

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12754 OF 2025

B.T. Kadlag Constructions,
A Private Limited Company,
Having its registered office at
3, V-square Building, Second Floor,
Near Sandip Hotel, Mumbai Naka,
Nashik – 422 001, Through its Director
Shri Bhairavnath Trymbak Kadlag

..Petitioner

Versus

1. The Employees Provident Fund Organization,
Through Assistant Provident Fund
Commissioner / Recovery Officer,
Regional Office at Nashik.

2. Niphad Sahakari Sakhar Karkhana Ltd.
Pimplas, Tal. Niphad, Dist. Nashik,
Through its Liquidator.

3. The Chairman, Nashik District
Central Cooperative Bank,
Mumbai – Agra Road, Nashik,
Near Central Bus Stand, Nashik.

4. The State of Maharashtra

...Respondents

Mr. Sanskar Marathe, for the Petitioner.
Mr. Arsh Mishra, for Respondent No.1.
Mr. Sachin Gite, for Respondent No.3.

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RAMCHANDRA
SANKPAL

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Date: 2025.11.18
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CORAM: N. J. JAMADAR, J.
RESERVED ON : 4th NOVEMBER 2025
PRONOUNCED ON : 18th NOVEMBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of a prohibitory order dated 22nd August 2025 passed by the Assistant Provident Fund Commissioner / Recovery Officer, Nashik (R1), whereby the Petitioner has been restrained from making payment of the amount which the Petitioner owes to M/s Niphad Sahakari Sakhar Karkhana Ltd (R2), the employer or to any person whomsoever, except the Recovery Officer.

3. The background facts leading to this Petition can be stated in brief as under:

3.1 Niphad Sahakari Sakhar Karkhana (R2) was an employer. The employer committed default in payment of the provident fund and other dues. The Respondent No. 2 was in arrears of provident fund and other sums to the tune of Rs.2,52,17,137/-. Recovery certificates were issued.

3.2 Respondent No.2 had availed financial facilities from Nashik District Central Cooperative Bank Limited, Nashik (R3). In the wake of default in the discharge of the liabilities, the Respondent No.3 initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”) and

took possession of the factory of the Respondent No.1 over which security interest was created (the establishment).

3.3 The Respondent No.3, with a view to make the factory functional, generate revenue and recover the loan amount, entered into a Lease Agreement dated 9th December 2022 with the Petitioner. It was *inter alia*, agreed that factory would be leased out to the Petitioner for a term of 25 years commencing from the crushing season 2022-2023 and the Petitioner would pay the rent, at the agreed rate. Out of the said amount, the Respondent No. 3 lessor would utilise 50% of the amount towards the payment of the statutory dues and other liabilities of the Respondent No.2 and the balance 50% would be utilised to discharge liabilities of the Respondent No.2 to the bank (R3). The parties agreed for enhancement in the ratio of the amount to be utilised towards the recovery of the loan. It was further agreed that the statutory dues and the dues of the workmen would be paid by the lessor (R3).

3.4 On the strength Recovery Certificate, the Respondent No.1 addressed notices to the Petitioner calling upon the Petitioner to remit the amount of Rs. 2,52,17,137/- (vide Notice dated 27th September 2023) under Section 17B of the Employees Provident Fund and Misc Provisions Act, 1952 ("EPF Act"), asserting that the transferee was jointly and severally liable to pay the contribution and other sums due from employer up to the date of the transfer. It seems that the Petitioner

disputed the liability by filing Reply. The Respondent No.1, however, persisted with the demand.

3.5 Eventually by the impugned order dated 22nd August 2025, the Respondent No.1 restrained the Petitioner from making payment of amount owed to the Respondent No.2, while simultaneously restraining the Respondent No.2 from receiving the amount payable by the Petitioner. It was, *inter alia*, contended that a certificate to recover the amount of Rs.4,91,31,464/- has been issued under Section 8-B of the EPF Act. The Petitioner was put to notice that, in the event of default, the said amount would be recovered from the Petitioner as the amount due from the Petitioner.

3.6 Being aggrieved the Petitioner has preferred this Petition.

4. I have heard Mr. Sanskar Marathe, the learned Counsel for the Petitioner, Mr. Arsh Misra, the learned Counsel for the Respondent No.1 and Mr. Sachin Gite, the learned Counsel for the Respondent No.3.

5. Mr. Sanskar Marathe, the learned Counsel for the Petitioner, submitted that the impugned prohibitory order has been issued in flagrant violation of the provisions contained in EPF Act. First and foremost, the Respondent No.1 has not conducted the enquiry as envisaged by the provisions contained in Section 7 of the EPF Act. It has not been determined whether the Petitioner is an establishment within the meaning of Section of EPF Act. Nor there is any determination as to

how the amount of Rs.4,91,31,464/- became due and payable, when under the Notice dated 27th September 2023, the Petitioner was called upon to remit a sum of Rs.2,52,17,137/-. Ex-facie the impugned order is arbitrary, submitted Mr. Marathe.

6. Secondly, Mr. Marathe would urge, the Petitioner cannot be said to be a transferee of the employer (R2). The bank (R3), the secured creditor, who had taken possession of the subject premises, had given on lease the subject premises to the Petitioner. There was, thus, no privity between the Petitioner and the Respondent No.2 and, therefore, provisions contained in Section 17B of the EPF Act were not attracted.

7. An endeavour was made by Mr. Marathe to draw home the point that under the terms of the Lease Deed, the secured creditor had undertaken the liability to discharge the statutory dues and the dues of the workmen, accrued before the execution of the Lease Deed. Therefore, the Petitioner could not have been called upon to either remit the amount or restrained by the impugned prohibitory order. Mr. Marathe submitted that since the dues were for the period prior to the Petitioner becoming a lessee of the subject premises, the Petitioner cannot be fastened with any liability for the same. Reliance was placed on a Division Bench Judgment in the case of **Vitthal Sahakari Sakhar Karkhana, Aurangabad & Anr Vs Assistant Provident Fund Commissioner, Aurangabad and Ors.**¹

1 2008(3) Mh.L.J. 114.

8. Mr. Sachin Gite, the learned Counsel for the Respondent No.3, supported the stand of the Petitioner.

9. Mr. Arsh Misra, the learned Counsel for the Respondent No.1, would urge that the impugned prohibitory order does not suffer from any infirmity. It was submitted that the Petitioner had not disputed the provident fund dues in response to any of the notices issued by the Respondent No.1. The Petitioner had taken an unsustainable stand that it was not liable as the provident fund and sums pertained to the period prior to the Petitioner becoming a lessee of the Bank (R2). Mr. Misra would urge in view of the peremptory provisions contained in Section 11(2) of the EPF Act, the provident fund dues will have priority over the other dues including dues of the secured creditor. A very strong reliance was placed by Mr. Misra on the judgment of the Supreme Court in the case of **Employees Provident Fund Commissioner Vs Official Liquidator of Esskay Pharmaceuticals Limited.**²

10. It was urged that the provisions contained in Section 17-B of the EPF Act are elastic enough to cover in its fold a situation of the present nature where the secured creditor leases out the establishment to a transferee. Any other view, according to Mr. Misra, would defeat the statutory object of the giving primacy to the recovery of the provident fund dues of the workmen. Mr. Misra would urge that an identical

2 (2011) 10 SCC 727.

challenge was repelled by a learned Single Judge of this Court in the case of **Nandkishore Laxminarayan Agarwal Vs Union of India & Ors.**³

11. I have given careful consideration to the submissions canvassed across the bar.

12. To begin with, it is necessary to keep in view the nature of the order impugned in this Petition. As noted above, the Petitioner is the lessee of the establishment, under the lease executed by the secured creditor, who took over the possession of the establishment in enforcement of the security interest. After the said transfer, the Respondent No.1 has addressed multiple notices calling upon the Petitioner to pay the outstanding amount for which recovery certificates were issued under Section 8-B of the EPF Act. The Respondent No.1 has proceeded on the premise that in view of the provisions contained in Section 17-B of the EPF Act, the Petitioner and the employer were jointly and severally liable to pay the outstanding contribution and other sums due from the employer in respect of the period up to the date of such transfer.

13. The impugned order, however, appears to have been passed to restrain the employer (R2) from receiving the amount which the Petitioner has to pay to the employer and, simultaneously, restrain the Petitioner from making payment of the amount which it owes to the employer or to any other person, and instead to pay the same to the

3 2010(1) Mh.L.J. 907.

Respondent No.1 towards the recovery of the amount for which certificates under Section 8-B of the EPF Act, 1952 have been issued. Though the impugned order refers to Section 8-B and 17-B of the EPF Act, 1952, on its true construction, the order appears to have been passed under the provisions of Section 8-F of the EPF Act, 1952.

14. The abovesaid inference becomes deducible from the very nature of the impugned order. Firstly, the Petitioner is construed to be a debtor of the employer. Secondly, the employer has been restrained from receiving the amount from the Petitioner. Thirdly, the Petitioner has been prohibited from parting with the amount which the Petitioner owes to the employer, with a direction to remit the said amount to the Respondent No.1. Fourthly, the Petitioner has been put to notice that in the event of default in the payment of the amount which it owes to the employer, the amount would be recovered from the Petitioner as if it was due from the Petitioner.

15. The prohibitory order thus draws support and sustenance from the enabling provisions contained in Section 8-F of the EPF Act, 1952 to recover the amount from the person who owes the amount to an employer who is in arrears of the amount under the EPF Act, 1952.

16. The aforesaid being the nature of the impugned order, its legality and propriety is required to be evaluated in the light of the provisions of the EPF Act, 1952.

17. Few provisions of the EPF Act, 1952 deserve to be noted before adverting to the provisions of Section 8-F of the EPF Act, 1952 under which, in the considered view of this Court, the impugned order appears to have been passed. Section 11 of the EPF Act, 1952 provides for priority of payment of contribution over other debts.

18. Sub-Section (2) of Section 11 reads as under:

11. Priority of payment of contributions over other debts.

1.

(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer whether in respect of the employees contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.

19. The aforesaid and other provisions of EPF Act, 1952 are required to be construed keeping in view the fact that EPF Act, 1952 is a social welfare legislation intended to protect the interest of a weaker section of the society, i.e., the workers. The measures under EPF Act, 1952 are a legislative recognition of the workers contribution to the growth of the capital and industry. Therefore, the provisions contained in the EPF Act, 1952 deserve a purposive interpretation.

20. In the case of **Official Liquidator of Esskay Pharmaceuticals Limited (Supra)**, the Supreme Court expounded the nature of the EPF Act, 1952 and also delineated the approach to be adopted in interpreting the provisions as under:

“22. The EPF Act is a social welfare legislation intended to protect the interest of a weaker section of the society, i.e. the workers employed in factories and other establishments, who have made significant contribution in economic growth of the country. The workers and other employees provide services of different kinds and ensure continuous production of goods, which are made available to the society at large. Therefore, a legislation made for their benefit must receive a liberal and purposive interpretation keeping in view the Directive Principles of State Policy contained in Articles 38 and 43 of the Constitution.”

21. In the said case while interpreting the provisions of Section 11(2) of the EPF Act, 1952 and after adverting to the decision in the case of **Maharashtra State Cooperative Bank Ltd. v. Assistant Provident Fund Commissioner**,⁴ the Supreme Court enunciated that any amount due from an employer shall deemed to be the first charge on the assets of the establishment and is payable in priority to all other debts including debts due to a secured creditor. The observations in paragraphs 31 to 33 are instructive and hence extracted below:

“31. In Maharashtra State Cooperative Bank Ltd. v. Assistant Provident Fund Commissioner (supra), the Court was called

4 (2009) 10 SCC 123.

upon to consider whether dues payable by the employer under Section 11 of the EPF Act will have priority over debts due to the bank. The facts of that case were that Kannad Sahakari Sakhar Karkhana Ltd. and Gangapur Sahakari Sakhar Karkhana Ltd. had pledged sugar bags in favour of the appellant bank as security for repayment of the loan and interest. The respondent initiated proceedings for recovery of the dues payable under the EPF Act. The appellant bank questioned the legality of the orders passed under the EPF Act on the ground that being a secured creditor, the amount due to it was payable on priority vis-à-vis other dues including the dues payable by the employer under the EPF Act. The High Court negated the challenge.

32. The Court referred to the relevant provisions of the EPF Act including Section 11, the judgments noticed hereinabove as also the judgments in UCO Bank v. Official Liquidator, High Court of Bombay (1994) 5 SCC 1, A.P. State Financial Corporation v. Official Liquidator (2000) 7 SCC 291, Textile Labour Association v. Official Liquidator (2004) 9 SCC 741 and held:

“31. ... The priority given to the dues of provident fund, etc. in Section 11 is not hedged with any limitation or condition. Rather, a bare reading of the section makes it clear that the amount due is required to be paid in priority to all other debts. Any doubt on the width and scope of Section 11 qua other debts is removed by the use of expression “all other debts” in both the sub-sections. This would mean that the priority clause enshrined in Section 11 will

operate against statutory as well as non-statutory and secured as well as unsecured debts including a mortgage or pledge. Subsection (2) was designedly inserted in the Act for ensuring that the provident fund dues of the workers are not defeated by prior claims of secured or unsecured creditors. This is the reason why the legislature took care to declare that irrespective of time when a debt is created in respect of the assets of the establishment, the dues payable under the Act would always remain first charge and shall be paid first out of the assets of the establishment notwithstanding anything contained in any other law for the time being in force. It is, therefore, reasonable to take the view that the statutory first charge created on the assets of the establishment by subsection (2) of Section 11 and priority given to the payment of any amount due from an employer will operate against all types of debts.”

33. The ratio of the last mentioned judgment is that by virtue of the non obstante clause contained in Section 11(2) of the EPF Act, any amount due from an employer shall be deemed to be first charge on the assets of the establishment and is payable in priority to all other debts including the debts due to a bank, which falls in the category of secured creditor.”

(emphasis supplied)

22. In the light of the aforesaid position in law, it would be too late in the day to question the claim of priority of the dues under the EPF Act, 1952 over the claims of the bank (R3). The provident fund dues are required to be paid in priority over the debt which the employer owed to the secured creditor (R3).

23. The submission of Mr. Marathe that the Respondent No.1 has not conducted the enquiry envisaged by Section 7-A of the EPF Act, 1952 to determine the applicability of the Act to the Petitioner and the amount due from the employer under the provisions of the EPF Act, 1952 appears to be clearly untenable. Since the Petitioner is sought to be proceeded as transferee of the establishment, the Petitioner cannot be heard to urge that there was no enquiry as envisaged by Section 7-A of the EPF Act, 1952. Suffice to note that, the determination of the liability by the Respondent No.1 has not been assailed either by the employer or the secured creditor, which has taken over the position of the establishment.

24. In the facts of the case, the question that merits consideration is, whether the Petitioner could have been proceeded against under Section 17-B of the EPF Act, 1952 as a transferee of the establishment. Section 17-B of the EPF Act reads as under:

17-B. Liability in case of transfer of establishment.—Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence

or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision Of this Act or the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, in respect of the period up to the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.”

25. A bare perusal of the aforesaid provisions would indicate that with a view to ensure that the rights of the workmen are not defeated by resorting to the device of transfer of the establishment by the employer, the Parliament has provided that the transferee of the establishment becomes jointly and severally liable along with the transferor-employer, to pay the contribution and other sums due up to the date of the transfer of the establishment.

26. Thus under Section 17-B of the EPF Act,1952, the transferee would be liable jointly and severally with the transferor for the pre-transfer liability in respect of contribution and other sums due from the transferor/employer under any of the provisions of the EPF Act,1952 or the scheme. The liability of the transferee is, however, restricted to the value of the assets obtained by the transferee under such transfer.

27. Mr. Marathe attempted to canvass a submission that since the Lease Deed has not been executed by the employer but by the secured

creditor who had obtained the possession of the establishment by enforcing the security interest, the Petitioner cannot be said to be a transferee within the ambit of the provisions contained in Section 17-B of the EPF Act,1952.

28. Plainly, a distinction was sought to be carved out on the count of voluntary and involuntary transfer. The transfer by the secured creditor after taking possession of the establishment was in a sense involuntary and, therefore, not covered by the provisions contained in Section 17-B.

29. I am not inclined to accede to the aforesaid broad proposition sought to be canvassed by Mr. Marathe. Keeping in view the object of the EPF Act,1952, especially, the purpose for which Section 17-B came to be incorporated, i.e., to protect the interest of workmen, an interpretation which defeats the object of the Section 17-B, in particular, and the EPF Act,1952, in general, is required to be eschewed. It is the “effect” test which needs to be applied. In ultimate analysis, the establishment stands transferred; either directly or indirectly. The transfer of the establishment by the secured creditor, who obtains the possession of the establishment, subjects the workmen to the same vagaries as a transfer by the employer. Workmen cannot be compelled to proceed against the transferor-employer to recover their dues.

30. A useful reference can be made to a Full Bench judgment of the Calcutta High Court in the case of **Dalgaon Agro Industries Ltd (Now**

Known as Tasati Tea Ltd) Vs Union of India & Ors⁵ wherein the Calcutta High Court dealt with the submission of inapplicability of Section 17-B to involuntary transfers. In that case the transfer of the establishment was involuntary in the sense that it was under a scheme approved by the Court restricting the liability of the respective parties. Repelling the challenge the Calcutta High Court observed *inter alia* as under:

“9. Having regard to above proposition a reference to Section 17B does not create any difficulty. The heading discloses the liability in case of transfer of establishment, which in the plain words meant to be joint and several in between the transferor and the transferee both being liable. The object and purpose of the statute is to give benefit to the employees. Therefore it has to be construed in a manner to advance the interest of the employees. The employees are employed in the establishment. They are concerned with the employer of the establishment for the time being. The employees cannot be made to run after the transferor employer. It is whoever would be the employer would be liable; particularly when the transfer between the transferor and the transferee neither binds the employee nor the Provident Fund Authority.

9.1 Mr. Sengupta however had pointed out that the transfer was not a voluntary one but non-voluntary under a scheme approved by the Court restricting the liability of the respective parties. But then, even if the scheme might have received the seal of the Court and might have a binding force, it binds only the parties to the transfer to which neither the employees nor the Provident Fund Authority were parties to bind themselves under the scheme or otherwise. In any event the provisions

5 2005 SCC OnLine Cal 313.

being statutory and primarily running with the establishment the same can never be eclipsed, superseded or affected by any scheme approved by the Court.”

(emphasis supplied)

31. The aforesaid pronouncement is also a complete answer to the submissions sought to be canvassed by Mr. Marathe that under the Lease Deed the secured creditor had acknowledged the liability to discharge the statutory dues including the dues of the workmen up to the date of the transfer. Even otherwise, as rightly submitted by Mr. Misra, the parties cannot be permitted to contract out of the statute. The stipulation in the Lease Deed that the liability to pay the workers would be that of the secured creditor would not insulate the Petitioner.

32. This propels me to the mode of recovery resorted to by the Respondent No.1.

33. Under Section 8-B of the EPF Act,1952 the Recovery Officer on receipt of a certificate of recovery is empowered to proceed to recover the amount specified therein from the establishment or the employer by one or more of the modes mentioned therein, namely, attachment and sale of the property, arrest and detention of the employer, and appointment of the Receiver for the management of the movable or immovable properties of the employer.

34. It does not seem that the Respondent No.1 had resorted to any of the aforesaid modes of recovery. As noted above, the Recovery Officer

has invoked the enabling provisions contained in Section 8-F titled “other modes of recovery”. In the context of the controversy, the relevant part of Section 8-F deserves to be extracted. It reads as under:

“8F. Other modes of recovery.— (1) Notwithstanding the issue of a certificate to the Recovery Officer under section 8B, the Central Provident Fund Commissioner or any other officer authorised by the Central Board may recover the amount by any one or more of the modes provided in this section.

(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 authorised, as the case may be:

Provided that nothing in this sub-section shall apply to any part 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).

(3) (i) The Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the employer or, as the case may be, the establishment or any person who holds or may subsequently hold money for or on account of the employer or as the case may be, the establishment, to pay to the Central Provident Fund Commissioner either forthwith upon the money

becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or an 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.

(iii) A copy of the notice shall be forwarded to the employer at his last address known to the Central Provident Fund Commissioner or, as the case may be, the officer so authorised and in the case of a joint account to all the joint-holders at their last addresses known to the Central Provident Fund Commissioner or the officer so authorised.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(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 employers liability for any sum due under this Act, whichever is less.

(vii) The Central Provident Fund Commissioner or the officer so authorised may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Central Provident Fund Commissioner or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the employer to the extent of the amount so paid.

(ix) Any person discharging any liability to the employer after the receipt of a notice under this sub-section 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 so discharged or to the extent of the employer's liability for any sum due under this Act, whichever is less.

(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 realisation of the amount as if it were an arrear due from him, in the manner provided in sections 8B to 8E 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 8B.”

35. Sub-Section (2) of Section 8-F of the EPF Act, 1952, empowers the Provident Fund Commissioner to require the debtor of the employer to deduct from the amount due to the employer, the arrears due from such employer under the provisions of EPF Act, 1952 and such person, i.e., the debtor or garnishee is bound to comply with such requisition and pay the amount so deducted to the credit of the Provident Fund Commissioner. The provisions contained in sub-Section (3) of Section 8-F delineate the procedure to be adopted when recovery is sought to be made from the debtor or garnishee of the employer.

36. Under clause (i) of sub-Section (3), a notice is required to be served on such debtor of the employer. Clause (vi) *inter alia* provides that the person to whom a notice under sub-Section (3) of Section 8-F is sent, can object to the same 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 and on account of the employer. If such a

stand is taken, nothing contained in the said sub-Section shall be deemed to require such person to pay any amount to the Commissioner. However, if it is discovered that such statement was false in any material particular, the noticee shall be personally liable to the Commissioner to the extent of his own liability to the employer or the employer's liability for any sum due under the EPF Act, 1952 whichever is less.

37. A conjoint reading of Section 8-F, especially sub-Section 3(i) and (vi) would indicate that the debtor of the employer or garnishee to whom a notice is served is provided an opportunity to contest the notice by showing that either he does not hold the amount of the employer or is not liable to pay any amount to the employer. For that, a statement on oath is required to be made by such debtor of the employer. If it later on turns out that, the statement on oath was incorrect such noticee is liable to pay the amount. The scheme thus envisages an opportunity of hearing and a quasi-judicial determination.

38. The provisions contained in Section 8-F of the EPF Act, 1952, especially the clauses under sub-Section (3) appear to be *pari materia* Section 226(3) of the Income Tax Act, 1961, which also provides for "other modes of recovery".

39. In the case of **Beharilal Ramcharan Vs Income Tax Officer, Special Circle 'B' Ward, Kanpur and Anr**⁶ a three Judge Bench of the Supreme

⁶ (1981) 3 SCC 473.

Court considered the import of the provisions contained in Clause (i) and (vi) of Section 226 (3) of the Income Tax Act, 1961 and enunciated that the decision by the Income Tax Officer that the statement on oath made by the noticee is false in any material particular partakes the character of a quasi-judicial decision. The Income Tax officer would thus be enjoined to follow the principles of natural justice and reach an objective decision.

40. The observations in paragraph 4 are instructive and hence extracted below.

“4. Now under clause (vi), where a garnishee to whom a notice under clause (i) is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, he is not required to pay such sum or any part thereof to the Income-tax Officer in compliance with the requisition contained in the notice. But if it is discovered by the Income-tax Officer that such statement on oath was false in any material particular, the garnishee is made personally liable to the Income-tax Officer to the extent of his own liability to the assessee on the date of the notice or to the extent of the assessee's liability for arrears of tax, whichever is less. The petitioners having objected to the requisition contained in the notice dated 21st May 1966 by filing an affidavit of their accountant that nothing was due from the petitioners to B.R. Sons Limited, were not bound to comply with the requisition contained in such notice, but if the Income-tax Officer discovered that such statement on oath was false in material particular and that some amount was due

from the petitioners to B.R. Sons Ltd. the petitioners would be personally liable to pay such amount to the Income-tax Officer. The question is whether the Income-tax Officer could be said to have discovered that the statement on oath made in the affidavit of the accountant of the petitioners that nothing was due from the petitioners to B.R. Sons Limited was false in any material particular, as claimed by the Revenue in the notices dated 31st December 1966 and 11th January 1967. Now it is obvious that under clause (vi) the discovery by the Income-tax Officer that the statement on oath made on behalf of the garnishee is false in any material particular has the consequence of imposing personal liability for payment on the garnishee and it must therefore be a quasi-judicial decision preceded by a quasi-judicial inquiry involving observance of the principles of natural justice. The Income-tax Officer cannot subjectively reach the conclusion that in his opinion the statement on oath made on behalf of the garnishee is false in any material particular. He would have to give notice and hold an inquiry for the purpose of determining whether the statement on oath made on behalf of the garnishee is false and in which material particular and what amount is in fact due from the garnishee to the assessee and in this inquiry he would have to follow the principles of natural justice and reach an objective decision. Once a statement on oath is made on behalf of the garnishee that the sum demanded or any part thereof is not due from the garnishee to the assessee, the burden of showing that the statement on oath is false in any material particular would be on the Revenue and the Revenue would be bound to disclose to the garnishee all such evidence or material on which it proposes to rely and it would have to be shown by the Revenue on the basis of relevant evidence or material that the statement on oath is false in any material

particular and that a certain definite amount is due from the garnishee to the assessee. Then only can personal liability for payment be imposed on the garnishee under clause (vi)."

(emphasis supplied)

41. On the aforesaid touchstone, reverting to the facts of the case, it becomes abundantly clear that the Respondent No.1 has straightaway issued the prohibitory order to the debtor of the employer not to pay the amount due to the employer and instead credit the same with the Provident Fund Commissioner without giving a notice as envisaged by Clause (i) of sub-Section (3) of Section 8-F and also without providing an opportunity to meet the said demand by filing a statement on oath under Clause (vi) of sub-Section (3) of Section 8-F. The Recovery Officer is enjoined to first give a notice and then consider the statement on oath filed by the debtor of the employer and take a decision in observance of the principles of natural justice. Clearly there is infraction of the statutory mandate. Mere reference to the provisions contained in Section 8-B and 17-B of the EPF Act, 1952 without following the procedure prescribed under Section 8-F of the EPF Act, 1952 would not lend legality and validity to the prohibitory order.

42. In the aforesaid view of the matter, the prohibitory order deserves to be quashed and set aside. However, the prohibitory order can be considered as a notice under Section 8-F (3)(i) of the EPF Act, 1952 and the Petitioner can be given an opportunity to file a statement on oath

under Clause (vi) of sub-Section (3) of Section 8-F, and, thereafter, the Respondent No.1 can take a decision in accordance with law.

43. The upshot of the aforesaid consideration is that the Petition deserves to be partly allowed.

44. Hence, the following order:

: O R D E R :

- (i) The Petition stands partly allowed.
 - (ii) The impugned prohibitory order dated 22nd August 2025 stands quashed and set aside qua the Petitioner.
 - (iii) The impugned prohibitory order be treated as a notice under Section 8-F(3)(i) of the Employees Provident Fund and Misc Provisions Act, 1952.
 - (iv) The Petitioner shall be entitled to file a statement on oath in terms of Clause (vi) of Sub-Section(3) of Section 8-F, within a period of three weeks of the uploading of this order.
 - (v) The Respondent No.1 shall thereafter pass an appropriate order after considering the statement on oath to be filed on behalf of the Petitioner and conducting further enquiry as may be deemed appropriate.
 - (vi) Rule made absolute to the aforesaid extent.
- No costs.

[N. J. JAMADAR, J.]