comes to a conclusion that the petitioner is no way responsible for EPF contribution for the workers worked under the sub-contractors, appropriate orders can be passed.”

3. In spite of the above said order, no further proceedings had taken place and the respondents preferred to file counter affidavit by contesting the relief sought for in the writ petition. Accordingly, with the consent of the parties, the main writ petition is taken up for consideration and accordingly, the same is being disposed of by this order.



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4. Heard Mr.M.Kannan, learned counsel for the petitioner and Mr.John Xavier, learned counsel for the first respondent.

5. The scope of enquiry under Section 7A of the Act 1952 is wide enough and Respondent No.1 is conferred with powers of a civil Court under the Code of Civil Procedure, 1908 for trying a suit in the matters of enforcing the attendance of any person or examining any person on oath, requiring the discovery and production of documents, receiving evidence on affidavit and issuing commissions for the examination of witnesses and any such enquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code. It is in the light of the wide scope of Section 7A of the Act 1952, the petitioner filed an application to implead the sub-contractors on the ground that the petitioner is totally unaware of the employees that were engaged by the sub-contractors and the petitioner is having no particulars of all such employees and also to ascertain whether the sub-contractos would be covered by the provisions of the Act 1952 or not etc.



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6. Respondent No.1 ought to have allowed the said application either by impleading the sub-contractors as party to the proceedings or summoning them by issuing appropriate notices and gathered the relevant evidence for proper adjudication of the matter and passed final orders. But Respondent No.1, instead of exercising the said power either way, rejected the application filed by the petitioner on the ground that no useful purpose would be served, when the petitioner is already there as a party.

7. In the considered view of this Court, the said stand of Respondent No.1 is totally unsustainable. The petitioner is entitled for fullest opportunity to defend his case either by producing evidence or by calling for evidence from third parties or by impleading the third parties, who according to him are necessary for proper adjudication in the matter. Had the said sub-contractors are under the control of the petitioner, the petitioner himself should have submitted all the material. But in the instant case, the works that were entrusted to the sub-contractors were already executed long back and therefore, the sub-contractors cannot be said to be under the control of the petitioner herein. Therefore, even if the petitioner makes an attempt, the sub-



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contractors may not turn up and produce the relevant material. If any such notice is issued by Respondent No.1, the said sub-contractors are under statutory obligation to respond and in case if they fail to respond, Respondent No.1 has power under Section 7A of the Act 1952 to summon them in accordance with law.

8. The very same issue was dealt with by the Hon'ble Apex Court in the case of ***Food Corporation of India vs. Provident Fund Commissioner and others*** reported in ***(1990) 1 SCC 68***, which was rightly relied upon by the learned counsel for the petitioner, wherein the Hon'ble Apex Court held as under:

“7. The question, in our opinion, is not whether one has failed to produce evidence. The question is whether the Commissioner who is the statutory authority has exercised powers vested in him to collect the relevant evidence before determining the amount payable under the said Act.

8. It is of importance to remember that the Commissioner while conducting an inquiry under Section 7-A has the same powers as are vested in a court under the Code of Civil Procedure for trying a suit. The section reads as follows:



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“7-A Determination of moneys due from employer—(1) The Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner or any Regional Provident Fund Commissioner may, by order determine the amount due from any employer under any provision of this Act (the scheme or the Family Pension Scheme or the Insurance Scheme as the case may be) and for this purpose may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely:

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses and any such inquiry shall



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be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Penal Code, 1860.”

9. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person.”

9. Similarly, in ***Bharat Heavy Electricals Ltd. vs. Employees' State Insurance Corporation*** reported in (2008) 3 SCC 247, the Hon'ble Supreme Court has been pleased to deal with identical issue and held as under:

“Conclusion

29. Determination of the exact liability on the



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part of the contractors is necessary keeping in view the fact that they or some of them may not be under the control of the principal employer having regard to the fact that the contract has come to an end. It will bear repetition to state that the principal employers have a statutory right to recover the dues from the contractors/immediate employers.

30. It appears that the determining authority did not give an opportunity of hearing to the petitioner in regard to the names and other particulars of the contractors. The impugned judgment, therefore, cannot be sustained. It is set aside accordingly. The appeal is allowed and the matter is remitted to ESI Corporation/determination authority for considering the matter afresh. The authority shall either implead the contractors as parties and/or summon them for producing necessary records for the said purpose. In the facts and circumstances of the case, there shall be no order as to costs.”

10. The contention of the learned counsel appearing for Respondent No.1 is that the primary responsibility is on the petitioner herein to collect the



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provident fund contributions from the contractors and to remit to the Organisation in terms of Paragraph No.30 of Employees' Provident Funds Scheme, 1952. The said Paragraph No.30 reads as under:

“30. Payment of contributions .- (1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a



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contractor and also administrative charges.

Explanation: For the purposes of this paragraph the expression "administrative charges" means such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which Provident Fund Contribution are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses, fix."

11. This Court has carefully considered Paragraph No.30 of the said Scheme, but this Court is unable to agree with the contention raised by the learned counsel appearing for Respondent No.1 for the reason that the said provision deals with the contractors who supply employees to the Principal employer, but not in cases where the work itself was entrusted to the sub-contractors for the purpose of execution. Therefore, the contention of the learned counsel for Respondent No.1 does not require any further consideration.



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12. In the light of the above, the impugned order to the extent of rejecting the request of the petitioner for impleading the sub-contractors listed in the said application is quashed and Respondent No.1 is directed to either implead list of sub-contractors furnished by the petitioner as parties to Section 7A proceedings or summon them by issuing appropriate notice for furnishing information as may be required by Respondent No.1 and the petitioner.

13. The petitioner is also directed to furnish complete address and other particulars of all the sub-contractors whom he intends to implead or summon within a period of three weeks from today (18.02.2025). As the impugned proceedings under Section 7A of the Act 1952 were commenced as early as in the year 2021 and the same are pending for consideration, the petitioner is also directed to cooperate for early conclusion of the said proceedings.



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14. Accordingly, this Writ Petition stands allowed as indicated above. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.02.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR



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To

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MUMMINENI SUDHEER KUMAR, J.

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