

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.30372 OF 2012

Between:

M/s. Ampro Packaging Industries Ltd.,
and another

... Petitioners

And

Employees Provident Fund Organisation
and another

... Respondents

JUDGMENT PRONOUNCED ON: 18.03.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.30372 OF 2012****% 18.03.2024****Between:**# M/s. Ampro Packaging Industries Ltd.,
and another

... Petitioners

And\$ Employees Provident Fund Organisation
and another

... Respondents

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> Head Note:

! Counsel for the Petitioners : Mr.Vedula Srinivas**^ Counsel for Respondents : Mr.S.Prabhakar
Reddy**

? Cases Referred:

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HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 30372 of 2012****ORDER:**

Heard Mr. Vedula Srinivas, learned counsel appearing on behalf of the Petitioners and Mr. S.Prabhakar Reddy learned counsel appearing on behalf of the Respondents.

2. The petitioners approached this Court seeking prayer as under:

"To issue a Writ of Mandamus or any other appropriate writ order or orders, direction or directions to declare the proceedings of the 1st respondent dated 05.08.2011 in No.AP/22487/P.D-Cell.I/RO/Hyd/T.5/2011/671 and also the consequential proceedings of the 2nd respondent dated 13.09.2012 in reference No.AP/22487/Recovery Cell/PDRC 155/12, as illegal, arbitrary and violative of principles of natural justice and to set aside the same and to issue a consequential direction to the respondents to act in accordance with law."

3. **PERUSED THE RECORD :**

The interim orders of this Court dated 28.09.2012 passed in W.P.No.30372 of 2012 reads as under :

"It is contended by the learned counsel for the petitioners that show cause notice bearing Ref.No./A.P./22487/Recovery Cell/PDRC 155/12, dated 13.09.2012 is not served on the petitioners and that the 1st petitioner is not functioning from 2003 onwards.

In that view of the matter, notice before admission.

Pending further orders, there shall be interim stay as prayed for."

4. The case of the Petitioner, in brief, as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present writ petition is as follows :

The 1st Petitioner is a company registered under Companies Act, and it is carrying on the manufacture of Packaging Material at its factory situated at IDA, Uppal. The 1st Petitioner ran into severe losses and ultimately stopped its production activity in the year 2003, due to the accumulated losses and bad financial position it could not pay the Provident Fund contributions under the EPF Act, 1952 within the prescribed time. All the workmen had left the employment and there is no activity at all since June 2003. The Provident contributions were paid upto the month of June 2003 belatedly

and there is no need to pay any further contributions as industry itself stopped its activities and the workmen have left the employment.

It is further the case of the Petitioners that the 2nd Petitioner was served with Notice by the 2nd Respondent on 24.09.2012 dated 13.09.2012 asking the 2nd Petitioner to show cause as to why warrant of arrest should not be issued against the 2nd Petitioner on account of the 1st Petitioner not paying the arrears under the EPF Act. The said Notice was issued U/s.8G of the EPF Act. The 2nd Petitioner was also asked to appear before the 2nd Respondent on 25.09.2012 to show cause why the 2nd Petitioner should not be committed to civil prison. Upon inquiry it came to light that the 1st Respondent passed an order dated 05.08.2011 imposing damages U/s.14B of the EPF Act on the ground of delay in payment of contributions by the 1st Petitioner company in respect of the contributions paid during the periods 1995 to 2003 and in the furtherance of the said order of the imposition of damages the 2nd Respondent had invoked the provisions of Section 8G of the EPF Act for the recovery of the alleged damages amount by way of 2nd Petitioner's arrest and

detention in civil prison. Aggrieved by the same Petitioner filed the present writ petition.

5. The Learned Senior Counsel appearing on behalf of the Petitioner mainly put-forth the following submissions :

- i) The proceedings of the 1st Respondent dated 05.08.2011 are ex-parte in nature and hence unsustainable.
- ii) The 1st Respondent had initiated the proceedings after more than 7 years from the date of delay in the payment of last period of contributions and such a delay in initiating the proceedings itself is illegal.
- iii) The order impugned dated 05.08.2011 is in clear violation of principles of natural justice.
- iv) Unless the 1st Respondent records that there was mens rea on the part of the 1st Petitioner there cannot be imposition of damages automatically on mere delay in payment of the contributions.
- v) The Respondents are not empowered to arrest the 2nd Petitioner and detain the 2nd Petitioner in prison towards the alleged arrears of the company since the Directors of the Registered Company are having the immunity of limited liability under the Companies Act and they cannot be called upon to pay the amounts due from the company.

The Learned counsel appearing on behalf of the Petitioner placing reliance on the aforesaid submissions contends that the writ petition should be allowed as prayed for.

6. The counter affidavit has been filed by the respondents, in particular para 4 of the counter affidavit reads as under :

"4. I submit, without prejudice to the above contention, that the petitioner is covered establishment under the provisions of the Act w.e.f. 1-3-1989 under code number AP/22487. Thus they have to pay the dues under the provisions of the Act within time. And that as the petitioner failed to pay the dues within time for period from 12/1995 to 5/2009, action u/s 14 B of the Act has been initiated vide notice dated 30-10-2010 while personal hearing on 31-12-2010. And that as the petitioner failed to attend the hearing, the enquiry has been adjourned to 4-2-2011, then to 13-4-2011, 13-6-2011, 21-7-2011, **but the petitioner failed to attend the enquiry. Thus an ex parte order dated 5-8-2011 has been passed levying damages and interest. And that as the petitioner failed either to question the said order, or to pay the same, a show cause notice dated 13.9.2012 was issued. And that the petitioner instead of submitting the**

explanation raising all the contentions which are raised in this Writ petition, straight away approached this Hon'ble Court. Thus this Writ Petition is also not maintainable on this ground also and liable to be dismissed in limine."

DISCUSSION AND CONCLUSION :

7. A bare perusal of the order impugned dated 05.08.2011 passed by the 1st Respondent herein clearly indicates that it is an order passed *ex parte*. Para 2 of the order impugned dated 05.08.2011 of the 1st Respondent reads as under :

"2) Hence Summons Notice No.AP/22487/PD Cell-I/RO/Hyd/2010/T-5/1243, dated 30.11.2010 was issued to the employer of the aforesaid establishment to show cause as to why damages under Section 14B & 7Q of the Act should not be levied and the employer was also afforded opportunity of personal hearing on 31.12.2010 to enable the employer to present his case. Case called. None appeared and the enquiry is adjourned and posted to 04-02-2011, 13-04-2011, 13-06-2011, 21-07-2011, 03-08-2011. Case called. None appeared. Establishment failed to avail opportunity of being heard in person or made any submission. Inquiry therefore concluded *ex parte* and damages and interest as applicable shall be levied."

8. Taking into consideration that this Court passed interim orders in favour of the Petitioner on 28.09.2012 staying all further proceedings in pursuance to the

Notice issued by the 2nd Respondent dated 13.09.2012 which is a Notice to show cause why a warrant of arrest should not be issued to the 2nd Petitioner and the said orders dated 28.09.2012 are in force as on date and further taking into consideration that none appeared on behalf of the Petitioner's establishment on 04.02.2011, 13.04.2011, 13.06.2011, 21.07.2011 and 03.08.2011 and 1st Respondent proceeded and concluded the inquiry ex-parte and levied damages to a tune of Rs.3,22,053/- for the period from December 1995 to May 2003 vide the impugned order dated 05.08.2011 of the 1st Respondent herein i.e., after more than 7 years from the date of delay in the payment of the last period of contribution and duly taking into consideration a clear admission at para 4 of the counter affidavit filed by the Respondents that an ex-parte order dated 05.08.2011 had been passed by the 1st Respondent levying damages and interest without even recording a finding in the said order impugned dated 05.08.2011 of the 1st Respondent whether Notice has been served on the 1st Petitioner company or any person representing

the 1st Petitioner company or a finding that despite the service of the notice on the 1st Petitioner company or any person representing the 1st Petitioner company there was non-representation on the part of the 1st Petitioner company, because the order impugned dated 05.08.2011 only indicates that the alleged notice dated 30.11.2010 as having been issued to the employer of the Petitioner establishment, but however is silent with regard to the said notice being acknowledged by the Employer of the petitioner establishment hence, this Court opines that the order impugned dated 05.08.2011 of the 1st Respondent is in violation of principles of natural justice. The counter affidavit filed on behalf of the Respondents also does not explain the details of the Notice dated 30.10.2010 as being served and acknowledged by the Petitioners herein and it only states that action under section 14B of the Act has been initiated vide Notice dated 30.10.2010.

9. This Court opines that the judgment relied upon by the learned counsel appearing on behalf of the Respondents do not apply to the facts of the case since

the order impugned in the present writ petition passed by the 1st Respondent dated 05.08.2011 is an ex-parte order.

10. Taking into consideration the above referred facts and circumstances of the case and duly considering the interim orders of this Court dated 28.09.2012 which had been passed in favour of the petitioner and which are in force as on date and in the light of the discussion and conclusion arrived as above the writ petition is allowed, the proceedings of the 1st Respondent dated 05.08.2011 in No.AP/22487/P.D-Cell.I/RO/Hyderabad/T5/2011/671 and also the consequential proceedings of the 2nd Respondent dated 13.09.2012 in reference No.AP/22487/Recovery Cell/PDRC 155/12 are set aside and the matter is remitted to the 1st Respondent to pass appropriate orders, in accordance to law by giving opportunity of personal hearing to the Petitioner to enable the Petitioner to present his case and to conclude the proceedings in conformity with principles of natural justice, within a period of 6 weeks from the

date of receipt of the copy of the order. However there shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

SUREPALLI NANDA,J

Date: 18.03.2024

Note: L.R.Copy to be marked
(B/o) *Yvkr*