

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.12399 of 2006

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, praying for the following relief:

“To issue an appropriate Writ order or direction more particularly one in the nature of Writ of Mandamus declaring i) that the Proc.No. AP/CP/50130/Enf/CDP/SRO/CDP/2005/2717 dt. 19-10-2005 of the respondent where under the petitioner godown was made applicable of the Employees Provident Fund and code has been given as illegal, violative of principles of natural justice and contrary to Sec. 7-A(3) of Act 1952; ii) declaring the Proc. No. AP/CP/50130/SRO/CP/Enf/KP/7A/2006/4485 dt. 28-2-2006 of the respondent where under the Food Corporation of India & AP State Warehousing Corporation CI & APSWC were directed not to release payment payable towards Handling and Transport charges to the petitioner as illegal, without jurisdiction and malafide. iii) declaring the Roc.NO. APSRO/CP/Enf/AP/50130/2000 dt. 17-4-2006 of the respondent where under the petitioner was directed not to depute her counsel Sri Dwarakanath as illegal and highly objectionable. iv) declaring the Roc.No. AP/SRO/CP/Enf/AP/50130/CDP/2006 dt. 22-5-2006 of the respondent where under it was observed Provident Fund contribution to a tune of Rs. 20,01,815/- for the petitioner from Nov. 2002 to Jan 2006 as illegal, contrary to Sec. 7-A of Act 1952 and in utter violation of principles of natural justice”.

2. Heard Sri P.Gangaiah Naidu, learned senior counsel, representing Sri N.Bharat Babu, learned counsel for the petitioner and Sri Ravindra Yanamandra, learned Standing Counsel for the Respondent and perused the material available before the Court.

3. According to the pleadings in the writ affidavit, the petitioner constructed investor godown in the name and style of M/s Ganesh Godowns (Block II) at Bugga Agraharam, Kadapa district and V.Kondaraju constructed

another godown in the name and style of M/s Ganesh Godowns (Block-I) at the same place and the said godowns were constructed in terms of tripartite agreements dated 13.9.2001 and 22.9.2001 entered among the petitioner, A.P. State Warehousing Corporation and Food Corporation of India. Petitioner constructed the said godown for the purpose of storage of food grains.

4. Initially, on 3.6.2004, the Provident Fund Enforcement Officer (CDP), Kadapa issued a notice, asking the petitioner to produce certain records mentioned therein. According to the petitioner, the said records were made available. Subsequently, vide proceedings dated 19.10.2005, the respondent authorities brought the petitioner herein under the provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act'). Thereafter, respondent herein initiated proceedings under Section 7-A of the Act and issued notice bearing No.AP/50130/Enf./III/SRO/CDP/2006/4450 dated 21.2.2006. Thereafter, by way of order under challenge dated 22.5.2006, the respondent herein assessed the liability as Rs.20,01,815/- under Section 7-A of the Act. This writ petition challenges the validity and legal sustainability of the said order passed by the respondent herein.

5. According to the learned senior counsel, representing the petitioner herein, the order under challenge is highly illegal, arbitrary, erroneous and violative of Article 14 of the Constitution of India and opposed to the very spirit and object of the Act and in violation of principles of natural justice. It is contended by the learned senior counsel that the very action on the part of the respondent authorities making the provisions of the Act applicable to the petitioner herein and fixing the liability without being preceded by any notice

and opportunity cannot be sustained in the eye of law and the said action is highly preposterous.

6. On the other hand, it is the submission of the learned Standing Counsel that there is no illegality nor there is any procedural infirmity in the impugned action and in the absence of the same, the present writ petition is not maintainable under Article 226 of the Constitution of India and the petitioner herein is not entitled any relief from this Court.

7. A perusal of the material available on record discloses that the respondent herein by way of letter dated 17.4.2006, directed the petitioner herein not to depute Sri Dwarakanath Rao, Advocate who was engaged by the petitioner herein. A perusal of the order under challenge discloses that the matter was posted to 18.4.2006 and on the said date one Mr.M.Nagaraju, Advocate appeared along with Supervisor of the petitioner herein and he sought adjournment, so as to enable him to furnish relevant material. It is further evident from the impugned order that the matter was further adjourned to 24.4.2006 and on the said date, once again a request was made by the said M.Nagaraju for adjournment, but the respondent herein declined to grant the same and passed the order under challenge, fixing liability of Rs.20,01,815/-. According to Section 7-A of the Act, it is obligatory and mandatory on the part of the authorities to afford reasonable opportunity to the employer before passing any order under Section 7-A(1) of the Act. Since the subject matter is fixation of liability and payment of amount, the respondent authority ought to have considered the request of the learned Advocate for adjournment to some other date. Having directed the employer not to depute the earlier Advocate to represent the matter, the respondent authority ought not to have rejected the request of the Advocate who was

subsequently engaged by the petitioner for postponing the case. Though, it is the submission of the learned Standing Counsel that the petitioner herein has an alternative remedy of appeal before the Tribunal, this Court, at this length of time, is not inclined to relegate the petitioner to avail the said remedy.

8. Having heard the learned counsel for the petitioner and the learned Standing Counsel for the Respondent, this Court, in the facts and circumstances of the case, deems it appropriate to remand the matter to the respondent herein for fresh consideration, in accordance with law, by setting aside the impugned order.

9. Accordingly, the writ petition is allowed, setting aside the order passed by the respondent herein vide proceedings Roc.No. AP/SRO/CP/Enf/AP/50130/ CDP/2006 dated 22.5.2006 and the matter is remitted back to the respondent herein for fresh consideration, in accordance with law, after giving notice and opportunity to all the stakeholders. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 12.7.2017

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12.7.2017

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