9th January, 2024
(AK)
04

W.P.A 5924 of 2020

Bijit Roy
Vs.
State Bank of India and others

Mrs. Reshmi Ghosh
Ms. Barnali Gantait
...for the petitioner.

Mr. Swarup Banerjee
Mr. H.C. Yadav
...for the Respondent no.1.

Ms. Aparna Banerjee
...for the Provident Fund Authority.

1. The grievance of the petitioner is against the action of the respondent-Bank in freezing an account of the petitioner which, according to the petitioner, has no connection with the work done by the petitioner for the Bank.

2. It has been alleged that the petitioner did some work for the Bank and for such purpose engaged workmen on a contractual basis.

3. Subsequently, despite the entire work having been done and the payments resolved between the parties, the Bank, by a later action, froze the account of the petitioner which account has no connection with the work-in-question.

4. Learned counsel for the petitioner points out that even as per the contract between the parties, the Bank had, at the most, a right to withhold by way

of lien an amount of Rs. 30,000/- deposited by the petitioner as security deposit.

5. However, the account which has been frozen by the Bank contains an amount much higher than the same.

6. That apart, it is alleged that the petitioner himself had offered a cheque to cover alleged violation of the provision of the provident fund norms, if any. However, it is alleged that the Bank failed to prove any violation on the part of the petitioner.

7. Learned counsel for the provident fund authorities, as per previous direction of court, hands over a communication dated December 11, 2023 indicating that the provident fund authorities attempted to visit the office of the petitioner but failed to do so as no one could be located at the said address.

8. Thus, it is argued by the provident fund authorities that the petitioner ought to be directed to cooperate with the said authorities.

9. Learned counsel for the Bank places specific reliance on several pages of the affidavit-in-opposition of the Bank.

10. By placing reliance on certain communications made by the Bank to the petitioner, it is pointed out that the Bank made clear allegations of provident fund law violations by the petitioner.

11. In fact, by a purported communication dated February 26, 2020, annexed at page-31 of the affidavit-in-opposition of the Bank, the Bank had alleged that despite the Bank's requests, the petitioner had not furnished true and faithful statement with regard to the payment of statutory liabilities to the employees of the petitioner.

12. As such, it was alleged by the Bank that it was not in a position to make actual calculation; as such, question of acceptance and/or raising objection about shortfall on payment of EPF did not and cannot arise.

13. The Bank also sent a statement of alleged shortfalls regarding the EPF provisions to the petitioner.

14. Learned counsel for the Bank also places reliance on a purported admission by the petitioner regarding EPF dues, in terms of annexure R2 at page-17 of the affidavit-in-opposition of the Bank where the petitioner apparently stated that the Bank may hold an amount of Rs.15,66,326/- at the account of the petitioner for depositing short payment of EPF of the petitioner's employees in their account.

15. A scrutiny of the entire conspectus of the issue reveals that the Bank, although made several allegations regarding EPF violation by the petitioner, failed to substantiate the same or take

out appropriate complaints before the provident fund authorities.

16. There is nothing on record to indicate that the provident fund authorities started any proceeding against the petitioner for alleged violation of provident fund law and/or that even the Bank initiated such complaint with the provident fund authorities for the said authorities to commence such a proceeding.

17. The Bank made several allegations against the petitioner in its communications but did not vindicate its stand before the provident fund authorities.

18. Even the letter handed over in court today by the provident fund authorities indicates nothing as to any steps having been taken hitherto by the provident fund authorities against the petitioner on the score of alleged violation of EPF provisions.

19. As such, the action of the Bank in freezing a separate account of the petitioner held with the Bank, which has no nexus with the contract between the petitioner and the Bank, cannot be sustained in law.

20. The Bank apprehends that the first incidence of payment will fall upon it as the principal employer in the event it is detected subsequently that the

petitioner violated EPF norms in non-payment of the dues of its employees.

21. However, such apprehension on the part of the Bank has not been justified by the Bank at any point of time by lodging any complaint before the provident fund authorities asking to initiate a proceeding against the petitioner on such count.

22. Thus, the Bank acted palpably without jurisdiction in freezing an entirely separate and different account of the petitioner on the count of apprehended violation of provident fund norms by the petitioner.

23. The allegations of the Bank against the petitioner have not been canvassed before any authority having jurisdiction in law to decide on such issues or take out proceedings under the provident fund law.

24. Thus, anticipation of future proceedings being taken out against the petitioner cannot be a justification for the Bank in freezing an altogether unconnected account of the petitioner.

25. As rightly pointed out by the petitioner, the lien of the Bank on the security deposit was limited to Rs.30,000/-.

26. For abundant caution, the petitioner had handed over certain amounts to the Bank to cover EPF

dues, if any. The same is exhibited by annexure R/2 in the affidavit-in-opposition of the Bank itself.

27. Insofar as the provisions of the contract between the petitioner and the Bank are concerned, undoubtedly the contractor/petitioner was under the incumbent duty to clear statutory liabilities towards its workmen.

28. For example, Clause 17 of the contract stipulates that the contractor shall deposit a security amount of Rs. 30,000/- with the bank.

29. Clause 18 provides that the contractor undertook and accepted the absolute and complete responsibility for service conditions, claims, damages and other compensations of the personnel enrolled by the contractor.

30. Clause 19 provided that the contractor would arrange and pay for policy under the Public Liability Insurance Act, 1991.

31. Clause 20 of the contract stipulated that the contractor shall obtain adequate insurance policy in respect of his workmen engaged for the service towards meeting the liability of compensation arising out of death, injury/disablement at work etc.

32. Clause 21, again, provided that the contractor would submit bills for the service. The payments would be made within one week from the date of

certification, subject to the condition that the contractor had cleared/paid all his dues, namely, labour payments, taxes etc. payable by it under law.

33. However, nothing in the said contract gives a right on the Bank to freeze an unconnected account, having no nexus with the contract between the parties.

34. Moreover, during the entire tenure of the contract, the Bank did not take any steps under the provident fund law against the petitioner on alleged violation of such provisions.

35. Having not done so and the payments of the petitioner for work done having otherwise been cleared, the Bank acted palpably *de hors* its jurisdiction in freezing the petitioner's account on allegations of violation of the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 at this belated juncture.

36. In any event, it would be open to the provident fund authorities to take appropriate steps and make enquiries as the said authority is empowered under the 1952 Act or otherwise against the petitioner and/or the Bank if they are of the opinion that the petitioner and/or the bank have flouted any statutory provision pertaining to payment of provident fund dues.

37. However, such power of the authorities does not confer any jurisdiction of the Bank to do the act which has been impugned herein.

38. Accordingly, WPA 5924 of 2020 is allowed on contest, thereby directing the respondent-Bank to de-freeze the account of the petitioner and to ensure that the petitioner is able to operate the said account held with the respondent-Bank within twenty four hours from now.

39. It is made clear that nothing in this order shall prevent the provident fund authorities, who have also been impleaded as additional respondent to the writ petition, to initiate proceedings against the respondent-Bank as principal employer as well as against the petitioner, for any alleged violation of the provisions of the 1952 Act or other provident fund law by either of them.

40. Nothing in this order shall be deemed to create any right or equity in favour of the petitioner if the petitioner does not otherwise have the same in accordance with law, vis-à-vis alleged violations of the provident fund law.

41. There will be no order as to costs.

42. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)