



MADRAS HIGH COURT
Hon'ble Dr. A.D. Maria Clete, J.
WP No. 5469/2021, Dt/- 29-4-2025

M/s. Sri Sankara Vidyalaya Matriculation School

v.

Enforcement Officer, Employees Provident Fund Organisation, Chennai & Anr.

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 – Section 7A – Quashing of summons – Legality of – The petitioner's school has about 50 teaching and non-teaching employees, all covered under the EPF Scheme since 01-06-2000 – The school had engaged an independent contractor for housekeeping and security services between January 2014 and August 2018 – The said contractor was independently registered under EPF Act – The school has challenged the summons issued by the EPFO calling upon it to produce records relating to the contractor's employees – It contended by the petitioner that it is not liable for EPF dues in respect of independently covered contractor's employees and therefore the summons is without jurisdiction – Held, the Enforcement Officer had merely directed the petitioner to produce documents such as copy of agreement with the contractor, contractor EPF registration documents, records of EPF contributions, muster roll, wage register and attendance register – The scope of enquiry under section 7A includes the power to examine whether the principal employer has complied with contribution obligations towards employees engaged through contractors – Whether or not the contractor is independently covered and discharging statutory obligations is a matter of actual enquiry, which the petitioner must establish during the 7A proceedings – Even though the primary liability does not shift to the principal employer unless the contract defaults or the arrangement found sham, the defence must necessary be raised before the authority during the 7A enquiry, and cannot be a ground to stifle the enquiry itself at the threshold – **The writ petition is dismissed. Paras 8 to 13**

For Petitioner: Mr. P. Raghunathan for M/s. T.S. Gopalan & Co., Advocate.

For Respondent No. 1: Mr. A. Elangovan, Advocate.

IMPORTANT POINTS

- Summons calling upon the principal employer to produce documents such as copy of agreement with the contractor, contractor EPF registration documents, records of EPF contributions, muster roll, wage register and attendance register cannot be quashed before the enquiry is concluded.
- The scope of enquiry under section 7A includes the power to examine whether the principal employer has complied with contribution obligations towards employees engaged through contractors.
- Whether or not the contractor is independently covered and discharging statutory obligations is a matter of actual enquiry, which the petitioner must establish during the 7A proceedings.
- If a contractor is independently covered under the EPF Act, the primary liability does not shift to the principal employer unless the contractor defaults or the arrangement found sham, the defence must necessary be raised before the authority during the 7A enquiry, and cannot be a ground to stifle the enquiry itself at the threshold.

Order

A.D. Maria Clete, J. –

1. Heard.

2. The petitioner School has filed the present writ petition under Article 226 of the Constitution of India, seeking a Writ of Certiorari to quash the summons dated 18-11-2019 issued by the Employees' Provident Fund Organization (First Respondent) under section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

3. The petitioner is M/s. Sri Sankara Vidyalaya Matriculation School, a private unaided institution at Urupakkam, Chennai. It is stated that the school has about 50 teaching and non-teaching employees, all duly covered under the Employees' Provident Fund (EPF) Scheme since 01-06-2000, with contributions regularly remitted.



4. In addition to its regular staff, the school had engaged an independent contractor, Madhumitha Security and Housekeeping (Second Respondent), for housekeeping and security services between January 2014 and August 2018. The said contractor is stated to be independently registered under the EPF Act with Code No. TBTAM1566161000, and allegedly responsible for remitting EPF and ESI contributions for its own employees.

5. Challenging the summons issued by the EPFO calling upon it to produce records relating to contractor's employees, the petitioner contends that it is not liable for EPF dues in respect of independently covered contractor employees and therefore the summons is without jurisdiction.

6. Learned Counsel for the petitioner submits that the contractor being independently covered under the EPF Act, the petitioner as principal employer cannot be saddled with liability. In support of the writ petition, the petitioner placed reliance on *Breaks India Ltd. v. Regional Provident Fund Commissioner*, (2015) LLR 635, wherein it was held that if a contractor is independently covered under the EPF Act, the principal employer cannot be held liable unless there is a default or a sham arrangement. Reference was also made to *Madurai District Central Cooperative Bank Ltd. v. EPFO*, (2011) SCC OnLine Mad 1350 and *Securitas Guarding Ltd. v. EPF Appellate Tribunal*, (2011) SCC OnLine Del 4010, reinforcing the principle that where the contractor is independently covered and contributions are duly made, the principal employer cannot be fastened with liability. Hence, it was submitted that the summons dated 18-11-2019 deserves to be quashed.

7. In the counter-affidavit filed by the first respondent, it is contended that the second respondent-contractor, though allotted an independent EPF Code Number, had defaulted in remittance of contributions. It is further contended that under section 8A of the EPF Act and Paragraph 30 of the EPF Scheme, it is the statutory responsibility of the principal employer – namely, the petitioner – to ensure compliance and to pay contributions in respect of employees engaged through contractors. The first respondent asserts that the issuance of summons under section 7A is lawful, and that the independent coverage of the contractor does not absolve the principal employer from its primary obligation under the Act. The applicability of *Breaks India Ltd. v. Regional Provident Fund Commissioner*, (2015) LLR 635], relied upon by the petitioner, is specifically disputed.

8. On a perusal of the summons dated 18-11-2019, it is seen that the Enforcement Officer had merely directed the petitioner to produce documents such as Attendance Register, Wage Register, Muster Roll, copy of agreement with contractor, records of EPF contributions, and contractor's EPF registration documents.

9. It is settled law that a writ of certiorari is not maintainable against a mere show cause notice or summons unless it can be demonstrated that the authority issuing it lacks inherent jurisdiction, or that the notice is issued in flagrant violation of natural justice principles. [See *Union of India v. Kunisetty Satyanarayana*, (2006) 12 SCC 28].

10. The present summons has been issued in exercise of powers under section 7A of the EPF Act. The scope of enquiry under section 7A includes the power to examine whether the principal employer has complied with contribution obligations towards employees engaged through contractors. Whether or not the contractor is independently covered and discharging statutory obligations is a matter of factual enquiry, which the petitioner must establish during the 7A proceedings.

11. The decision relied upon by the petitioner in *Breaks India Ltd.* undoubtedly reiterates that if a contractor is independently covered under the Act, primary liability does not shift to the principal employer unless the contractor defaults or the arrangement is found to be a sham. However, that defence must necessarily be raised before the authority during the 7A enquiry, and cannot be a ground to stifle the enquiry itself at the threshold.

12. In the light of the foregoing discussion, this Court is not inclined to interfere at this premature stage when proceedings under section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are still pending. It is open to the petitioner to submit all relevant records, raise all legal and factual defences – including reliance on the judgment in *Breaks India Ltd. v. Regional Provident Fund Commissioner* – and contest the proceedings on merits before the first respondent. In the event of an adverse final order being passed, it would be open to the petitioner to avail appropriate remedies in accordance with law.

13. Accordingly, the writ petition is dismissed with a direction to the petitioner to submit a reply to the summons dated 18-11-2019 within a period of three weeks from the date of receipt of a copy of this order. Upon receipt of the reply, the first respondent shall consider the same and pass appropriate orders in accordance with law, after affording the petitioner a reasonable opportunity of hearing. No costs. Consequently, connected miscellaneous petitions are closed.



Ref: LLR

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