* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 3rd April, 2024**

\+ W.P.(C) 846/2017 & CM APPL. 3892/2017

VIKRANT NATH AND ANR ..... Petitioners

Through: Mr.Sumit Chander, Mr.Gurdeep Chauhan and Mr.Amit Agarwal, Advocates

versus

UNION OF INDIA ..... Respondent

Through: Mr.A.K. Singh, Ms.Aanchal Bindal and Ms.Ankita Baluni, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioners seeking the following reliefs:-

> *"a) Quash and set aside the impugned Show Cause Notice(s) of Demand Reference No. DL (S)/06679/Recovery/2016-17/37402 dated 29.12.2016 issued to Petitioner No.1 and Reference No. DL (S)/06679/Recovery cell/2016-17/38408 dated 13.01.2017 issued to Petitioner No.2;*
> *b) Direct the Respondent Department to refund the amount of Rs. 60,254/- paid by Petitioner No.2,*
> *c) Pass such other order(s) or directions(s) as this Hon'bie Court may deem fit and proper in the facts and circumstances of the case and in favour of the Petitioner"*

1. The father of the petitioners namely Late Sh. Surinder Nath was the managing director of M/s Express Movers Pvt. Ltd. since the year 1979 till he expired on 5th February, 2002.

2. On failure of the Company namely M/s Express Movers Pvt. Ltd. in discharging its legal liability towards the respondent organization of depositing the provident fund of its employees, the respondent department raised a demand on the petitioners vide notice/summons dated 29th January, 2015 regarding default made on behalf of M/s Express Movers Pvt. Ltd.

3. Thereafter, on 16th February, 2015**,** the petitioners appeared before the respondent department and deposited a sum of Rs.60,254/- with the respondent. The respondent then issued a recovery certificate dated 13th April, 2015 against the petitioners for recovery of arrears to the tune of Rs.1,18,307/- and subsequently, issued a show cause notices dated 29th December, 2016 and 13th January, 2017 for warrant of arrest.

4. Pursuant to the above, the representative of the petitioners appeared before the respondent department along with a letter dated 19th January, 2017 stating that they are not liable in any manner to pay the aforesaid amount. The respondent department further asked the petitioners to be present on the next date of hearing, i.e., on 31st January, 2017.

5. Being aggrieved, the petitioners have approached this Court seeking setting aside of the impugned show cause notices dated 29th December, 2016 and 13th January, 2017 for warrant of arrest (hereinafter "impugned notices").

6. Learned counsel appearing on behalf of the petitioners submitted that

the impugned notices are arbitrary, in violation of the principles of natural justice and bad in law which makes them liable to be set aside.

7. It is submitted that the demand raised by the respondent department is against the company namely M/s Express Movers Pvt. Ltd. (hereinafter "the Company") which is a separate legal entity and the petitioners, being the legal heirs of the director of the company (since deceased), cannot be held to be liable.

8. It is submitted that the petitioners do not fall under the definition provided under Section 2(e)(ii) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter "the Act") and that the same is applicable to a person or an authority, having ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent shall be liable under the Act.

9. It is submitted that the petitioners are not even aware of the existence the Company as on the present date and they did not even inherit any shares of their father in the said Company.

10. It is submitted that the amount of Rs.60,254/- was paid by the petitioners out of goodwill and with *bona fide* intentions, and the same does not tantamount to any admission on behalf of the petitioners pertaining to liability towards the arrears alleged to be recovered from them.

11. It is submitted that the demand raised by the respondent department is illegal, baseless and thus can't be countenanced under the law. The respondent department has erred by not mentioning as to under which law

the petitioners are liable towards the recovery of the alleged arrears.

12. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the impugned notices be set aside.

13. *Per Contra*, the learned counsel appearing on behalf of the respondent department vehemently opposed the instant petition submitting to the effect that the same being devoid of any merit is liable to be dismissed.

14. It is submitted that the impugned notices have been issued after taking into consideration the entire facts and circumstances available on record, and there is no illegality or infirmity of any kind thereto.

15. It is submitted that the father of petitioners was the managing director of the Company and the said Company was managed by him, and all the profits and perks accrued from the income of M/s Express Movers Pvt. Ltd. were being utilized by the family of the said managing director including the petitioners and therefore, the corporate veil be lifted in the present case to secure the recovery of statutory demands/contributions in arrears which were due from the said company for the further disbursement to the employees.

16. It is further submitted that the petitioners fall within the definition of employer as defined under section 2(e) of the Act and therefore, being the legal heirs, they are duly liable towards the recovery amount mentioned in the impugned notices.

17. It is submitted that the recovery process undertaken by the respondent department is in accordance with the provisions of Section 8 of the Act and the steps taken by the authority are in consonance with the procedure laid down under section 8B to 8F of the Act.

18. It is further submitted that out of the total amount due, a part amount of Rs.60,254/- already stands paid by the petitioners and as such the petitioners have no right to approach by way of the present writ petition to deny their liability to pay the remaining amount.

19. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be dismissed.

20. Heard the parties and perused the record.

21. It is the case of the petitioner that the impugned notices issued against them seeking issuance of warrants of arrest towards the recovery of arrears of EPF dues *qua* the employees of the Company whose managing director was their father, is bad in law. The petitioners contest the same on the ground that as they have not inherited any share of the Company, therefore, they are not liable in any manner.

22. In rival submissions, the respondent department has refuted the submissions advanced by the petitioners submitting to the effect that the impugned notices have been issued in accordance with the procedure enshrined under the Act. It has also been contended that the petitioners, being the legal heirs of their deceased father, are duly liable towards the arrears of EPF dues against the Company, and therefore, there is no illegality or infirmity of any kind thereto.

23. During the course of arguments, this Court posed a specific query to the petitioners as to whether any statutory appeal was filed against the assessment order dated 15th June, 2004 passed under Section 7A of the Act vide which the Company namely M/s Express Movers Pvt. Ltd. was directed

to deposit the EPF dues initially.

24. In response to the specific query made by the Court, the learned counsel appearing on behalf of the petitioners responded that no statutory appeal was filed against the order dated 15th June, 2004 vide which the liability of the Company was determined by the concerned EPF authority.

25. Section 7- I of the Act provides for provisions of statutory appeals, relevant portion of which reads as under:

> "***7-I. Appeals to Tribunal.***—*(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B*
>
> *[except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.*
>
> *(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.*"

26. Perusal of the above shows that any person aggrieved by an order/notification issued by the government or any authority under the proviso to Sub-Section (3), or Sub-Section (4), of Section 1, or Section 3, or Sub-Section (1) of Section 7A, or Section 7B.

27. As per the scheme of the Act, the assessing authority is required to pass the original assessment order under Section 7A after hearing the parties concerned. The said order is appealable under Section 7-I of the EPF Act. In case the petitioners were not satisfied with the said order, there was nothing

to stop them from availing the remedy of the appeal; as provided under the above said Section, however, they remained non-vigilant and in pursuing their remedy. Further, this Court is of the view that that alternative remedy should have been exhausted by the petitioner before approaching this Court.

28. The assessment order was passed in the year 2004 and the petitioners' father expired in the year 2002. Further, the concerned authority under the Act had passed an order dated 13th September, 2005 towards recovery of the arrears.

29. The above said facts imply that the petitioners were aware about the proceedings under the Act and had sufficient opportunities to avail the statutory remedies. However, as per the records, neither the petitioners approached the appropriate forum under the Act challenging the assessment order nor they challenged the order dated 13th September, 2005.

30. In view of the facts and submissions, this Court is of the opinion that petitioners woke up from the slumber after a considerable amount of time had elapsed and approached this Court by assailing the impugned show cause notices vide which the authority had asked the petitioners to appear and to state as to why warrants of arrest shall not be issued against them.

31. This Court is of the considered view that the instant petition is not maintainable against the impugned notices issued by the respondent authority, since the assessment order dated 15th June, 2004 vide which the liability of M/s Express Movers Pvt. Ltd. was determined, was not challenged by the petitioners by way of an appeal under Section 7-I.

32. In light of the foregoing discussions, it is held that the instant petition

is liable to be dismissed since the petitioners have failed to avail the alternative remedy by filing the statutory appeal against the assessment order and are approaching this Court at a belated stage when the recovery certificate has been already issued and the authority under the Act is issuing show cause notices to recover the dues.

33. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

34. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 3, 2024
dy/ryp/db

Click here to check corrigendum, if any