THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.1268 of 2006

ORDER:

The prohibitory order and show cause notice, dated 26.12.2005 issued by the second respondent – Recovery Officer, Employees Provident Fund Organization, SRO, Warangal, are challenged before this Court.

It is the case of the petitioner that he started cloth business under the name and style of M/s. Ch. Koteswara Rao & Co., at Gandhi Chowk, Khammam, in 1985, and due to various reasons, he closed the business in 1997-98. His establishment was covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act'). As he had closed the business in 1997-98, no contributions were paid towards the Employees' Provident Fund. However, the third respondent - Enforcement Officer, Khammam, visited the premises of his erstwhile firm and informed about the dues. He paid a sum of Rs.4,569/- for the period from 3/97 to 3/98 and the same is evident from the communication dated 28.01.2004 of the third respondent addressed to the first respondent – Assistant Provident Fund Commissioner, SRO, Warangal. It is his further case that in spite of the fact that his establishment was closed, the second respondent passed the impugned prohibitory order prohibiting the petitioner to operate the bank account with the State Bank of Hyderabad, Gandhi Chowk Branch, Khammam, until a sum of Rs.1,07,416/- towards arrears of Employees Provident Fund is paid. Further, the second respondent issued a notice bearing No.AP/WGL/Recy/Enf/ 26505/2005/, dated 26.12.2005 to the petitioner to show cause as to why he should not be committed to the civil prison. The petitioner had submitted to the third respondent the certificate issued by the Commercial Tax Department evidencing the fact that he had closed the business from the financial year 1997-98 onwards and was not doing the business since then. In the circumstances, he questioned the prohibitory order and notice, dated 26.12.2005 as arbitrary, illegal and violative of Articles 14, 21 and 300-A of the Constitution of India.

A detailed counter-affidavit is filed by the first respondent on behalf of the respondents. In the said counter-affidavit, it was categorically stated that the petitioner's shop was covered under the provisions of the Act with effect from 27.02.1996; that the petitioner failed to remit the Provident Fund contributions from 3/1998 onwards and that the third respondent visited the establishment and submitted a report stating that the petitioner was running business in the new premises constructed by him in nearby area and the name of the concern has been changed as M/s. Ch. Koteswara Rao and Sons and further requested to initiate action under Section 7A of the Act vide letter, dated 10.03.2003. It was further stated that several notices were issued calling the petitioner for enquiry under Section 7A of the Act. In spite of the same, as the petitioner had not responded, *ex parte* order, dated 03.02.2004 was passed determining that the petitioner was liable to pay a sum of Rs.74,298/- with interest of Rs.30,761/- for the period from 3/98 to 11/03, basing on the records available in the Office. It was also stated that in spite of the said orders passed, there was no payment forthcoming from the petitioner. Therefore, the impugned prohibitory order was passed and notice was issued. It was specifically stated that the petitioner attended the Office of the first respondent on 09.01.2006 and sought time and that the time was granted up to 27.01.2006. Despite the same, the petitioner filed the present Writ Petition on 24.01.2006 and obtained interim orders.

From the counter-affidavit, it is clear that the petitioner without questioning the order dated 03.02.2004, had chosen to challenge the consequential proceedings. Further, in a reply affidavit filed by the petitioner, there is no categorical denial of the allegations of the respondents particularly, with regard to the fact that notice having been issued, enquiry having been conducted and final orders having been passed on 03.02.2004. The petitioner has only harped on the fact that M/s. Ch. Koteswara Rao and Sons is a different legal entity started by his son and he is nothing to do with the same.

Having considered the above, this Court is of the view that in the absence of any challenge to the order, dated 03.02.2004, initiation of consequential proceedings by the respondents cannot be found fault with. However, this Court is unable to accept the plea of the respondent authorities that M/s. Ch. Koteswara Rao and Sons is required to be treated as M/s. Ch. Koteswara Rao & Co., because without there being any provision of law, it cannot be presumed that M/s. Ch. Koteswara Rao and Co., has transformed into M/s. Ch. Koteswara Rao & Sons. There is always a possibility that with similar names, different legal entities would exist and without there being any enquiry, liability of a concern cannot be fastened on other legal entity or concern. Except this, there is no infirmity in regard to the passing of impugned prohibitory order and issuance of impugned show cause notice.

In view of the above, leaving it open to the petitioner to challenge the order dated 03.02.2004, if he so chooses, the Writ Petition is closed. It is stated that pending disposal of the Writ Petition, the petitioner had paid a sum of Rs.40,000/-. Further amounts that may be paid by the petitioner shall be credited to his account without prejudice to his rights with respect to his challenge to the order, dated 03.02.2004.

It is the complaint of the petitioner that the respondents did not furnish material documents to him. Learned Standing Counsel for the respondents submits that necessary instructions would be issued to the authority concerned to furnish copies of the documents to the petitioner that are required by him.

Miscellaneous Petitions, if any pending in this Writ Petition, shall stand closed.

CHALLA KODANDA RAM, J

22nd DECEMBER, 2016.

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