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

% **Date of order: 30th April, 2024.**

\+ W.P.(C) 77/2020 & CM APPL. 257/2020

YASH PAL ASHOK ..... Petitioner

Through: Mr. Nikhil Patnaik, Advocate

versus

REGIONAL PROVIDENT FUND COMMISSIONER-1 AND ORS.

..... Respondents

Through: Mr.Rajesh Kumar, Standing Counsel for EPFO with Mr.Shivam, Advocate (Through VC)

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of Constitution of India read with Section 151 of Code of Civil Procedure, 1908 has been filed on behalf of the petitioner seeking the following reliefs:

> *"A. Quash the recovery proceeding initiated under Section 8B to Section 8F arising out Section 7A order dated 28.02.2019 in so far as such proceeding relate to the petitioner.*
> *B. Set aside the order dated 23.09.2019 as ultra vires the Act and violative of Article 14 and Article 300-A of Constitution of India.*
> *C. Set aside the order dated 01.10.2019 as ultra vires the Act*

and violative of Article 14 and Article 300-A of Constitution of India.
D. Direct respondent no. 3 Axis Bank Limited to permit the petitioner to operate his bank account.
E. Pass such other orders as may be deemed fit."

2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

a. M/s YPA Hospitality Pvt. Ltd. (hereinafter "company") is a company involved in operating the restaurants. The petitioner served as a director of the said company for nine months w.e.f. 21st January, 2011 to 1st October, 2011.

b. On 1st January, 2012, an enquiry under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter the "Act") was initiated for defaults committed by the company towards payment of dues of provident fund (hereinafter "PF") under the Act for the duration of January, 2012 to March, 2016.

c. The Assistant Provident Fund Commissioner vide order dated 28th February, 2019 held that the company failed to remit the PF dues to the tune of Rs. 56,63,502/- for the period of enquiry and cost of Rs. 27,500/- was imposed upon the petitioner.

d. Pursuant to the aforesaid order, the assessing officer issued a certificate of recovery dated 2nd April, 2019, against the company, under Section 8 for recovery of sums determined under Section 7A.

e. The learned Recovery Officer vide order dated 23rd September, 2019 made observations that the petitioner withdrew funds from the establishment's account even after resigning from the position of director, demonstrating a continued control over the establishment and that he remained an authorized signatory of the bank account despite resigning from directorship.

f. The learned Recovery Officer *vide* the same order gave a final opportunity to the petitioner to provide the required documents, noting that failure to do so will result in treating him as the director of the establishment at the time of default, leading to recovery from his personal account.

g. The learned Recovery Officer also wrote to the petitioner's banker, Axis Bank/respondent No. 3 to prevent the petitioner from operating his personal bank account maintained with Lajpat Nagar-II Branch.

h. Pursuant to which, the company sent a letter dated 27th September, 2019 to the recovery office seeking non-initiation of recovery proceedings against the petitioner.

i. Thereafter, on 1st October, 2019, the learned Recovery Officer directed the petitioner to produce the details of the bank account of the petitioner. The petitioner vide letter dated 17th October, 2019 addressed to the learned Recovery Officer prayed, that the recovery proceedings against him be stayed.

j. Aggrieved by the aforesaid recovery proceedings dated 23rd September, 2019 and 1st October, 2019 (hereinafter "impugned orders"), the petitioner has filed the instant petition seeking quashing of the same.

3. Learned counsel appearing on behalf of the petitioner submitted that the recovery proceedings under Sections 8B to 8F of the Act must adhere to the orders passed under Section 7A, Section 7Q, and Section 14B of the Act. However, in the present case, the learned Recovery Officer has overstepped his authority by initiating proceedings against the petitioner, who was neither in control of the establishment nor a director of the employer company during the period of default.

4. It is further submitted that for the proceedings under the Section 7A of the Act, the petitioner is deemed to be a third party. Therefore, the recovery proceedings against the petitioner are beyond the scope of Sections 8B to 8F of the Act and illegal.

5. It is submitted that the determination of monies under the Act is conducted through Section 7A proceedings, which were exclusively against the company. Since the petitioner was never involved in these proceedings and was not in control of the company, no recovery order can be issued against him now.

6. It is contended that the recovery proceedings must be limited to the employer company or its establishments. Thus, the recovery proceedings against the petitioner exceeds the scope of Section 7A read with Section 8B to 8F of the Act.

7. It is submitted that the impugned orders dated 23rd September, 2019 and 1st October, 2019 passed by the learned Recovery Officer are arbitrary

since the recovery officer wrongly assumed that every authorized signatory of a company is its owner, disregarding the company's separate legal identity. It is further submitted that due to the expertise of the petitioner in handling financial matters, he continued to be the authorised signatory of the company.

8. It is submitted that despite no legal relationship between the petitioner and the company, recovery proceedings were initiated against the petitioner's personal bank account, violating Article 14 and Article 300A of the Constitution of India.

9. It is submitted that Section 8A(1) of the Act primarily aims at attaching the company's property for recovery and in the alternate, the assets of the director may be attached. The recovery office in the instant petition has wrongly moved against the personal bank account of the petitioner.

10. It is submitted that the petitioner was a shareholder in the company and the details of the shareholding pattern are reproduced herein below:

Date	Shareholding Pattern
31.03.2011	Yash Pal Ashok @ 91 per cent
	Tarun Roi Arora @ 9 per cent
31.03.2012	Yash Pal Ashok @ 91 per cent
	Taron Roi Arora @ 9 per cent
31.03.2013	Yash Pal Ashok @ 41 per cent
	Tarun Roi Arora @ 9 per cent
	Umang Tiwari @ 30 per cent

	Amit Bagga @ 20 per cent
31.03.2014	Yash Pal Ashok @ 41 per cent
	Tarun Roi Arora @ 9 per cent
	Umang Tiwari @ 30 per cent
	Amit Bagga @ 20 per cent
31.03.2015	Yash Pal Ashok @ 41 per cent
	Tarun Roi Arora @ 9 per cent
	Umang Tiwari @ 30 per cent
	Amit Bagga @ 20 per cent
31.03.2016	Yash Pal Ashok @ 41 per cent
	Tarun Roi Arora @ 9 per cent
	Umang Tiwari @ 30 per cent
	Amit Bagga @ 20 per cent

11. It is submitted that the money withdrawn under the petitioner's signature from the bank account of the company maintained with the respondent no. 3/Axis Bank were used to facilitate the RTGS/NEFT transaction of the company and the cash money withdrawn from the company's bank account was utilized to meet daily requirements of the company.

12. It is submitted that the respondent no.3 vide letter dated 20th September 2019, informed the petitioner that on the basis of the Board of Resolution dated 1st March 2011 available with the respondent no.3, the petitioner was the director of the company and on the basis of such document filed by the respondent no.3, the learned Recovery Officer passed attachment orders of the personal bank account of the petitioner, despite the

fact that the company had already provided details of its directors to the learned Recovery Officer on 6th September, 2019.

13. In view of the aforesaid submissions, the learned counsel for the petitioner submitted that the instant petition may be allowed and the reliefs as sought, may be granted by this Court.

14. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect there is no legal infirmity or perversity in the impugned orders which merits interference of this Court.

15. It is further submitted that the impugned orders have been passed taking into account the fact that the petitioner is the authorized signatory of the company's bank account as well as the petitioner is involved in the administration of the various business transactions of the company.

16. It is further submitted that the resignation of the petitioner from the position of director is not available on the record of the respondent no.3, therefore, the learned Recovery Officer initiated recovery proceedings against the petitioner. Moreover, the petitioner failed to produce on record the Board Resolution or any supporting documents to prove that the petitioner resigned from the position of Director w.e.f. 1st October, 2011.

17. It is submitted that the bank statements provided by the respondent no. 3 establishes the fact that the petitioner has withdrawn money from the bank account of the company for his self-use, despite resigning from the position of director of the company.

18. It is submitted that as stated in the proceeding dated 6th September 2019, the learned Recovery Officer directed that since there are no separate personal accounts of the directors of the company or the company itself except the bank account of the petitioner, therefore, the same was attached.

19. It is contended that the learned Recovery Officer after initiation of the recovery proceedings, the learned Recovery Officer who is the employer of the company had to lift the corporate and accordingly, upon his investigation, it was found that it was the petitioner.

20. In view of the aforesaid submissions, learned counsel appearing on behalf of the respondents submitted that the instant writ petition being devoid of any merit, is liable to be dismissed by this Court.

21. Heard learned counsel for the parties as well as perused the entire material on record.

22. It is the case of the petitioner that recovery proceedings initiated under Sections 8B to 8F of the Act must align with the orders passed under Sections 7A, 7Q, and 14B of the Act. However, initiating the above said recovery proceedings against the petitioner, who had no role during the default period or Section 7A proceedings, exceeds the learned Recovery Officer's jurisdiction. The recovery proceedings must be limited to the employer company or its establishments, and issuance of notice of recovery proceedings against the petitioner by the learned Recovery Officer amounts to exceeding scope of its power under Sections 7A and 8B to 8F of the Act.

23. The learned Recovery Officer 's orders dated 23rd September 2019 and 1st October 2019 are arbitrary and violate the petitioner's rights under Article

14 and Article 300A of the Constitution. Attaching the petitioner's personal bank account under Section 8F is illegal, as he is not a garnishee, and Section 8A(1) prioritizes attaching the company's property for recovery.

24. It is further submitted that the petitioner is the authorized signatory of the company due to his financial expertise and he has never used company's money for his personal use. The petitioner served as the director of the company only from 21st January 2011 till 1st October 2011. Therefore, the learned Recovery Officer cannot initiate recovery proceedings against the petitioner.

25. In rival submissions the respondent no. 1 and 2 submitted that the petitioner is the authorized signatory of the company's bank account and although, the petitioner contends that he has resigned from the position of director of the company, however, the petitioner has failed to produce on record Board Resolution of the company or any supporting document on record to support its contention.

26. It is further contended that from the perusal of the bank account details as provided by the respondent no. 3, it is evident that the petitioner is using the company's money for his personal use. Since no separate personal account of the directors of the company as well as the company could be traced, the petitioner's account was attached for the purpose of recovery which is in accordance with the law.

27. The petitioner has filed the instant petition seeking quashing of the orders dated 23rd September 2019 and 1st October 2019.

28. Therefore, the short question which falls for adjudication before this Court is whether the impugned orders dated 23rd September 2019 and 1st October 2019 merit interference of this Court under Article 226.

29. Before adverting to the merits of the case, this Court deems it necessary to state the law pertaining to the definition of employer and recovery of moneys from the employers under the Act. The relevant provisions are as under:

> *"Section 2 (e) "employer" means*
> *(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and*
>
> *(ii) in relation to any other establishment, the person who, or the authority which, has the 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.."*

30. Upon perusal of the above, it is made out that the term "employer", in terms of an establishment, refers to the person who or any authority which is vested with the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a person holding the position of manager, managing director or managing agent.

31. Now adverting to the perusal of the impugned order dated 23rd September 2019. The relevant extract of the order is reproduced herein below:

> "*Sh. Ravi Sharma appeared on behalf of estt. with a request to provide 15 days time to produce the requisite documents as their legal advisor is out of station. Further, none appeared on behalf of the Axis Bank, Lajpat Nagar. However, the bank has provided the documents sought in previous hearing viz. Details of transactions of the A/c of M/s YPA Hospiltality pvt. Ltd. On going through the records produced by bank, it is found that Sh. Yash Pal Ashok has withdrawn money from the bank A/c of estt. for self-use even after having been resigned from directorship of the estt. It is also noticed that that some withdrawals from, the bank A/c are marked; as Self, Cash or Yourself in the statement provided by the bank. Bank is therefore directed to provide details of withdrawn amount along with copy of cheque/vouchers on or before 27.09.2019.*
>
> *Further, the estt. has failed to submit Audited copy of Balance sheet filed with IT Deptt and ROC and details of fixed assets including Cars/Vehicles i.e. Registration Numbers, their current possession along with other fixed assets. It has also failed to explain the reason as to why Sh. Yash Pal Ashok still remain Authorised Signatory of A/c of estt even after resigning from directorship of estt. Moreover, he continued to withdraw amount from A/c of estt which establishes the fact that Sh. Yash Pal Ashok has ultimate control over the affairs of estt and be treated as employer as per definition of Section 2(c) of EPF & MP Act, 1952.He also failed to reply this office letter dated 20.09.2019 (copy enclosed) whereby he was directed to furnish details of money withdrawn by him. This act of estt shows that establishment is deliberately avoiding to furnish explanations as desired above and to secure the legitimate Pf dues. It; is my utmost duty to lift the veil and to locate the real owner who is*

benefited of these transactions. It shows the malafide intention on the part of Sh. Yash Pal Ashok (the then director). Since, the estt. is not working at present as per the submission made by A/R of estt and as per report of AEO, the department has no option but to recover the dues by attachment of assets of director/owner. However, one last opportunity is-provided to Sh. Yash Pal Ashok to provide the documents as sought in earlier proceeding dated 06.09.2019 as the bank is also required to provide information along with documentary evidences such as copy of cheque/vouchers, otherwise he will be treated as director of estt at the time of default and bank will be directed to remit the dues from the A/c attached in the name of Sh. Yash Pal v Ashok. Accordingly, enquiry stands adjourned to 27.09.2019."

32. In the above said impugned order, it has been stated by the learned Recovery Officer that the respondent no.3 provided the documents pertaining to the transactions in the company's account and upon perusal of the aforesaid transactions, the learned Recovery Officer was of the view that evidently the petitioner withdrew the money from the bank account of the company and the said withdrawal are marked as Self, Cash or Yourself as per the bank statement.

33. It was observed by the learned Recovery Officer that the company has failed to submit the Audited copy of its Balance sheet filed with the Income Tax Department and Registrar of Company and along with the details of fixed assets including Cars/Vehicles i.e. Registration Numbers, their current possession as well as the other fixed assets. The company has further failed to provide an explanation as to why the petitioner is the Authorised

Signatory of the company's bank account even after resigning from the directorship of the company.

34. In light of the aforesaid circumstances, the learned Recovery Officer held the act of the petitioner of continuously withdrawing amount from the bank account of the company establishes the fact that he had ultimate control over the financial affairs of company and shall be treated as employer as per definition of Section 2(e) of the Act.

35. The learned Recovery Officer further observed that the petitioner did not file reply to the office letter dated 20th September, 2019 as per which he was directed to furnish details of money withdrawn by him from the company's bank account. Accordingly, the learned Recovery Officer drew an inference that the company is deliberately avoiding to furnish explanations as directed vide letter dated 20th September, 2019.

36. In view of the aforesaid circumstances, the learned Recovery Officer held that it is apposite to pierce the corporate veil and to identify the real owner who is benefitting out of these transactions and held that the petitioner is the beneficiary of the afore-discussed business transactions of the company.

37. Moreover, one last opportunity was provided to the petitioner to place on record the documents as sought vide letter dated 6th September 2019 as the respondent no.3 is also required to provide information along with documentary evidences such as copy of cheque/vouchers, otherwise he will be treated as director of company at the time of default and respondent no.3

will be directed to remit the dues from the account attached in the name of the petitioner. Accordingly, the enquiry was adjourned.

38. Now adverting to the adjudication of the instant petition on merits.

39. In the instant petition the petitioner is admittedly acting as an authorized signatory of the bank account of the company and is performing following functions:

a. to facilitate transactions on behalf of the company/establishment by way of RTGS/NEFT to third/other parties;

b. to meet the day to day demands of the company/establishment in its ordinary course of business;

c. for any other purpose connected or ancillary thereto.

40. Upon perusal of the aforesaid functions performed by the petitioner in the company, it can be concluded that the petitioner has control over the financial matters of the company and is also actively involved in the daily business transactions of the company.

41. Furthermore, it is pertinent to note that it is admitted by the petitioner that he is the largest shareholder in the company, therefore, he has a say in the various administrative decisions/functioning of the company.

42. In view of the aforesaid discussions, this Court is of the view that it has been correctly held in the impugned order that the petitioner is the "employer" of the company. It is apparent that the petitioner exercises control over the day-to-day affairs of the company as well as being the major shareholder of the company has a say in the matters pertaining to the company.

43. This Court is of the view that the petitioner tried to camouflage its position by way of resigning from the position of director and contending that merely due to his financial expertise, the petitioner is the Authorised Signatory of the company. However, the ultimate control over the affairs of the company vests with the petitioner.

44. It is held that the learned Recovery Officer has correctly pierced through the corporate veil concluding that the petitioner is an "employer" as per the definition provided under Section 2(e) of Act.

45. In view of the aforesaid discussions, this Court is of the view that the impugned order does not suffer from any illegality or error apparent on the face of it which merits interference of this Court under Article 226.

46. Now adverting to the perusal of the impugned order dated 1st October 2019 and the same is reproduced herein below:

> *"Sh. Yash Pal Ashok*
> *1-20, Lajpat Nagar-lll,*
> *New Delhi-110024*
> *Subject: Recovery proceeding u/s 8B to 8G of EPF & MP Act 1952 in r/o M/s YPDA Hospitality Private Limited [DS/NHP/103572]*
> *Sir,*
> *Reference is made to your letter dated 26.09.2019 on the subject cited above.*
> *In this regard it is intimated that in order to examine the severance of status of Sh. Yash Pal Ashok from establishment i.e. M/s YPA Hospitality Private Limited and to decide the matter of de freezing of Bank A/c you are hereby directed to provide the following :*
> *1. Status of Sh. Yash Pal Ashok in the establishment being Authorized Signatory to operate the bank A/c along with*

documentary evidence such as Minute of Board Meeting, Power of Attorney and Appointment Letter etc.
2. Copy of Ledger of Axis Bank Account and Sh. Yash Pal Ashok along with attested copies of Vouchers with narration and supporting documents.
3. Details of movable / immovable property of establishment and its directors along with location and current possession of property.
The above details forwarded on or before next date of hearing i.e. 04.10.2019."

47. The impugned order states that the petitioner to produce on record certain documents in support of its contention that there is severance of status between the petitioner and the company.

48. This Court is of the view that as per the impugned order dated 23rd September 2019, the learned Recovery Officer had inferred on the basis of the evidence on record that the petitioner is the employer of the company and in furtherance of the same it issued the impugned letter dated 1st October 2019 providing an opportunity to the petitioner to prove that he is not the employer as per the Act.

49. In view of the aforesaid discussions, this Court observed that the above said impugned order does not from illegality or error apparent on the face of it which merits interference of this Court under Article 226.

50. Accordingly, this Court upholds the impugned orders dated 23rd September,2019 and 1st October, 2019 passed by the learned Recovery Officer and the instant petition stands dismissed along with pending applications, if any.

51. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 30, 2024
dy/db/ryp