
(1990) 07 MAD CK 0124
In the Madras High Court
Case No : Writ Petition No. 8781/199

Madras Gymkhana Club

APPELLANT

Vs

E.S.I.C., Madras

RESPONDENT

Date of Decision : 16-07-1990

Acts Referred:

Citation : (1991) 62 FLR 198

Hon'ble Judges : S. Govindaswamy, J

Bench : Single Bench

Judgement

S. Govindaswamy, J.—The petitioner herein has filed the above writ petition to issue a writ of certiorari to quash the order of the respondent dated May 23, 1990.

2. The petitioner-Club received a show cause notice, dated September 27, 1989, pointing out that wages allegedly paid by the contractors in regard to carrying out repairs and renewals of the premises of the Club and dhobi charges should be taken into account by the Club for the purpose of payment of contribution. The petitioner-Club, by its letter dated January 16, 1990, pointed out that in so far as the Club was concerned it had made payment with regard to all its employees and that certain types of work were given to the contractors and that each of the contractors had to make his own arrangement for engagement of people to carry out the work and the Club had no knowledge of these persons or the actual members engaged by the contractors or the payments made to them. The Club also submitted that the bill of the contractors was settled on presentation and it was a consolidated amount which includes the cost of materials, labour and profit of the contractor. The Club had no details with regard to the details of payment because it could not call upon the contractors to furnish all the details. It is in these circumstances, the petitioner submitted that the liability could be determined only if the contractors concerned were impleaded and consequently filed a petition before the respondent seeking that four contractors may be impleaded so that the question whether they were covered

could be decided after giving an opportunity to all the persons concerned. The respondent, however, by the impugned order, dated May 23, 1990, rejected the said petition. It is to quash that order the petitioner has filed the above writ petition.

3. On notice from the Court Sri Ali Mohammed, learned counsel for the respondent, appears and makes representation.

4. Learned counsel for the petitioner contended that the contractors are necessary parties and that they should be impleaded and without impleading them the issue in question cannot be determined. In support of the above contention, the learned counsel for the petitioner cited a decision in Food Corporation of India v. Provident Fund Commissioner 1990 (60) FLR 15 (SC) wherein the Supreme Court held in paras 8 and 9 :

"... The Commissioner while conducting an inquiry under Sec. 7-A has the same powers as are vested in a Court under the CPC for trying a suit ... The power was given to the Commissioner to decide not abstract question 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 at all material before coming to proper conclusion. This is the legal of the Commissioner"

5. In view of the decision of the Supreme Court the respondent ought to have impleaded the contractors as parties as requested by the petitioner in order to adjudicate the matter in controversy. Learned counsel for the respondent further contended that the impugned order is sustainable but in view of the decision of the Supreme Court, this Court finds that there is justification on the part of the petitioner seeking to implead the contractors as necessary parties for adjudication of the matter in controversy. Consequently, the impugned order is set aside and the respondent-Corporation is directed to impleaded the contractors as necessary parties for adjudication of the matter in controversy and to proceed further. The writ petition is allowed. No costs.