

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.17468 of 2013

(An application under Articles 226 & 227 of the Constitution of India).

Accounts Officer, Microwave Projects, Petitioner
Bhubaneswar

-versus-

The Recovery Officer, EPF Organisation Opposite Parties
and others

For Petitioner : Mr. P.R. Barik, Advocate

For Opposite Parties : Mr. S.S. Mohanty, Advocate

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING : 07.09.2022

DATE OF JUDGMENT: 07.09.2022

V. Narasingh, J.

1. Heard Mr. P.R. Barik, learned counsel for the petitioner and Mr. S.S. Mohanty learned counsel for the Opposite Party No.1 and 2, EPF Organisation.
2. The petitioner has assailed the order dated 02.01.2012 passed by the Assistant Provident Fund Commissioner at Annexure-1 under Section 8F of the Employees Provident

Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “ the Act, 52”), the notice dated 01.05.2013 issued by the Recovery Officer, show cause notice issued by the Recovery Officer dated 26.06.2013 notice dated 15.07.2013 issued by the Recovery Officer at Annexure-8, 9 and 11 of the Writ Petition.

3. Admittedly, an order was passed on 01.01.2012 by the Assistant Provident Fund Commissioner, Sub-Regional Office, Rourkela initiated against the Opposite Party No.3 under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act 1952 (herein after referred to as Act 52).
4. Subsequently, as the amount remained unpaid in terms of the order U/s.7A of Act 52, in exercise of its statutory functions, the Opposite Party-Organisation passed an order under Section 8F of the Act, 52 against the Opposite Party No.3 and also against the petitioner treating the petitioner as his employer during the relevant period.
5. It is submitted by the learned counsel for the petitioner that in response to the notices received from the Recovery Officer, vide Annexure-7, it was brought to the notice of the authorities that contractor Mr. Sashi Sankar Ray (Opposite Party No.3) has not been paid any amount since last four years previous to the relevant period. So it was the contention of the petitioner (Official of BSNL) that the petitioner is not at all liable.

6. For convenience of ready reference the letter dated 05.07.2013 of the petitioner (Accounts Officer) addressed to the Recovery Officer is extracted hereunder;

*“To
The Recovery Officer,
Employees Provident Fund Organisation,*

X X X X X X X X X X

Sir, In reference to above, it is to bring to your kind notice, that the matter came to notice of Accounts Officer only on 20.03.2013. However, the contractor Sri Ray has not been paid any amount since last 4 years. It is learnt that he is at present working at Patna and some amount is payable to him. The Accounts Officer responsible for making payment to him is Accounts Officer, Office of Dy General Manager, Telecom Projects, 2nd Floor, Telephone Exchange Building, Anisha Bagh, Patna 800002. The AO also furnished his residential address which is as follow:

Sri Shashi Shankar Ray, C/o Subhas Sharma, 2nd Floor, Pustakalaya Lane, Near Shiv Mandir, East Lohanipur, Kadamkuan, Patna-800003. His mobile No. is 8651535763.

Therefore, it is requested if the Patna Branch office of EPFO is entrusted with the work, the defaulting contractor can be caught hold of and the claim will be easily realized.

*Yours faithfully,
Sd/-*

7. Hence, it is submitted by the learned counsel for the petitioner that exercising power in an arbitrary manner bereft of the factual matrix that the petitioner is not the

employer at the relevant time, the impugned order and the show case have been issued and hence, it is submitted that exercising power under Article 226 of the Constitution this Court can be exercised to quash such arbitrary action.

8. Per contra the learned counsel for the Organisation MR. S.S. Mohanty, relying on Sections 8-D(1), 8-F(2), 8-F(3)(II) and 8-F(3)(x) of Act, 1952 quoted hereunder;

“8-D. Validity of certificate and amendment thereof.-

(1). When the authorised officer issues a certificate to a Recovery Officer under section 8-B, it shall not be open to the employer to dispute before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

8-E. xxx xxx xxx

8-F. Other modes of recovery.-(1)

xxx xxx xxx

8-(F)(2). If any amount is due from any person to any employer who is in arrears, the Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may require such person to deduct from the said amount the arrears due from such employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Provident Fund Commissioner or the officer so authorized, as the case may be:

Provided that nothing in this sub-section shall apply to any party of the amount exempt from attachment in execution of a decree of a Civil Court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908).

8-(F)(3)(i). xxx xxx xxx

8-(F)(3)(ii). *A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the employer jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.*

8-(F)(3)(iii). xxx xxx xxx

(iv). xxx xxx xxx

(v). xxx xxx xxx

(vi). xxx xxx xxx

(vii). xxx xxx xxx

(viii). xxx xxx xxx

(ix). xxx xxx xxx

8-(F)(3)(x). *If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Central Provident Fund Commissioner or the officer so authorised he shall be deemed to be an employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realization of the amount as if it were an arrear due from him, in the manner provided in section 8-B to 8-E and the notice shall have the same effect as an attachment of a debt*

by the Recovery Officer in exercise of his powers under section 8-B.” x x x x x

submits that once an order of recovery has been passed, the Recovery Officer becomes functus officio and there is no power vested in him to recall that order. And, relying on the same Mr. Mohanty for the Organisation says that since the order passed was not assailed as per the statutory schematic provisions provided for, it is not open for the petitioner to question the same in a Writ Petition under Article 226.

9. On perusal of the Provisions contained under Section 8-D it can be seen that it provided that once certificate was issued by the Recovery Officer under Section 8-B, it shall not be open to the employer to dispute before the Recovery Officer the correctness of the amount and objection to the certificate cannot be entertained on any other ground.
10. It is also placed on record by Mr. Mohanty that in response to the notices issued, the petitioner (BSNL) has been taking prevaricating stands, hence this Court ought not to interfere with the order of recovery.
11. As submitted by the learned counsel for the petitioner this Court examined the Provisions contained under Section 8-D(2) read with Section 8-F(3)(vi). Such provisions are quoted hereunder for convenience of ready reference;

8-D. Validity of certificate and amendment thereof.-

“8-D(1). xxx xxx xxx

“8-D(2). Notwithstanding the issue of a certificate to a Recovery Officer, the

authorised officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

8-F(3)(vi). *Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the employer or that he does not hold any money for or on account of the employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Central Provident Fund Commissioner or the officer so authorised to the extent of his own liability to the employer on the date of the notice, or to the extent of the employer's liability for any sum due under this Act, whichever is less.” x x x x x*

12. On a conjoint reading of the Provisions contained in Section 8-D(2) and 8-F(3)(vi), this Court is persuaded to hold that in a given case where the employer has approached the authorities on the premise that he is not the employer against whom an order under Section 8-F can be passed as in the present Case, it is incumbent upon the authorities of the Organisation exercising power in terms of the Act, 52 to take into account such objection.

13. In the present case though the petitioner had brought to the notice of the authorities vide Annexure-7 and 10 dated 20.04.2013 and 05.07.2013 respectively that he is no longer the employer and in fact provided the address and the telephone number of the person liable, for reasons best known the authorities chose to proceed against the petitioner, Government of India enterprise instead of taking steps to recover the amount from Opposite Party No.3.
14. Hence on a conspectus of materials on record this Court is of the considered view that the power has been exercised arbitrarily by the authorities which cannot stand the test of reasonableness. And, in issuing the notice and passing the recovery order notwithstanding the communications of the petitioner that he is no longer the employer, the Authorities of the Provident Fund Organisation abdicated the responsibility enjoined upon them to consider the grievance of the petitioner in terms of the Provisions of the Act. Hence, the notice and the orders passed at Annexures-8,9 and 11 stand quashed vis-à-vis the petitioner.
15. It shall be open to the Opposite Party-Organisation to take steps for recovery of the amount, in accordance with law against the Opposite Party No.3.
16. The writ petition is accordingly allowed.
17. No costs.

(V.Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 07th of September, 2022/Santoshi