

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

**WRIT PETITION No.1572 of 2006**

**ORDER:**

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

“... issue a writ, order or direction particularly one in the nature of writ of Mandamus declaring the impugned proceedings No.A.P./SRO/WL/ENF/WGL/19585/2005/96 in Rc.No.034 of 2005 dated 08.04.2005 and the Proc.No.A.P./WGL/Recy/Enf/19585/2005 dated 28.12.2005 as totally illegal and without jurisdiction and in violation of Article 14 of the Constitution of India and consequently set aside the same.”

Heard and perused the material available on record.

According to the petitioner, he belongs to Scheduled Caste community and he constructed a Cinema Theater, namely, Ambedkar Kala Mandir at Torrur, Warangal District. It is stated that the 1<sup>st</sup> respondent, Assistant Provident Fund Commissioner, without taking into consideration the ground realities, issued an order bearing proceedings No.AP/SRO/WGL/ENF/19585/7A ORDER/2004-05/4571, dated 21.03.2005, fixing the liability of the petitioner under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, “the Act”) at Rs.1,27,346/- for the period from November, 1997 to December 2004. Thereafter, the 1<sup>st</sup> respondent on 08.04.2005 issued a certificate under Section 8B of the Act. Subsequently, the 1<sup>st</sup> respondent issued a prohibitory order also on 13.07.2007 under Section 8F(3)(iii) of the Act and the same was followed by a show cause notice bearing

No.AP/WGL/Recy/Enf/19585/2005, dated 28.12.2005. The order, dated 08.04.2005, issued by the 1<sup>st</sup> respondent under Section 8B of the Act and the show cause notice, dated 28.12.2005, are under challenge in the present writ petition.

In the present writ petition, broadly, there are two contentions raised by the learned counsel for the petitioner. They are (1) The certificate bearing No.AP/SRO/WL/ENF/WGL/19585/2005/96, and Rc.No.034 of 2005, dated 08.04.2005, issued by the 1<sup>st</sup> respondent under Section 8B of the Act, appointing himself as a Recovery Officer, cannot be sustained, and (2) The 1<sup>st</sup> respondent is not justified in issuing the impugned show cause notice of arrest, dated 28.12.2005, under Section 8B(1)(b) of the Act straight away without resorting to other remedies available under Section 8 of the Act.

Repelling the first contention urged in the writ affidavit it is stated in paragraph 4 of the counter affidavit filed on behalf of the respondents that all the Assistant Provident Fund Commissioners are authorized by the Central Government as Authorized Officers and Recovery Officers vide notification No.796, dated 04.03.1997, as per the provisions in Sections 2(aa) and 2(kb) of the Act. The said averment is not disputed by way of filing reply. Therefore, the first contention raised by the learned counsel for the petitioner does not merit consideration and the same is accordingly rejected.

Section 8B of the Act reads as under:

“8B. Issue of certificate to the Recovery Officer:- (1) 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;

Provided that the attachment and sale of any property under this section shall first be effected against the properties of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorized officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.”

While considering the above provision of law, this Court in **Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Hyderabad vs. M/s. Deccan Foam Plastics Pvt., Ltd., Narsapur**<sup>1</sup> at paragraphs 11 and 12 held as under:

“In our considered opinion, the submission is misconceived and we are not inclined to read the provision in the manner suggested by the learned Standing counsel. Under Section 8-B of the Act even the movable and immovable properties of the employer cannot be attached and sold for the purposes of realization of the arrears without first exhausting the remedy of attaching and bringing the properties of the establishment for sale and, if that is so, it would be absurd to hold that employer can be arrested for the purpose of sending him to imprisonment

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<sup>1</sup> 2005 (1) ALT 645 (D.B.)

without even finding whether the attachment and sale of the properties of establishment for realization of the arrears is sufficient or not.

It is for that reason, this Court took the view that the 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 without exhausting the remedy of attachment and sale of properties of establishment for realization of amounts of arrears. The proviso cannot be read in isolation but is to be read along with Sec.8-B(1)(a), (b), (c) of the Act. It is no doubt true that the Punjab and Haryana High Court took the view holding that nothing in Section 8-B(1) and other provisions of the Act prevents Recovery Officer to adopt the method specified in clause (b) of Sec.8-B(1) of the Act before exhausting the other modes of recovery. Such an interpretation, in our considered opinion, causes hardship and inconvenience. It is settled rule of interpretation that no statutory provision can be read in such a manner, which results in hardship and inconvenience.”

In fact, in the counter affidavit it is stated that as per the provisions of Section 8B of the Act, there cannot be any restriction on the mode of recovery on the authorities. The said contention of the respondents, in view of the above judgment, cannot be sustained.

In view of the law laid down in the above referred judgment, the second contention of the learned counsel for the petitioner that the impugned action to the extent of resorting to the recovery by way of arrest directly without exhausting to other remedies under the said provision of law, cannot be sustained, deserves to be upheld and accepted.

For the aforesaid reasons, the writ petition is partly allowed, setting aside notice bearing No.AP/WGL/Recy/Enf/19585/2005, dated 28.12.2005. It is made clear that this order will not preclude the respondents from proceeding in

accordance with law and in the light of the observations made supra.

Miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

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**A.V.SESHA SAI, J**

Date: 20.06.2017  
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