

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.A. 26467 of 2006

IA CAN 1 OF 2011
(Old CAN 656 of 2011)
CAN 2 OF 2021
CAN 3 OF 2021

Satish Kumar Jhunjhunwala

-vs-

Regional Provident Fund Commissioner

For the petitioner : Mr. Krishnendu Gooptu,
Mr. Chanchal Kumar Saha,

For the P.F Authorities : Mr. S.C Prasad,
: Mr. Nikhil Kumar Gupta,

Hearing concluded on : 23.07.2021, 04.08.2021

Judgment on : 18.08.2021

Ravi Krishan Kapur, J.:

1. The petitioner assails an order passed under Section 8-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1985 ('the Act') issued by the Recovery Officer, Employees' Provident Fund Organisation, which is in the nature of a warrant of arrest.

2. Admittedly, the petitioner is a director of one Shri Govinda Glass Works Limited ('the establishment'). In view of statutory defaults committed by the establishment towards payment of their provident fund dues, an amount of Rs.44,04,178/- became due and payable by the establishment to the respondent Provident Fund Authorities. It is in connection with those recovery proceedings initiated by the respondent Provident Fund Authorities that the impugned warrant of arrest dated 26th September, 2006 was issued by them against the petitioner.
3. The petitioner assails the impugned warrant of arrest primarily on the ground that before issuing such warrant it was incumbent on the respondent authorities to initiate all other modes of recovery against the establishment prior to issuance of a warrant of arrest against the petitioner. It is also contended on behalf of the petitioner that it is only after such recovery proceedings have failed that the respondent authorities could have issued the impugned warrant against the petitioner. This is the only point raised in this petition. The petitioner also relies on the decisions reported in *2005 (1) LLN 745 Regional Provident Fund Commissioner Employees' Provident Fund Organisation, Hyderabad & Another Vs. M/s Decan Foam Plastics (Private), Ltd. Narsapur and (2004) 3 LLJ 952 D.R. Venkatesh vs. Regional Provident Fund Commissioner, Hyderabad, and Another* to contend that the personal liability of a director cannot be straightway attracted and an order of arrest can only be issued in the event that

the assets of the establishment are found to be insufficient to meet the dues payable by the establishment to the respondent authorities.

4. On behalf of the respondent Provident Fund Authorities, it is submitted that in view of the provisions contained in Section 8-B of the Act, the options available to the respondent authorities are concurrent and they may apply any of the modes specified under the aforesaid section and are not bound to exhaust all other remedies before issuance of a warrant of arrest. In any event, it is submitted on behalf of the respondent Provident Fund Authorities that due to subsequent events and the fact that the petitioner has now approached the respondent authorities after filing of this petition and has also paid a sum of Rs.50,000/- and the fact that the petitioner is now participating in the recovery proceedings the petition has become infructuous.
5. This petition was filed in 2006. Upon the petition being moved, by an order dated 19th December, 2006 a Learned Single Judge had granted a stay of the impugned warrant of arrest. It is pertinent to mention that by the interim order, liberty was specifically granted to the respondent authorities to exhaust all other remedies for recovery of their dues and to proceed in a manner contemplated under the Act against the establishment. Subsequently, the writ petition was dismissed for default on 13th December, 2018 and restored only on 4th August, 2021.

6. Section 8-B of the Act provides as follows:

[8B. Issue of certificate to the Recovery Officer.—

(1) Where any amount is in arrear under section 8, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below:

- (a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;
- (b) arrest of the employer and his detention in prison;
- (c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer:

Provided that the attachment and sale of any property under this section shall first be effected against the properties of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorised officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.]

7. In *Sri Sayan Ghosh & Another vs. Regional Provident Fund Commissioner, West Bengal & Ors.* unreported judgment of Ruma Pal, J. in (W.P. No.1095 of 1998 dated June 19, 1998) it was held as follows:

“Section 8 to 8E related to the civil process for recovery of the amounts due under the 1952 Act. Sections 14 to 14C deal with the punishment which may be inflicted in connection with the offence by an employer under the Act. Keeping this distinction in mind it is clear that section 14A which relates to offences by a company by reason of the nature of the proceedings makes only

those persons culpable who were in-charge of business of the company at the material point of time. This element of mens rea is absent from section 8 which deals with the civil modes of recovery.

There is no bar under section 8B to the Revenue Officer recovering the amount due by attachment and sale of any movable and immovable property of the establishment (in this case the firm) as well as by the arrest of the employer (in this case the partners including the petitioners) and their detention in prison. This detention is not a detention pursuant to the finding of guilt under section 14 but a mode of recovery similar to section 51 of the Civil Procedure Code. It cannot be said therefore that the show cause notice was invalidly or incompetently issued."

8. Moreover, in *Maharashtra State Co-operative Bank Ltd. vs. The Assistant Provident Fund Commissioner (AIR 2010 SC 868)* at para 26 the Supreme Court has held as follows:

*26. "Section 8-B provides for issue of certificate by the authorised officer in respect of the amount due to the Recovery Officer so as to enable him to recover the amount specified therein by attachment and sale of movable **or** immovable property of the establishment **or** the employer **or** by arrest of the employer and his detention in prison **or** by appointing a Receiver for the management of the movable **or** immovable properties of the establishment or the employer, as the case may be."(emphasis supplied)*

9. On a plain and proper reading of the aforesaid section, I am unable to agree with the contention of the petitioner that it is incumbent on the respondent authorities to proceed against the establishment and initiate all other recovery modes of before issuing a warrant of arrest against the petitioner director. On the contrary, it appears from the scheme of the section that the remedies provided to the respondent

authorities for recovery of their dues are co-extensive and mutually exclusive of each another. I also find the decisions relied on by the petitioner to be distinguishable and inapposite to the facts of the instant case.

10. There is also another reason as to why this petition deserves to be dismissed. It is now an admitted and indisputable fact that pursuant to the filing of the writ petition, the petitioner has approached the respondent Provident Fund Authorities and has also made payment of Rs.50,000/-. In view of the fact that the petitioner is now participating in the recovery proceedings, I am of the view that there is no scope of challenging the impugned warrant of arrest since the petitioner has acquiescence in the steps taken by the respondent authorities and is also participating in the same.
11. I also must take note of the subsequent facts which have transpired after the filing of this petition. The aggregate dues payable by the establishment on the date when this petition was filed were approximately Rs.50 lacs in the year 2006. There is nothing on record to demonstrate nor could either of the parties show that any portion of the dues (save and except Rs.50,000/-) has been paid by the establishment towards satisfaction of their dues. This petition was filed sometime in 2006. Thus, it would be reasonable to estimate that the aggregate dues in respect of the establishment after a period of approximately 15 years are far in excess of Rs.1 crore.

Notwithstanding a specific query, the petitioner could not substantiate any steps taken by the petitioner to have this petition heard (far less disposed of). Thus, the petitioner and the establishment have only taken advantage of the delay in the justice delivery system whilst enjoying an interim order, intentionally choosing not to have the matter heard and having a nonchalant opponent in the respondent Provident Fund Authorities. The fact that the petitioner has continued to enjoy a “status quo” of sorts since 2007 evidences that neither the petitioner nor the establishment have any bonafide intent to pay off the dues of the respondent Provident Fund Authorities. This also demonstrates bad faith beyond indifference to pay on the part of both the petitioner and the establishment. Hence, I am of the view the attitude of both the petitioner and the establishment reflects a dishonest disowning of their obligation for a period of nearly two decades. Thus, the conduct of the petitioner also subsequent to the filing of this petition disentitles him to any relief whatsoever.

12. In view of the aforesaid, I find no merit in the writ petition and this petition stands dismissed.
13. It is significant to highlight the lackadaisical, indifferent and indolent attitude of the respondent authorities in pursuing such recovery proceedings. By an ad interim order dated 19th December, 2006, the respondent authorities were specifically granted liberty to exhaust all

other remedies against the establishment for recovery of their dues and proceed in a manner contemplated under the Act. Notwithstanding a specific query, the respondent authorities could not satisfy this Court as to what steps they had taken for recovery of their dues against the establishment. Subsequently, the writ petition was also dismissed for default on 13 December, 2018 and was restored only on 4th August, 2021. Even during the interregnum i.e. 3 years the respondent authorities have taken no steps against the petitioner nor the establishment. It is unfortunate that a statutory organisation such as the respondent Provident Fund Authorities continues to remain oblivious and blind to the purpose for which they have been set up and the rights which they are expected to protect. It continues to remain a disturbing feature as to how a piece of social welfare legislation intended to protect the interests of a weaker section of society during the superannuated winter of their life (as per *Krishna Iyer, J. in Organo Chemical Industries & Anr. vs. Union of India & Ors.* 1979 AIR 1803) has been stultified and made impotent because of the casual, indifferent and cavalier attitude of those who are intended to protect and preserve their rights. It is apparent that the salutary public purpose which the Act seeks to achieve has been left unprotected in the hands of those who are statutorily obliged to protect and preserve them. In view of the indolent, appalling and pathetic approach of the respondent authorities, let a copy of this order be served by the Registrar

General of this Court upon The Director General of Labour Welfare, Ministry of Labour & Employment, Jaisalmer House, New Delhi so that a proper inquiry maybe initiated in this matter against all the errant officers of the respondent authorities and appropriate action be taken against those found guilty in accordance with law.

14. Accordingly, WPA 24467 of 2006 stands dismissed. All connected applications also stand disposed of. There shall be no order as to costs.
15. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of requisite formalities.

(Ravi Krishan Kapur, J.)