

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CM No.14017 of 2019 and
CWP No.20073 of 2019
Date of decision: 15.10.2019**

Akhil Jain	Versus	Petitioner
State of Haryana and others		Respondents

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Akhil Jain		Respondents
State of Haryana and others		

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Shailendra Jain, Sr. Advocate with Ms. Vandana Sehgal, Advocate and Mr. Siddharth, Advocate and Ms. Divya Sharma, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Ashish Chaudhary, Advocate for respondent No.2

B.S. Walia, J. (Oral)

1. This order shall decide CWP Nos.20073 and 27039 of 2019.
2. Prayer in CWP No. 20073 of 2009, is for the issuance of a writ of certiorari for quashing proceedings against the petitioner under Section 8 of The Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) as well as Show Cause Notice, Annexure P/5 dated 22.08.2018, as well as all subsequent proceedings therein, on account of the petitioner being a Non-Executive Director of M/s Celebrity Fitness India Pvt., Ltd (hereinafter referred to as the Company) besides having resigned from the Company in the year 2015, thus, not falling within the definition of the term Employer as given in Section 2(e) of the Act. Prayer is also for quashing Order Annexure P/10 dated 10.07.2019 i.e. warrant issued

by respondent No. 2 for the arrest of the petitioner for not attending proceedings, etc.

3. Prayer in CWP No. 27039 of 2019, is for the issuance of a writ of certiorari to quash Order Annexure P/13 dated 26.08.2019, passed by respondent No.2 directing the petitioner to pay PF dues for the period during which the petitioner was the director of the Company despite the petitioner being a Non-Executive Director, thus, not an employer within the meaning of the term as given in Section 2(e) of the Act.

4. Learned Senior Counsel assisted by Ms. Vandana Sehgal, Advocate and Ms. Divya Sharma, Advocate's for the petitioner contend that despite the petitioner having raised the plea of being a Non Executive Director of the Company, therefore not being liable for the recovery of provident fund dues of the Company, besides having resigned as director in the year 2015 vide Annexure's P/2 and P/3, no decision has been taken on the aforementioned plea of the petitioner.

5. Learned counsel further contended that the petitioner being a Non-Executive Director was neither entrusted with the affairs of the Company nor for that matter had any control over the affairs of the company, therefore did not fall within the definition of the term 'Employer' as given under Section 2(e) of the Act, consequentially, show cause notice Annexure P/5 dated 22.08.2018, proceedings under Section 8 of the Act as also all subsequent proceedings thereto qua the petitioner were liable to be set aside.

6. Learned counsel for respondent No.2 on the other hand by referring to order Annexure P/8 (Colly) qua proceedings under Section 8B to 8G of the Act held on 17.09.2018 as well as paragraph No. 9 of the reply in CWP No.20073 of 2019 contended that despite the petitioner having been directed

by respondent No.2 to submit relevant documents of the minutes of meeting/Board Resolution of Directors of the Company to prove that he was only a nominee director and not having any role to play in the day to day affairs of the company, no documents had been submitted by him. Besides, respondent No. 2 had issued various notices on the official address of the company during the proceeding under Section 7(a) of the Act but nobody from the Company turned up to attend the proceedings, therefore, summons were issued to all directors of the company including the petitioner in the recovery proceedings under Section 8 of the Act. Accordingly, in view of procedure followed by respondent No. 2 under the Act, the show cause notice and subsequent proceedings could not be withdrawn. Learned Counsel however, contended that in case the material sought for was furnished, respondent No.2 would take a decision in respect thereto in accordance with law.

7. The aforementioned offer of learned counsel for respondent No. 2 satisfies learned counsel for the petitioner who states that Form-32 already having been filed by the petitioner, the petitioner would furnish such other material as is available with the petitioner before respondent No.2 within such time as is granted by this Court and respondent No. 2 be directed to consider and decide the claim of the petitioner of not being liable to proceedings under the Act on account of his being a Non-Executive Director/Nominee Director and not having any control over the day-to-day affairs of the Company besides, having resigned from the nominee Directorship of the Company vide Annexures P/2 and P/3.

8. In view of the statement of learned counsel for the parties, the writ petitions are disposed of by granting liberty to the petitioner to furnish within

10 days from the receipt of this order, such material as is available with him to respondent No.2 in addition to documents claimed to have already been submitted. Thereafter, Respondent No.2 would consider and decide as expeditiously as possible, preferably within two weeks of expiry of time granted for submission of additional documents / within two weeks of date of submission of additional documents, whichever is earlier, claim of petitioner being a Nominee Director / Non-Executive Director, of not having been entrusted with the affairs of the Company nor for that matter having any control over the affairs of the Company, therefore not falling within the definition of the term 'Employer' as given under Section 2(e) of the Act, consequentially, not being liable to any proceedings under the Act, by passing a speaking order in accordance with law.

9. Needless to mention, further action in respect of order Annexure P/13 dated 26.08.2019, requiring the petitioner to make payment of the amount in default would be subject to the outcome of the decision to be taken by respondent No.2 qua claim of the petitioner, of his not being liable, in accordance with law.

October 15, 2019

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Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No

(B.S. Walia)
Judge