

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION No.16539/2022 (L-PF)

C/W

WRIT PETITION No.4449/2018 (L-PF)

IN W.P. No.16539/2022

BETWEEN:

BBMP POWRAKARMIKAR SANGHA
(FORMERLY BBMP GUTTIGE
POWRAKARMIKARA SANGHA)
REGISTERED AS A TRADE UNION
UNDER THE TRADE UNIONS ACT, 1926,
BEARING REG. NO.ALCB-2/TUC/CR-26/2010-11
NO.19, BHARAT BHAVAN, NO.35,
INFANTRY ROAD, BENGALURU – 560 001
REPRESENTED BY ITS PRESIDENT.

... PETITIONER

(BY SMT. MAITREYI KRISHNAN, ADVOCATE FOR
SMT. AVANI CHOKSHI, ADVOCATE)

AND:

1. BRUHAT BENGALURU MAHANAGARA PALIKE
HAVING ITS HEAD OFFICE AT
HUDSON CIRCLE, N.R. SQUARE,
BENGALURU – 560 002
BY ITS COMMISSIONER.
2. REGIONAL PROVIDENT FUND COMMISSIONER,
BENGALURU, BHAVISHYANIDHI BHAVAN,
NO.13, RAJA RAM MOHAN RAY ROAD,
BENGALURU – 560 025.

... RESPONDENTS

(BY SRI SANJEEV B.L., ADVOCATE FOR R-1;
SMT. SHWETHA ANAND, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE R1 TO FORTHWITH COMPLY WITH THE ORDER DATED 26.10.2017 PASSED BY THE R2 (PLACED AS ANNEXURE-A ABOVE) AND MAKE THE DEPOSIT ALONG WITH SIMPLE INTEREST AT THE RATE OF TWELVE PERCENT IN ACCORDANCE WITH SECTION 7Q OF THE EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952 AND ETC.

IN W.P. No.4449/2018

BETWEEN:

BRUHAT BENGALURU MAHANAGARA PALIKE
(BBMP),
THE OFFICE OF THE CAO,
N.R. SQUARE,
BENGALURU – 560 002,
REP. BY ITS CHIEF ACCOUNTS OFFICER.

... PETITIONER

(BY SRI PRASHANTH B.R., ADVOCATE)

AND:

REGIONAL PROVIDENT FUND COMMISSIONER
EPFO, REGIONAL OFFICE (COMPLIANCE WING)
AT NO.13, RAJA RAM MOHAN ROY ROAD,
BENGALURU – 560 025.

... RESPONDENT

(BY SMT. SHWETHA ANAND, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER OF ATTACHMENT DATED 23.01.2018 BEARING NO.KN/BNG-2A/BG/BNG/44679/66/2017-18 VIDE ANNEXURE-C PASSED BY THE RESPONDENT AUTHORITY.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED ON 16/01/2024 FOR ORDERS AND COMING FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

W.P.No.4449/2018 is preferred by the establishment assailing the order of attachment dated 23.01.2018 at Annexure – C passed by the respondent-authority.

2. W.P.No.16539/2022 is preferred by the registered Trade Union known as BBMP Powrakarmikara Sangha seeking for a direction directing respondent No.1 to comply with the order dated 26.10.2017 passed by respondent No.2 vide Annexure – A and direction to deposit along with simple interest at the rate of 12% in accordance with Section 7A of the Employers' Provident Fund & Miscellaneous Provision Act, 1952 (hereinafter referred to as "the EPF & MP Act"), for a direction to ensure the remittance that are to be made in compliance with the order dated 26.10.2017 and to be remitted in the account of Powrakarmikara Sangha, direction to respondent No.2 to lodge prosecution against 14A of the EPF & MP Act and para No.76 of the EPF Fund 1952 against respondent No.1 to comply with the aforesaid provisions for exemplary damages against respondent No.1 under Section 14B of the said Act, and for further enquiry to be conducted expeditiously in pending

dues from the year 2007 to 2011 and to ensure that the said amounts are received by the said Powrakarmikara Sangha and seek the following prayers:

"A. ISSUE an appropriate writ, order or direction directing the Respondent No.1 to forthwith comply with the order dated 26.10.2017 passed by the Respondent No.2 placed as Annexure-A above and make the deposit along with simple interest at the rate of twelve percent in accordance with Section 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

B. ISSUE an appropriate writ, order or direction to ensure that the remittances that are to be made in compliance with the order dated 26.10.2017 passed by the Respondent No.2 placed as Annexure-A above are made into the accounts of the Powrakarmikas and it is ensured that the same is received by them.

C. ISSUE an appropriate writ order or direction to the Respondent No.2 to launch prosecution under Section 14/14A of the Act of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 read with Para 76 of the Employees Provident Fund Scheme, 1952 against the Respondent No.1 for failing to

comply with the aforementioned order dated 26.10.2017.

D. ISSUE an appropriate writ order or direction to the Respondent No.2 to impose exemplary damages against the Respondent No.1 under Section 14B of the Act of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

E. ISSUE an appropriate writ, order or direction to the Respondent No.2 directing for further 7A enquiry to be expeditiously conducted into pending dues from the years 2007-2011 and ensure that the said amounts are received by the concerned powrakarmikas.

F. PASS any other orders within the facts and circumstances of the case in the interests of justice and equity, including orders regarding compensation.”

3. Facts reveal that the respondent-authority passed an order under Section 7A of the EPF & MP Act determining an amount of Rs.90,18,89,719/- on the account of provident fund, pension fund and insurance fund contribution for the period from January 2011 to July 2017. Application for review was filed by BBMP seeking to review the order passed by the respondent-authority, determining an amount of

Rs.90,18,89,719/-. The grievance of the petitioner in W.P.No.4449/2018, the BBMP is that the impugned order of attachment passed by the respondent-authority is without giving any notice of hearing nor passing an order of rejecting the review filed by the BBMP. The dispute arose when BBMP failed to provide PF pass books, account details, contribution cards to the workers and failure of contractors in remitting PF contribution, contractors withholding annual statement of the workers' account. The petitioner - union issued letter producing list of contractors, number of contract, Powrakarmikara Sangha and work orders issued to the contractors along with the order dated 09.03.2009 in KIC 2247 COM 2008 directing respondent No.1 to ensure compliance with the PF and MP Act which is under the guise that the order was passed by the authority and noting the serious non-compliance having taken place, the petitioner - union continue to pursue the authorities seeking implementation of the order with both the respondents.

4. The respondent - authority filed statement of objections to W.P.No.4449/2018, *inter alia*, contending that the

respondent-authority has followed the directives contained in the Act and Scheme and enquiry under Section 7A was initiated for assessment of dues from January 2011 and order was passed based on the reports and records were submitted, show-cause notices were issued and after hearing and affording sufficient opportunity to the establishment, the impugned order was passed. It is stated by the authority that the writ petition is not maintainable in light of the alternative efficacious remedy provided under the Act and the BBMP has to approach the Central Government Industrial Tribunal, if so aggrieved by the impugned order. It is also brought to the notice of this Court that the review petition filed by the BBMP in review was dismissed on 08.01.2018, pursuant to which, the impugned order of attachment was passed and the BBMP cannot contend that the notice of hearing nor passing an order rejecting the review filed by the petitioner was without being heard. The order passed under Section 7A has attained finality since the BBMP has not assailed the order passed under sub-Section (1) of Section 7 of the EPF & MP Act, 1952 and the application for review has also been dismissed way back in the year 2018.

5. The material on record also reveal that the BBMP was intimated about the dismissal of the review and the intimation of the orders on review was delivered on the BBMP. The order of the authority passed on 26.10.2015 has attained finality way back in the year 2017 and even assuming that, after filing of review petition in the year 2018 itself. No material is forthcoming to establish the challenge of the order before the appropriate authority against the order passed under Section 7A of the EPF & MP Act.

6. The petitioner-union in W.P.No.16539/2022 is a registered trade union namely, Powrakarmikara Sangha employed by respondent No.1-BBMP. On the complaint of the petitioner-union, the PF Commissioner issued notice to the petitioner-union to produce the details of the contractors. In reply the petitioner-union submitted communication, wherein the list of contractor and number of contract Powrakarmikas were produced along with the work orders issued to the contractors. The contents of the communication also served as the petitioner-union submission 7A enquiry against respondent

No.1 regarding gross illegality and misappropriation of funds. The petitioner-union requested the PF Commissioner to direct the BBMP to fulfill their role as principal employer and to make remittance to the workers. Thereafter, the PF Commissioner after holding enquiry directed the BBMP to pay Rs.90,18,89,719/- was determined on account of provident fund, pension fund and insurance fund contributions and administrative charges for the period from January 2011 to July 2017 as per the provisions of PF Act, 1952 and the amount determined was exclusive of interest payable under 7Q and the damages liable under Section 14F of the PF Act, while retaining the liberty to reopen the case and reassess the dues under Section 7C.

7. The order dated 26.10.2017 was passed by the authority directing an amount as stated supra to be remitted by the BBMP failing which the prosecution will be launched against the BBMP. Sections 7A of the Act states that the amount of contribution and any charges for meeting the cost of administering the funds (i.e., to say the employers contribution as well as the employees contribution in pursuance

of any scheme and employees contribution and pursuance of insurance company) and any charges for meeting the cost of administering the funds paid or payable by an employer in respect of any employee employed by or through a contractor may be recovered by such employee from the contractor either by deduction from any amount payable to the contractor under any contract or a debt payable by the contractor. Despite the same, respondent No.1 has failed to make the payment and has deliberately violated the statutory mandate imposed upon him.

8. The preamble and directive principles in vision social justice as the harsh to ensure life to be meaningful and liable with human dignity. The concept of "social justice" which the Constitution of India engrafted consists of diverse principles essential for orderly growth and development of personality of every citizens. Social justice is a dynamic device to mitigate the sufferings of workers, poor, weak, dalit, farmers and deprived section of the society and to elevate them to the level of equality to live a life with the dignity of person.

9. These workers are doing great service to the society and the union has worked for several years to ensure that all workers shall receive their dues including proper and regular wages. It is contended that respondent No.1-BBMP is the employer of Powrakarmikas and they were appointed by respondent No.1-BBMP through the contract system, despite being core and perennial employees in necessary work of the BBMP. The State Government vide order dated 26.10.2017 took decision to abolish the contract system and bring the Powrakarmikas under the direct payment system and by virtue of this decision, the sweeper across the State of Karnataka have been brought under the direct payment system, whereas, the drivers, loaders and cleaners employed on the vehicles transporting solid waste are still under contract system. The Powrakarmikas are almost entirely from Dalit Community and predominantly women. They are employed in the most scientifically backward, inhuman and primitive form of garbage-collection and street-sweeping through out the year, without weekly or national holidays or any breaks at all. They have ceaselessly protected the health of the public and continued to

do so each and every day. This has come to the cost of their own health and safety and they suffer from serious and life-shortening respiratory ailments, heart problems, back and knee problems etc.

10. Their working conditions which also include lack of access to drinking water, toilets or urinals have been shockingly deplorable for years, which was accentuated during Covid-19 Pandemic. Provided with little to, no personal protective equipment gloves and other sanitary guards, many have died or being left with severe, life-altering health complications. They have been forced to work through lockdowns and while fresh waves of the pandemic ravaged the country, despite lacking the resources and access to basic medical care for themselves. They face demeaning discrimination, including not being given water in households, being told to stand at a distance as they "smell of garbage", being spoken to rudely and so on, and they have been pushed down the social ladder to an extent that is inhuman.

11. The petitioner-union had filed applications in Covid in the nature of PIL, for protection of the rights of the Powrakarmikas and also another writ petition was filed in W.P.No.22126/2021 in regard to the failure of the State Government to revise the wages of Powrakarmikas and the same was disposed on 20.12.2021. It was brought to the attention of the BBMP that about 19,000 Powrakarmikas had been employed by the BBMP through contractors to whom passbooks, PF code numbers and details of remittals had not been given. It is further mentioned that ESI and PD Schemes were only extended to the contract Powrakarmikas from 2007, despite contractors working with BBMP since 1992. The complaint was lodged to the Regional Provident Fund Commissioner raising several issues including;

- (i) Denial in providing PF passbooks, PF account details, or contribution cards to the workers.
- (ii) Contractors failing to remit PF contribution to employees' accounts or failing to remit the entire amount mandated.

(iii) Contractors withholding the annual statement of the workers' accounts and failing to disclose the same to any worker, despite it being mandatory to do so.

(iv) A massive scam resulting in loss to the public exchequer by the nexus of the contractors and other officials. While on paper, in the work orders and agreements, a certain number of contract Powrakarmikas are stated to have been employed, only 50-70% of these workers are employed in reality, the rest being fictitious persons in whose names ghost accounts are operated for salaries and PF.

12. There is no manner of doubt that a welfare state is a protector of life and liberty its citizen. The concept of *parents patriae* recognises the state as protector of citizen as parents, particularly when citizens are not in a position to protect themselves. The preamble of the constitution and Directive principles of State Policy under Articles 38, 39 and 39A enjoins the State to take all protective measures to which a social welfare state is committed. The EPF & MP Act is a social welfare legislation intended to protect the interest of a weaker section of the society i.e., the workers employed in the

factories and other establishments who have significant contribution in economic growth of the country. The workers and other employees provide services of different kinds and ensure continuous production of goods, which are made available to the society at large. The acts of the respondent BBMP have caused financial and mental suffering to the workers who come from extremely poor and marginalized background. The failure of the respondent No.1 to comply with and implement the order dated 26.10.2017 is highly illegal, violative of public policy in contravention to the fundamental and statutory life of the poor karmikas.

13. Section 3 of the EPF & MP Act, 1952 envisages that, immediately after coming into force of this Act, it becomes applicable to an establishment there is existence of provident fund which is common to the employees employed in that establishment. An employee in any other establishment, the Central Government may by notification in official gazette direct, the provisions of the Act shall also apply to such other establishment. The meaning of employee as defined under Section 2(f) "employee" means any person who is employed for

wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, (and includes any person (i) employed by or through a contractor in or in connection with the work of the establishment (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment.

14. Section 7A envisages the diminishing of money due from the employees. Section 7G states the salary and allowances and other terms and conditions of the presiding officer. Section 7Q is the interest payable by the employer at 12% p.a. or higher rate as may be specified in the Scheme. On any amount due from him under this Act from the date on which the amount has become so due till the date of his actual payment. Section 8A provides for an appeal. Both the provisions of EPF & MP Act, Section 2(f), Section 2(9) of the Employees State insurance Act, 1948, both the enactments include contract workers within the purview of the "employee" this being so, it cannot be said that the contract workers are

not eligible to get gratuity as contended and to get the provident fund as contended by the petitioner. The order passed by the respondent-authority under Section 7A dated 26.10.2017 needs to be implemented in the present facts and circumstances of the case. Accordingly, necessary direction needs to be issued to the respondent BBMP to implement the order and pay the amount to the petitioner as held by respondent no.1 in its order dated 26.10.2017.

15. In the peculiar facts and circumstances of this case and looking into the nature and the proceedings that has been initiated by the petitioner-union against respondent no.1 and the order dated 26.10.2017 having attained finality, this Court is of the considered view W.P.No.16539/2023 needs to be allowed and W.P.No.4449/2018 to be dismissed. Accordingly, the Court pass the following:

ORDER

- (i) Writ Petition No.16539/2022 is hereby ***allowed in part.***
- (ii) W.P.No.4449/2018 is hereby ***dismissed.***
- (iii) Respondent No.1 – BBMP is directed to comply with the order dated 26.10.2017 passed by respondent No.2 and

deposit the amount along with simple interest at the rate of 12% p.a. in accordance with Section 7Q of the EPF & MP Act, 1952 to the accounts of the Powrakarmikas within a period of eight weeks from the date of receipt of a copy of this order.

**SD/-
JUDGE**

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