HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.6305 of 2007

ORDER:

Heard learned counsel for the petitioners as well as the respondents.

The present writ petition is filed declaring the action of the 2nd respondent in issuing the proceedings No.AP/RO/GNT/Rec.Cell/2015/2006, dated 06.02.2007, demanding an outstanding amount of Rs.3,36,259=60 ps + applicable recovery charges payable by M/s. Krishna District Cooperative Marketing Society Limited bearing Regn.No. H-1311 as arbitrary, illegal and violative of Article 14 of the Constitution of India and also contrary to the mandatory provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, "the Act") and the Rules framed thereunder.

It is the case of the petitioners that the 1st petitioner is a society registered on 28.01.1956 with Regn.No.H-1311 and since it suffered heavy losses, the District Collector (Cooperation), Machilipatnam, was pleased to order liquidation of the society under Section 64 of the A.P. Cooperative Societies Act and appointed the 3rd respondent – Divisional Cooperative Officer, Vijayawada, as a liquidator through his proceedings bearing Rc.No.2787/85/B, dated 27.08.1991. The liquidation proceedings are still pending. The 1st petitioner society (for short, "the society") is not having

any assets and liabilities except member share capital of Rs.1.48 lakhs. Though the society was registered on 24.06.1994, no business transactions have taken place up to the year 2003 and that since 2003 the society was supplying potatoes to the Rythu Bazar in Vijayawada duly purchasing from the wholesalers. The newly elected Managing Committee of the society conducted General Body Meeting on 02.01.2006 resolving to request the Hon'ble Minister for Cooperation, A.P. to transfer all the existing assets and liabilities of the District Cooperative Marketing Society Limited to the society which will help to take new business transactions in order to strengthen the society. In pursuance of the same, while issuing G.O.Rt.No.512, dated 20.05.2006, the agriculture and cooperation departments transferred the assets and liabilities of the society under liquidation to the 1st petitioner society.

According to the 2nd respondent, the society under liquidation was in default in making the payment of Rs.3,36,259-60 ps for a period commencing from November, 1978 to February, 1992 to the E.P.F.O. against RRC.No.801/1995 and that the 3rd respondent addressed a letter to the 2nd respondent to make correspondence with petitioner No.2 for recovery of the alleged arrears, as the assets and liabilities were transferred to the 1st petitioner society on 06.07.2006. The 2nd respondent issued notice, dated 16.01.2007, directing the 2nd petitioner to appear before him on 06.02.2007 to show cause as to why he should not be

committed to civil prison in execution of the said certificate showing an amount of Rs.3,36,220/- towards arrears. Having received the said proceedings, the petitioners have addressed a letter dated 23.01.2007, requesting the 2nd respondent to provide the details of information of provident fund dues i.e., the details of the beneficiaries and the number of persons to whom the amounts are allegedly due and in whose favour the amount is to be paid. The 2nd respondent having received the said letter, without passing any orders, issued proceedings, dated 06.02.2007 directing the 2nd petitioner to appear before him with proof of remittance with a condition on failure to comply the same action will be taken without further notice. In response to the said proceedings, dated 06.02.2007, the 2nd petitioner appeared before the 2nd respondent, who, in turn, gave time up to 20.02.2007 to clear all the alleged dues. In fact, the petitioners have categorically stated in letter dated 16.02.2007, that since the committee is insisting for details of the dues to be paid, the 2nd respondent may kindly provide the information sought and grant some more time to clear off the alleged dues.

On 20.02.2007, Sri Vijay Kumar, Advocate, appeared on behalf of the petitioners and requested the 2nd respondent to furnish the details. The 2nd respondent, without considering the submission made on behalf of the petitioners and without furnishing the information sought for, simply adjourned the matter to 17.03.2007 directing to pay the entire amount

failing which warrant of arrest will be issued without any further notice. Since 17.03.2007 was declared to be holiday, 18.03.2007 was a holiday being Sunday, 19.03.2007 was declared as public holiday on account of Ugadi and 20.03.2007 was also declared as optional holiday, the petitioners on 21.03.2007 approached the 2nd respondent to ascertain the further date of hearing of the proceedings. But, to their surprise, they came to know that the 2nd respondent, without waiting till the adjourned date i.e., 17.03.2007, issued non-bailable warrant on 16.03.2007 itself without providing an opportunity of presenting the objections, more particularly, without even furnishing the information sought by the petitioners. The said action of the 2nd respondent is nothing but a colourable exercise of power besides being arbitrary. In those circumstances, the present writ petition is filed questioning the arbitrary action of the respondents in issuing the proceedings, dated 06.02.2007.

Learned counsel appearing for the petitioners would contend that on 29.03.2007 this Court was pleased to grant interim stay of the order of arrest and detention in civil prison and in taking any coercive steps against the petitioners for the recovery of the amounts mentioned in the impugned order of the 2nd respondent on condition that the petitioners deposit Rs.3,36,259-60 ps to the credit of the 2nd respondent within seven days from the date of receipt of a copy of this order. In default of such deposit within the stipulated time, the stay

granted shall be considered as dissolved without further reference to this Court and the respondents shall be at liberty to execute the order of the 2nd respondent, dated 06.02.2007. In pursuance of the said order, the petitioners deposited a sum of Rs.3,36,259-60 ps vide demand draft bearing No.157251, dated 07.04.2007, drawn on UTI Bank Limited, Vijayawada and the same was informed to the Recovery Officer, Regional Provident Fund Commissioner, Guntur, vide letter, dated 07.04.2007.

However, learned counsel for the respondents would submit that as per Section 7A of the Act the authority concerned shall pass an order determining the monies due from the employer and the aggrieved person has to file an appeal before the appellate authority. However, in the case on hand, from the inception the petitioners are seeking information from the respondents with regard to proof of remittance. In fact, the petitioners have issued explanation, dated 16.02.2007, reply dated 17.03.2007 furnishing detailed information regarding the employees provident fund dues. But, admittedly, no orders are passed on the said explanation nor the respondents have furnished information sought by the petitioners.

Be that as it may, in pursuance of the orders passed by this Court on 29.03.2007, the petitioners have already deposited the entire demanded amount through a demand draft dated 07.04.2007. Since the amount has already

deposited, the counsel for the petitioners requested this Court to direct the respondents to furnish the information sought by the petitioners regarding the employees provident fund dues. Counsel for the respondents submitted that the information as sought by the petitioners will be furnished so as to enable the petitioners to verify and pay the employees provident fund dues if any.

In these circumstances, this Court feels that the ends of justice would meet if the petitioners are furnished with the information regarding the employees provident fund dues as mentioned in their explanation, dated 16.02.2007 and reply dated 17.03.2007.

Therefore, the writ petition is disposed of directing the 2nd respondent to furnish the information as sought by the petitioners in their explanation dated 16.02.2007 and reply dated 17.03.2007 within six weeks from the date of receipt of a copy of this order. The petitioners are directed to submit their explanation within four weeks thereafter, upon which the 2nd respondent is directed to consider the same and pass appropriate orders. No costs.

Miscellaneous petitions, if any, shall also stand disposed of.

JUSTICE P. KESHAVA RAO

Date: 15.12.2017.
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