HON'ABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No. 9959 of 2009

ORDER:

Heard the learned counsel for the petitioner and the learned standing counsel for the respondents 1 to 3 and 5.

2. The prayer of the writ petition is as under:

> "For the reasons stated in the accompanying affidavit, it is hereby prayed that this Court may be pleased to issue a writ, order or direction more particularly in the nature of writ of mandamus declaring the Order No.AP/SRO/NZB/7B/34094/2008/162, dated 30.05.2008 of the 1st respondent and also the proceedings No. AP/SRO/NZB/ENF/7B/34094/200910/20, dated 08.04.2009 of the 2nd respondent, as illegal, arbitrary and contrary to the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the Schemes made thereunder, violative of principles of natural justice and also violative of Article 14, 21 and 300-A of the Constitution of India and to issue a consequential direction to the respondents not to give effect to the same and grant such other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case."

3. The case of the petitioner is that it is a partnership firm. It is not covered under the provisions of the Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act). It was not allotted any code number, much less code No. AP/34094. On an earlier occasion, the 3rd respondent by its order dated 16.03.2007 directed the 4th respondent to pay an amount of Rs.3,09,838/- within 15 days from the date of receipt of the order. The 4th respondent said to have filed an application before the respondent Nos.1 and 3 to review the order passed under Section 7-A of the Act on the ground that the 4th respondent stopped business activity with effect from 01.04.2004 and the petitioner is running the business and it is liable for the due amount under the Act for the period from

01.01.2005 to 21.12.2006. Accordingly, the petitioner was issued a notice dated 21.06.2007 by the 3rd respondent to appear before the respondents 1 and 3. In response to the notice, the petitioner appeared and filed the written statement stating that its employees never exceeded seven and the names of the said employees were given in the written statement. It is also stated that the petitioner has nothing to do with the business of the 4th respondent and that the plea of the 4th respondent that the amounts due as assessed against it, is payable by the petitioner, is totally false and baseless. The document filed by the 4th respondent is a xerox copy of an agreement between Padmalaya Tele Films and the petitioner. After hearing, the 1st respondent by orders dated 30.05.2008 directed the petitioner to remit an amount of Rs.90,141/- under the Act, against which, the present writ petition is filed.

4. Learned counsel appearing for the respondents 1 to 3 and 5 submitted that the impugned order passed under Section 7-B of the Act appealable under Section 7-I of the Act. Therefore, the writ petition, as filed, is not maintainable.

5. Learned counsel appearing for the petitioner strenuously contended that the petitioner is not at all responsible for the dues of 4th respondent. In fact, the petitioner filed a detailed written statement before the 1st respondent stating that it is not liable to pay any amounts that are due by the 4th respondent. In spite of the same, the 1st respondent without considering the said fact, passed the impugned orders under Section 7-B of the Act. However, the learned counsel appearing for the respondents 1 to 3 and 5

produced a xerox copy of the agreement entered into between Padmalaya Tele Films and the petitioner.

6. A perusal of the said agreement, it is evident that the petitioner agreed and undertook to pay the dues such as P.F., ESI, service tax, and income tax of Nizamabad Communication Pvt. Ltd. and the same will be cleared. Such being the position, it cannot be said that the petitioner is not liable to pay the said amount. Be that as it may, when the petitioner is disputing the said contentions, such a disputed fact cannot be decided in a writ petition filed under Article 226 of the Constitution of India. However, as the impugned orders are appealable under Section 7-I of the Act, the petitioner ought to have filed an appeal. When an alternative statutory remedy in the form of appeal is provided, the petitioner cannot bye-pass the same and file the present writ petition. Even from the averments made in the affidavit, the present writ petition is not maintainable for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India when an alternative remedy of appeal is provided. Further, it is also not the case of the petitioner that the impugned orders are passed without notice to the petitioner, without any jurisdiction and that there is a patent irregularity on the face of the record. Therefore, this Court is not inclined to accept the contention of the petitioner for interfering with the impugned orders. As such there are no merits in the writ petition and the same is liable to be dismissed.

7. Accordingly, the writ petition is dismissed. No costs.

8. Since the impugned order is appealable, the petitioner is given liberty to file an appeal under Section 7-I of the Act before the competent authority within six weeks from the date of receipt of a copy of this order. On such filing, the authority is directed to consider the same and pass appropriate order as per law.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date:29.10.2018
ccm

HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No. 9959 of 2009

Date:29.10.2018

ccm