

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 14275 OF 2005

ORDER:

This Writ Petition is filed by M/s. Radha Theatre, represented by its Managing Partner, challenging the proceedings bearing No. AP/GNT/1565/Comp/II/KST/2004/516 and the consequential warrant of arrest issued by the 1st respondent bearing No. AP/SRO/GNT/1565/Recy.Cell/KST/District-2005 dated 16-06-2005 as illegal and arbitrary and against the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act of 1952').

The petitioner is a cinema theater carrying on its business at Guntur and it is governed by the provisions of the Act of 1952. The petitioner has been paying its contribution to the employees' provident fund regularly without fail. However, the theater is closed as the business is running in loss and, therefore, contribution could not be paid within time. The 1st respondent, by exercising power under Section 7 A of the Act of 1952, determined an amount of Rs.35,603.75 ps. towards provident fund due for the period from 07/2003 to 04/2004 and also determined interest, under Section 7 Q of the Act of 1952, amounting to Rs.1,704/-. At the time of 7 A inquiry, the petitioner stated that from 01/2003 to 06/2003, the petitioner theater was closed, only three employees were working during the said period and requested to drop the proceedings but the 1st respondent, without conducting any inquiry and without verifying the facts, passed an order on 02-06-2004.

While the matter stood thus, the 1st respondent issued show-cause notice dated 17-01-2005. Immediately, the petitioner approached the 1st respondent and requested to grant time but the 1st respondent did not oblige the request of the petitioner. While the petitioner was waiting for communication from the 1st respondent, arrest warrant dated 16-06-2005 was entrusted to the 3rd respondent which was returnable on or before 15-07-

2005. Thus, passing the order dated 02-06-2004 and issue of arrest warrant dated 16-06-2005 is against Section 8 B of the Act of 1952.

It is the specific contention of the petitioner that Section 8 B of the Act of 1952 enables the authorities to recover arrears in the modes prescribed under Section 8 of the Act. The provisions are to the effect that whether the recovery officer decides to arrears of provident fund by attachment and sale of the property, such attachment shall be against the properties of the establishment. In case, such attachment and sale is insufficient for recovery of the provident fund arrears specified in the certificate issued by the authorized officer, the recovery officer has to take such proceedings against the property of the employer for recovery of the whole or any part of such arrear. Unless and until the same is exhausted, the power to arrest the employer may not be available to the recovery officer. But, in the present case, the 1st respondent issued warrant of arrest and the procedure adopted by the 1st respondent is against the principle laid down by a Division Bench of this Court in ***M/s. Targot Pure Drugs Limited and another Vs. The Regional Provident Fund Commissioner and others***^[1]. On the strength of the above judgment, learned counsel for the petitioner prayed to allow the Writ Petition setting aside the proceedings referred above declaring the same as illegal and arbitrary.

During hearing, learned counsel for the petitioner not pressed the relief in respect of the order dated 02-06-2004. Therefore, the claim of the petitioner, to declare the proceedings bearing No. AP/GNT/1565/Comp/II/KST/2004/516 dated 02-06-2004, is rejected in view of the concession of learned counsel for the petitioner as he is not entitled.

The only question before me is whether the 1st respondent can straightaway issue warrant of arrest without exhausting the remedy of attachment and sale of the petitioner's property and the property of managing partner of the petitioner as contemplated under Section 8 B of the Act of

1952. Undisputedly, the certificate of recovery dated 02-06-2004 for recovery of provident fund due and interest thereon was issued but the petitioner did not pay the contribution even after issuance of recovery certificate. For recovery of amount covered by certificate, straightaway the 1st respondent issued warrant of arrest *vide* proceedings No. AP/SRO/GNT/1565/Recy.Cell/KST/District-2005 dated 16-06-2005 which was preceded by the show-cause notice dated 17-01-2005.

Section 8 B of the Act of 1952 deals with issue of certificate to the recovery officer and it is extracted hereunder for better appreciation:

"Where any amount is in arrear under Section 8, the authorized officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer, by one or more of the modes mentioned below:-

- (a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;*
- (b) arrest of the employer and his detention in prison;*
- (c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer."*

The issue involved in this Writ Petition is no more *res integra* and it is squarely covered by the judgment of a Division Bench of this Court in ***M/s. Targot Pure Drugs Limited*** (*supra*), wherein this Court in the last five lines of the judgment held that arrest of the employer and his detention in prison cannot at all be made in view of the proviso to Section 8 B (1) of the Act of 1952 as the petitioner did not exhaust the other remedies *i.e.* attachment and sale of the property of the firm. In the event the amount realized by attachment and sale of the property of the firm is insufficient, the recovery officer can proceed against the property of the managing partner. The principle laid down in the above judgment is directly applicable to the present

facts of the case since the procedure adopted by the 1st respondent in issuing warrant of arrest is against the principle laid down in the above judgment and proviso to Section 8 B of the Act of 1952 and the same is hereby declared as illegal and arbitrary.

Learned counsel for the petitioner submitted that the petitioner might have paid the amount covered by certificate of recovery on account of passage of 10 years time but no evidence is brought on record to accept this contention. However, the 1st respondent is entitled to recover the amount by following the procedure, if not paid.

With the above direction, the Writ Petition is allowed. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed in consequence. No order as to costs.

Date: 07th April, 2016.
MURTHY, J.

JSK

M.SATYANARAYANA

[\[1\]](#) W.A.No. 177 OF 2002