IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

C O R A M

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.4644 of 2018
and W.M.P.No.5727 of 2018

K.Kaleeswarn
...Petitioner

Vs.

1.The Recovery Officer,
The Employees Provident Fund Organisation,
76, Bhavishya Nidhi Bhavan,
Balasundaram Road, ATT Colony,
Gopalapuram,
Coimbatore-641 018
2.The Regional Provident Fund Commissioner,
The Employees Provident Fund Organisation,
76, Bhavishya Nidhi Bhavan,
Balasundaram Road, ATT Colony,
Gopalapuram,
Coimbatore-641 018
3. The Employees Provident Fund Organisation,
represented by the Central Provident Fund
Commissioner and Chief Executive Officer,
Bhikaji Cama Place,
RK Puram, New Delhi-110022
4. The Official Liquidator,
The Office of the Official Liquidator
Corporate Bhavan, 2nd Floor,
Rajaji Salai, Chennai-600001
... Respondents

PRAYER

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the first respondent herein in TN/CBE/RECY/CC-29/PGC/2018 dated 23.02.2018, quashing the same.

For Petitioner : Mr.V.Pushpa
for M/s.Rajnish Pathiyu

For RR1 to 3 : Mr.R.Thirunavukarasu

O R D E R

The show cause notice issued by the first respondent in proceedings dated 23.02.2018 is under challenged in this writ petition.

2. The impugned show cause notice stipulates that the writ petitioner is liable to pay the amount of arrears amounting to Rs.1,20,13,408/- (towards administrative charges, penal damages and interest) and cost and charges amounting to Rs.15,000/- totaling to Rs.1,20,28,408/- (Rupees One Crore Twenty Lakhs Twenty Eight Thousand Four Hundred and Eight only) specified in certificates forwarded by the authorised officer EPFO, Coimbatore to the Recovery Officer, Coimbatore for the recovery of arrears from the writ petitioner and the interest payable under Section 7 Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for the period commencing immediately after the said date and it is proposed to execute the above certificates by arrest and imprisonment of the writ petitioner. The show cause notice further states that the writ petitioner is required to appear before the Recovery Officer on 26.02.2018 at 11.00 a.m. and show cause why the writ petitioner should not be committed to civil prison in execution of the said recovery certificates. Instead of appearing before the Recovery Officer and submitting the explanations in detail, the writ petitioner has chosen to file the present writ petition challenging the very show cause notice issued by the competent authorities under the provision of the Act.

3. The learned counsel appearing on behalf of the writ petitioner strenuously contended that the respondents have not followed the procedures as contemplated under the Act and Rules. There are various procedures contemplated for the purpose of recovery of arrears of amount and the respondents have initiated action to commit the writ petitioner to civil prison. Contrarily, the properties of the writ petitioner had already been attached by the authorities and in the event of allowing the writ petitioner to sell those properties, the petitioner will in a position to deposit the entire arrear amount with the respondents. The learned counsel for the petitioner further states that the properties already attached are valuable properties belongs to the writ petitioner and the petitioner is unable to initiate any action for selling all those properties.

4. The learned counsel for the petitioner further contended that the respondents ought to have proceeded for recovery by following all these steps contemplated under the Act. Without following those procedures, they have directly issued the show cause notice initiating coercive action against the writ petitioner. Thus, the show cause is liable to be quashed.

5. The learned counsel appearing on behalf of the respondents opposed the contentions by stating that the writ petitioner is a defaulter and right from the year 2013, the actions are pending against this writ petitioner. They are evading payment of arrears for the past about four years. In fact, the original amount raised was Rs.2,48,05,016/-. However, the Appellate Tribunal waived of Rs.1,00,17,796/-. Such a waiver itself is a concession to the writ petitioner and in spite of such waiver of huge amount, the writ petitioner has failed to remit the balance amount. This apart, the writ petitioner was allowed to pay the dues in instalments. Such a benefit was also not availed of by the writ petitioner. Thus, no leniency can be shown to the writ petitioner in respect of the current dues to be paid to the respondent organisation.

6. The learned counsel for the respondents further states that Section 8 (B) provides issue of certificate to the Recovery Officer which reads as under.

> "8B.(1) Where any amount is in arrear under Section 8, the authorised 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 recovery 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."

7. Thus, the authorities competent are empowered to initiate action by issuing show cause notice. There is no infirmity as such in respect of the show cause notice issued to the writ petitioner in proceedings dated 23.02.2018.

8. This court has considered the object of the welfare legislation in M.P.No.4259 of 2018 dated 04.04.2018, the relevant paragraph are extracted hereunder.

15.After all, the Employee's Provident Fund and Miscellaneous Provisions Act, is a welfare legislation. In a welfare legislation, when certain benefits are extended to the labourers/employees, the same cannot be denied on certain technical grounds. It is the constitutional obligation on the part of the Court to see that the poor families struggling to meet out their day-to-day expenditure are saved.

16.The Constitution makers were highly influenced by the feeling of social equality and welfare of the common man. On principle, they agreed that this sacrosanct work could only be done by State. For this reason, they incorporated such provisions in the Constitution of India which made the role of state important and went towards social welfare and ideal state.

17.The Concept of government in which the state plays a key role in protecting and promoting the economic and social well-being of its citizens, is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those who lack the minimal provisions for the good life. The term may be applied to a variety of forms of economic and social organization. A basic feature of the welfare state is social insurance, intended to provide benefit during periods of greatest need (Example: old age, illness, unemployment). The welfare State also usually includes public provision for education, health services, and housing.

18.A welfare state strives to achieve many ideals, some of them are -

- Removal of inequalities in distribution of economic resources
- Equality of opportunity for employment
- Equal pay for equal work.
- Elimination of exploitation of labourers
- Establishment of a welfare state
- Initiation of schemes relating to health, education, social security, and other such essential matters.

19.The Constitution Bench of the Hon'ble Supreme Court of India in the case of D. S. Nakara v. Union of India, reported in (1983) 1 SCC 305, held that the principal aim of a Socialist State is to eliminate inequality in income, status and standards of life. The basic frame work of socialism is to provide a proper standard of life to the people, especially, security from cradle to grave. Amongst there, it envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism, leaning heavily on Gandhian socialism. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society reveals a long march, but, during this journey, every state action, whenever taken, must be so directed and interpreted so as to take the society one step towards the goal.

20.The Apex Court in the case of Excel Wear v Union of India, reported in AIR (1979) SC 25 held that the addition of the word "socialist" might enable the courts to learn more in favour of nationalisation and State ownership of an industry. But, so long as private ownership of industries is recognized which governs an overwhelming large principles of socialism and social justice can not be pushed to such an extent so as to ignore completely, or to a very large extent, the interest of another section of the public, namely the private owners of the undertaking.

21.The Indian Constitution set certain values which striked happy balance between individualism and socialism. It eliminates the vices of unbridled private enterprises, and protects interests by social control and welfare measures. The value system structured by our Constitution finds its expression in its various provisions and, more particularly, in Part III, Part IV and the Preamble of the Constitution.

22.In Meneka Gandhi v. Union of India, reported in AIR 1978 SC 597, the Hon'ble Supreme Court of India gave a new dimension to Article 21.It held that the right to "live'" is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Article 38 of the Indian Constitution provides State to secure a social order for the promotion of welfare of the people. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life. The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

23.Employee's Provident Fund Act is one such Act enacted for the purpose of achieving constitutional perceptions. Therefore, this Court is of an opinion that the the provisions contained in such Act to be given paramount importance, more specifically, in the matter of settlement of provident fund to the employees/labourers.

9. The learned counsel appearing on behalf of the respondents further contended that the writ petitioner is having various other companies and possessing large extent of immovable properties and also movables. This being the factum, there cannot be any difficulty for the writ petitioner to deposit the entire arrears amount. Contrarily, they are pursuing the litigation in order to evade payment of arrears of amount to be paid to the respondent organisation.

10. May that it be, this Court is of an opinion that already the Appeallate Tribunal had waived the huge amount of more than Rs.1,00,00,000/- Such a waiver was granted enabling the writ petitioner to pay the balance arrears of amount to the respondent organisation. In spite of these factors, the respondents have not complied with the recovery orders passed by the competent authorities under the provisions of the Act. This being the factum, the writ petitioner deserves no leniency from the hands of this Court.

11. The challenge in this writ petition is a show cause notice and no writ can be entertained against show cause notice in a routine manner. The writ against the show cause notice can be entertained, if the same is being issued by an incompetent authority having no jurisdiction or allegation of malafides are raised or if the same is in violation of statutory rules in force. Even in case of allegation of malafides, the authority against whom the said allegation is raised, is to be impleaded as a party respondent in the writ proceedings in a personal capacity. In the absence of any of these legal grounds, no writ can be entertained. Therefore, review against a show cause notice is undoubtedly limited and the constitutional courts shall allow the competent authorities to exercise the powers as contemplated under the provisions of the statutes.

12. Institutional respects ought to be followed by the courts also. Every institution created under the statute must be allowed to function and shall be allowed to exercise its powers in the manner known to law. Intermittent intervention in such exercise of powers will not only create a chaos but will become an unnecessary intervention of powers conferred on the

competent authorities under the provisions of the statutes. Thus, the constitutional courts are also to be cautious, while exercising the powers of judicial review under Article 226 of the Constitution of India, more so, during the pendency of the proceedings before quasi judicial or competent authorities.

13. In the present case on hand, it is a show cause notice issued to the writ petitioner. It is left open to the writ petitioner to submit all the explanations and materials available with them and defend their case before the authorities. Without doing so, they have approached this Court under Article 226 of the Constitution of India with an idea to prolong and protract the issues. Such an idea of the litigants are to be deprecated and can never be encouraged by the constitutional courts.

14. Thus, the writ petitioner is at liberty to submit all his explanations, documents, if any with them, to the respondents and defend their case properly and in the manner known to law. The respondents also is bound to follow the procedures contemplated under the Act and reasonable opportunity ought to be given to the writ petitioner to defend their case. The authorities competent are bound to initiate action without any further delay in this regard.

15. In this view of the matter, the writ petitioner has not established any legal grounds enabling this Court to interfere with the show cause notice issued. Accordingly, no further adjudication needs to be entertained and the writ petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

lok

To
1.The Recovery Officer,
The Employees Provident Fund Organisation,
76, Bhavishya Nidhi Bhavan,
Balasundaram Road, ATT Colony,
Gopalapuram,
Coimbatore-641 018

2.The Regional Provident Fund Commissioner,
The Employees Provident Fund Organisation,
76, Bhavishya Nidhi Bhavan,
Balasundaram Road, ATT Colony,
Gopalapuram,
Coimbatore-641 018

3. The Central Provident Fund Commissioner and Chief Executive Officer, The Employees Provident Fund Organisation,
Bhikaji Cama Place,
RK Puram, New Delhi-110022

4. The Official Liquidator,
The Office of the Official Liquidator
Corporate Bhavan, 2nd Floor,
Rajaji Salai, Chennai-600001

+1cc to Mr.R.Thirunavukarasu, Advocate sr.no.34922
+1cc to M/s.Rajnish Pathiyu, Advocate sr.no.35404

W.P.No.4644 of 2018
and W.M.P.No.5727 of 2018

nri(co)
nr 18/06/2018