IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 6416 of 2007 (L)

PETITIONER:

STATE BANK OF TRAVANCORE
MAIN BRANCH, M.C. ROAD, CHENGANNUR
REPRESENTED BY ITS CHIEF MANAGER.

BY ADVS.SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.ANJU P.NAIR

RESPONDENT:

RECOVERY OFFICER,
EMPLOYEES PROVIDENT FUND ORGANISATION, PATTOM PALACE
THIRUVANANTHAPURAM-695004.

R BY SMT.T.N.GIRIJA, SC,EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

WP(C).No. 6416 of 2007 (L)

APPENDIX

PETITIONER'S EXHIBITS

P1: TRUE COPY OF THE RELEVANT PART OF THE BIFR ORDER DT.27.6.02.

P2: TRUE COPY OF THE PROHIBITORY ORDER ISSUED BY THE RESPONDENT.

P3: TRUE COPY OF THE REPLY LETTER DT.17.2.07 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.

P4: TRUE COPY OF THE LETTER DT.19.2.07 SENT BY THE PETITIONER TO THE RESPONDENT.

P5: TRUE COPY OF THE LETTER ISSUED BY THE RESPONDENT DT.20.2.07 TO THE PETITIONER.

P6: TRUE COPY OF THE LETTER DT.21.2.07 SENT BY THE PETITIONER TO THE RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

K.SURENDRA MOHAN, J.

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W.P.(C).No.6416 of 2007

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Dated this the 30th day of January, 2015

<u>JUDGMENT</u>

The petitioner a statutory Banking Corporation constituted by the State Bank of India (Subsidiary Banks) has filed this writ petition aggrieved by Ext.P5 order issued by the respondent. As per Ext.P5 order, the Chief Manager of the petitioner Bank has been informed that, she would be proceeded personally for recovery of an amount of ₹1,18,10769/- (Rupees One crore eighteen lakhs ten thousand seven hundred and sixty nine only). According to the petitioner, the said notice though one issued directing the Chief Manager to show cause against the action, is unsustainable and liable to be set aside.

2. The short facts of the case are the following:

3. M/s.Aluminium Industries Ltd. (ALIND for short) was a Company that was functioning at Kundara in Kollam District. The Company had become sick and had been declared as a sick industry by the Board for Industry and Financial Reconstruction

(BIFR for short). As per Ext.P1 order, the BIFR directed recovery of the amounts due to M/s. ALIND/Kundara and to retain 5% of the amount recovered in a current account to be appropriated towards the amounts outstanding from the Company. The amounts were to be paid to a consortium of Banks that had financed the operations of the Company. The money, according to the petitioner, could be appropriated only in accordance with the orders and directions to be issued by the BIFR.

4. While so, the respondent issued Ext.P2 prohibitory order to the petitioner directing that an amount of ₹1,45,66560/- (Rupees One crore fourty five lakhs sixty six thousand five hundred and sixty only), being the amount of provident fund dues that were payable by the Company, to be paid by demand draft in favour of the respondent. Immediately, on being served with the said order, the petitioner issued Ext.P3 letter containing the details of the accounts maintained by M/s.ALIND with the branch and showing the amounts available in the said account. It is also informed by Ext.P3 that, both the accounts were frozen and that a demand draft would be issued on 19.2.2007. On

19.2.2007, the petitioner informed the respondent that the amount of ₹1.18,10,769/- (Rupees One crore eighteen lakhs ten thousand seven hundred and sixty nine only) that was available in the account of M/s.ALIND represented the recovery of 5% of the receipt of the total receipts of the Company M/s.ALIND in accordance with the directions of the BIFR. In accordance with the directions of the BIFR contained in Ext.P1 order, the said amount cannot be said to be the amount payable to the Company. Since the amount did not belong to the Company, no demand draft in question of the said amount was issued to the respondent. A demand draft for only ₹13,342/- (Rupees Thirteen thousand three hundred and fourty two only) representing the amount due to the Company alone was issued.

5. Thereupon, the respondent has issued Ext.P5 notice proposing to make the Chief Manager of the petitioner personally liable for the amount available in the account of M/s.ALIND, alleging that the refusal of the Chief Manager to issue a demand draft in respect of the said amount, amounted to collude with the defaulter. It has therefore been alleged in Ext.P5 that, the Chief

Manager has also become a defaulter. The Chief Manager has therefore be directed to show cause why action should not be initiated against her and her properties for recovery of the entire amount that is remaining due and payable by M/s.ALIND. The petitioner has submitted Ext.P6 explanation to Ext.P5 stating in detail, the circumstances under which the amount was not paid. It has also been stated that, the amount in question did not belong to the Company. That was the reason why, the same was not paid to the respondent. According to the petitioner, Ext.P5 is absolutely unsustainable and liable to be set aside.

6. According to the learned Senior Counsel Sri.T.Sethumadhavan, who appears for the petitioner, the amount of ₹1,18,10769/- (Rupees One crore eighteen lakhs ten thousand seven hundred and sixty nine only) represented recovery of 5% of the receipt of the total receipts of the Company M/s.ALIND made by the Bank, lien Bank of the consortium that had funded the Company, in accordance with the directions of the BIFR containing in Ext.P1 order. The said amount was directed to be recovered for the purpose of paying

off the amounts outstanding towards consortium of Banks from the Company. The said amount did not belong to the Company which was the defaulter. The amount could be appropriated only in accordance with further orders on directions to be issued by the BIFR. The above being the position, it cannot be said that the Chief Manager of the petitioner had wilfully disobeyed the directions of the respondent or had colluded with the defaulter, as alleged.

7. My attention is gone to the conduct of the Chief Manager in issuing Ext.P3 reply immediately on receipt of Ext.P2 prohibitory order. As per Ext.P3, she had informed the respondent of the amount that were available in the Bank account of the defaulter, M/s. ALIND. She had informed that a demand draft would be issued on 19.2.2007. Accordingly, on 19.2.2007 she has submitted Ext.P4 letter and a demand draft for ₹13,342/- (Rupees thirteen thousand three hundred and fourty two only) which amount alone belonged to the Company. Ext.P4 letter was issued along with the demand draft explaining the circumstances under which a demand draft of ₹1,18,10769/-

(Rupees One crore eighteen lakhs ten thousand seven hundred and sixty nine only) could not be issued to the respondent. Since the action of the Chief Manager was perfectly legal, it is contended that the action initiated as per Ext.P5 is without any basis.

8. A counter affidavit has been filed on behalf of the respondent. Allegations have been made by the respondent about the conduct of the Chief Manager in making the Enforcement Officer to wait, allegedly from 10AM to 5PM to receive the demand draft on 19.2.2007. It is alleged that, the stand that the account was not the account, is a subsequent creation to favour the defaulter. It is also stated that even if the amounts were made to be paid to the other Banks that constituted the consortium, provident fund dues enjoy priority in payment in view of section 11 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act for short). It has been further pointed that, no action beneficial to the interest of the petitioner has been taken by the respondent, Ext.P5 being only a show cause notice. The above being the position, it is

contended that this writ petition itself is not maintainable and liable to be dismissed.

9. Heard. Ext.P1 is the copy of the summery record of the proceedings of hearing held on 27.6.2002 of the BIFR. It has been directed in the said proceedings that 5% of all receipts could be retained by the Bank for adjustment towards their principal outstanding only. It is clear that, appropriation could be done only in accordance with the orders to be passed by the BIFR. The case of the petitioner is that, the amount of ₹1,18,10769/- (Rupees One crore eighteen lakhs ten thousand seven hundred and sixty nine only) represents the said 5% of receipts retain in accordance with the direction in Ext.P1. It is also stated that the amount would not be paid to the defaulter. But that, the same would be retained by the Bank. Since the amount has been recovered on the orders of the BIFR, the stand of the petitioner that the amount could be appropriated only in accordance with the orders of BIFR cannot be found fault with. In answer to the above contention, it is pointed out on behalf of the respondent that as per section 11 of the EPF Act the provident

fund contributions enjoy priority of paying. If so, the proper course would be adopted by the respondent is to put forward the said contention before the BIFR and obtain necessary orders for appropriation of the amount retained by the petitioner, as stated above in accordance with the direction contained in Ext.P1. Admittedly, the respondent does not obtain any such orders. Therefore, if the dues are still subsisting, it is for the respondent to obtain appropriate orders from BIFR to obtain the amount on the basis thereof.

10. With respect to the question as to whether the issue of Ext.P5 is justified or not the fact remains that immediately on receipt of Ext.P2, the Chief Manager had issued Ext.P3 letter promptly informing the respondent of the amounts available in the accounts maintained by the defaulter of the Bank. Thereafter, on instructions from the higher ups in the Bank, the petitioner had issued Ext.P4 along with a demand draft for the amount that belonged to the defaulter, according to the Bank. The respondent has not issued any other communication to the Chief Manager disputing the statement that the amount does not belong to the

defaulter or directing the Chief Manager to produce records to support her contention. The matter could also have been adjudicate by the respondent. Instead, the respondent has taken strong exemption to the stand of the Chief Manager and has issued Ext.P5 proceedings proposing to make her personally liable for the dues of the defaulter alleging that she had been colluding with the defaulter. I find no grounds to support the said presumption. This writ petition was admitted on 26.2.2007. Further proceedings on the basis of Ext.P5 has been remaining stayed pursuant to the interim order granted in this case. I noticed that the Chief Manager has already crossed the age of superannuation. Therefore, no purpose would be served by pursuing Ext.P5, at this length of time. The respondent does not appear to have taken any action to get the stay vacated, at any time during the period that this writ petition has been pending. Since there are no grounds to justify a presumption that the Chief Manager was colluding with the defaulter as alleged, no personal liability also could be attached on her. For the above reasons, Ext.P5 is quashed.

11. If the amounts due from the defaulter have still not been recovered, the respondent shall be at liberty to pursue further proceedings after obtaining necessary orders from the BIFR.

This writ petition is allowed as above.

Sd/-

K.SURENDRA MOHAN,
JUDGE.

rkc.