

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.28787 OF 2008

ORDER:

This writ petition is filed by the petitioner seeking a writ in the nature of Certiorari calling for the records pertaining to the show-cause notice for arrest issued in Proceedings No.AP/PF/RECOVERY/4297/2008, dated 15.12.2008 and another notice for settling of sale proclamation in proceedings No.AP/SRO/NZB/REC/4297/2008-09, dated 24.12.2008, issued by the respondent and quash them as arbitrary and illegal.

2. Petitioner's case is that one Heeralal Agarwal, who is the father of the petitioner, has established a Sugar factory under the name and style "M/s.Shiv Nagar Khandasari Sugar Mills" at Jalmaya Pally Village of Yella Reddy Mandal of Nizamabad District in the year 1973, which was registered under the provisions of the Factories Act, 1948 and with licence No.35102 and it was regularly renewed from the year 1973 onwards and finally, it was renewed on 24.10.1998. The said sugar factory was closed at the end of 1999, during the lifetime of the father of the petitioner and the same was endorsed by the Inspector of Factories in the License Book which was issued by the Factories Department. The father of the petitioner died in the year 2002 due to ill-health. At no point of time, in the factory registers, the petitioner was

shown as 'employer', as neither the petitioner nor his family members were concerned to the said business, which was closed in the year 1999. During the lifetime of the father of the petitioner, he paid the yearly amounts under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, "Act") and as the factory was closed in the year 1999, no payments were made subsequent to the said period. While so, all of a sudden the respondent authorities issued show-cause notice stating that dues were pending and why a warrant of arrest should not be issued against the petitioner alleging as if under PRC.No.PD 88/2000, dated 01.04.2000, there were dues of Rs.10,000/- and under ENF RRC No:21/2004, there were dues of Rs.84,500/-, even though the petitioner's factory was closed in the year 1999 itself. The said notice was prepared behind the back of the petitioner without any basis. Without giving further time, the respondent issued FORM NO. EPF CP-17 notice for settling sale proclamation of the properties of the petitioner under proceedings No.AP/SRO/NZB/REC/4297/2008-09, dated 24.12.2008, fixing the date as 17.01.2009 for recovery of the amounts shown in the show-cause notice. Both these notices are arbitrary and illegal as the petitioner has nothing to do with the alleged payments to be made to the respondents.

Hence, the instant petition.

3. This Court, in its order dated 30.12.2008, granted interim stay of all further proceedings including arrest of the petitioner pursuant to the notice dated 15.12.2008 on the condition of petitioner depositing Rs.40,000/- within six weeks from the date of the order. It is informed by the learned counsel for petitioner that the petitioner has complied with the aforesaid order.

4. The respondent filed counter and opposed the writ petition mainly on the ground that the petitioner's establishment is covered under the provisions of Act and therefore, the petitioner is liable to pay contribution under various provisions of the Act and the schemes framed thereunder and the total amount due is Rs.94,519/- and the dues were assessed under Section 7A/14B of the Act and the petitioner neither disputed the liability to pay nor the quantum of the dues. Since the petitioner never questioned any order passed under Section 7A/14B of the Act by way of preferring appeal under Section 7(I) of the Act, the writ petition is not maintainable. Learned counsel for respondent would vehemently argued that without preferring statutory appeal under Section 7(I) of the Act, the petitioner cannot maintain this writ petition.

5. Heard both sides.

6. Admittedly, the petitioner is challenging his liability in respect of the amount claimed by the respondent, but however, he has not preferred any appeal under Section 7(1) of the Act. In that view of the matter, this writ petition is disposed of giving liberty to the petitioner to prefer statutory appeal before the concerned authority within three weeks from the date of this order and vindicate his defence. Till the appeal is preferred, the interim order passed by this Court on 30.12.2008 shall be in operation.

7. Accordingly, this writ petition is disposed of with the above observation. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

30.08.2018

U.DURGA PRASAD RAO, J

Note: issue C.C. by tomorrow.
B/o.SS