THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.10185 of 2019

ORDER:

The petitioner-M/s Broadridge Financial Solutions India Private Limited, is aggrieved by the action of the 1st respondent-Regional Provident Fund Commissioner in initiating recovery proceedings *vide* Prohibitory Order dated 29.04.2019 (served on the 3rd respondent-Bank on 02.05.2019). By the impugned order, the 1st respondent has initiated recovery proceedings by way of obtaining Pay Order No.699479 dated 02.05.2019 from the 3rd respondent for recovery of the amount as determined by him in his Order dated 26.03.2019, even before the expiry of the limitation period of 60 days for filing an appeal against the impugned order, as provided under the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (for short, 'the EPF Act').

2. Heard Sri Vedula Srinivas, learned counsel for the petitioner-Company, and Sri Balaji, learned Standing Counsel for the respondents-Corporation.

3. In the light of the issue involved and the scope of consideration of the writ petition, both the learned counsel represented that the writ petition itself can be disposed of at the admission stage.

4. The facts are not in dispute. The petitioner is an employer registered with the Employees Provident Fund Organisation, and it has been complying with the provisions of the EPF Act and Rules made thereunder; and paying the Provident Fund contributions on regular basis. However, a notice came to be issued to the petitioner stating that certain amounts, representing allowances, which have been paid by the petitioner

to its employees have not been added for the purpose of assessment. The petitioner submitted its explanation. Thereafter, the 1st respondent passed an order on 26.03.2019 stating that the petitioner-Company is liable to pay Rs.5,95,02,651/-. Once again, on 28.03.2019, a Corrigendum was issued revising the amount due as Rs.3,89,09,720/-. The petitioner filed a review petition before the 1st respondent on 24.04.2019 invoking Section 7(B) of the EPF Act, and the same was rejected on 25.04.2019. On 29.04.2019, the 1st respondent issued the impugned Prohibitory Order and served the same on the 3rd respondent-Bank on 02.05.2019, thereby initiated recovery proceedings even before expiry of limitation period for appeal.

5. It is the specific contention of the learned counsel for the petitioner that in terms of Section 7(I) of the EPF Act, remedy of appeal is provided before the Industrial Tribunal, and such appeal can be filed within 60 days from the date of receipt of the impugned order. As the order dated 26.03.2019 passed by the 1st respondent determining the amount payable by the petitioner, was received by the petitioner on 26.03.2019, the petitioner can file an appeal on or before 26.05.2019 as provided under Section 7(I) of the EPF Act. Learned counsel, by relying on the judgment of the Division Bench of this Court in Anab-E-Shahi Wines and Distilleries Private Limited v. Appellate Deputy Commissioner, Secunderabad Division, Nampally, Hyderabad[1], would submit that when there is an appeal remedy provided under the Act, till the time for filing such appeal is exhausted, no coercive steps can be taken, as, otherwise the appeal remedy would itself become otiose.

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[1] (1995) 98 STC 386 (AP)

6. On the contrary, learned Standing Counsel appearing for the respondents-Corporation, by placing reliance on paragraph No.20 of the judgment of the learned single Judge of High Court of Gujarat in Employees Provident Fund Organization v. Rollwell Forge Ltd and anr.[2] would submit that the enforceability of an order is not hindered merely on account of there being a provision to appeal. Learned Standing Counsel would further submit that even as per the appeal provision, there is a mandate under Section 7(O) of the EPF Act, which states that unless 75% of the amount determined is deposited, no appeal is maintainable. However, the learned Standing Counsel submits that though there is a provision to waive or reduce the amount payable, such an order is required to be passed by the appellate authority. He would also submit that the 3rd respondent Bank had already issued a Pay Order in favour of the 1st respondent-Corporation and hence the relief claimed in this writ petition has become infructuous, and hence the learned Standing Counsel raises objection as to the very maintainability of the writ petition and seeks dismissal of the writ petition.

7. Having regard to the respective submissions, and in view of the law laid down by the learned Division Bench of this Court in Anab-E-Shahi (1 supra), which is binding on this Court, and which is affirmed by the Hon'ble Supreme Court and followed in a large number of cases, the judgment of the learned single Judge of High Court of Gujarat, relied on by the learned Standing Counsel, need not be taken into consideration.

8. Apart from that, when the very provision providing for appeal itself provides for an adjudicatory opportunity for the appellate forum to

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[2] Legalcrystal.com/918776

consider and decide whether the pre-determined amount should be directed to be deposited; or whether such a demand can be waived either in full or part; without permitting the employer to avail such an opportunity of appeal, if the order is implemented even before the appeal time is exhausted, the provision of appeal would itself become negatory, and an empty formality.

9. This Court cannot lose sight of the fact that the demand is on account of revision of earlier orders and not because of non-compliance of the provisions with respect to regular payments. Whether a particular allowance is required to be added for the purpose of computing the provident fund contribution, depends on the nature of payments which essentially require consideration of the facts. While the Provident Fund Commissioner is the primary authority, admittedly, the appellate authority is the Industrial Tribunal, and therefore the petitioner cannot be denied the opportunity of availing statutory remedy of appeal provided under the EPF Act.

10. In those circumstances, the impugned Prohibitory Order dated 29.04.2019 deserves to be quashed and is, accordingly, quashed. As the compliance of the 3rd respondent-Banker by issuing the Pay Order does not alter the legal position merely because the Pay Order has been given to the EPF Officer, the legal rights of the employer cannot be ignored and cannot be made to be nugatory. Therefore, the 1st respondent shall return the Pay Order to the 3rd respondent-Bank. In the event the 1st respondent fails to return the instrument, the 3rd respondent is not required to honour the same in the facts of the present case. However, it is made clear that the protection that is provided by this Court to the

petitioner in this writ petition is limited till the expiry of the period of filing of appeal as per law.

11. The writ petition is disposed of accordingly. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

03rd May, 2019

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HIGH COURT FOR THE STATE OF TELANGANA ★ HYDERABAD ★

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION (SR) No.15555 of 2019

03rd May, 2019

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