
(2014) 11 JH CK 0113

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1780 of 2014

Aadarsh Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Citation : (2015) 145 FLR 523

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Rajiv Ranjan Tiwari and Prabhat Singh, for the Appellant; Banani Verma, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J. Aggrieved by order dated 25.2.2014, the petitioner has approached this Court.

The brief facts of the case are that, on 25.2.2014 a summon was issued from the office of the Recovery Officer to the petitioner for recovery of sum of Rs. 10,40,107/-. Thereafter the petitioner submitted his representation which was received in the office of the Recovery Officer on 10.3.2014 however, on 1.7.2014, a notice to show-cause for warrant of arrest was issued against the petitioner.

The learned Counsel appearing for the petitioner submits that vide order dated 28.7.2004 the Regional Provident Fund Commissioner, passed order under section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 against M/s. St. Mary's School, Shivaji Maidan, Daltonganj, Palamau. The order dated 28.7.2004 under section 7-A records that the summon issued to the opposite party returned with the postal remarks " Refused, return to sender" and thereafter, the proceeding under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was initiated against M/s. St. Mary's School. The father of the petitioner challenged order dated 28.7.2004 in W.P. (S) No. 1730 of 2010 in which the order staying the operation of order dated 28.7.2004 was passed by

this Court however, during the pendency of the writ petition, the father of the petitioner died and therefore, on 11.12.2012 the writ petition was withdrawn. The learned Counsel for the petitioner has further submitted that even the order dated 25.2.2014 and 1.7.2014 record contradictory fact in as much as, the Regional Provident Fund Commissioner has initiated the proceeding against the petitioner on the ground that he is the sole surviving legal heir of Late Sudama Pandit whereas, in subsequent proceeding a show-cause notice for warrant of arrest has been issued to the petitioner on the premise that he is the owner of M/s. St. Mery's School.

2. As against above, Mrs. Banani Verma, the learned Counsel appearing on behalf of the Regional Provident Fund Commissioner submits that after the writ petition filed by the father of the petitioner was withdrawn on 11.12.2012, the order dated 28.7.2004 remained unchallenged and in pursuance of the said order a proceeding has been initiated against the petitioner being the legal heir of Late Sudama Pandit. It is submitted that the liability under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is statutory liability and the petitioner being the legal heir of Late Sudama Pandit cannot escape from the said liability.

3. Having heard the learned Counsel appearing for the parties, I am of the opinion that the writ petition deserves to be allowed on the sole ground of violation of rules of natural justice. In the counter-affidavit filed on behalf of the respondent-Regional Provident Fund Commissioner, it is nowhere indicated how the proceeding against the petitioner was initiated. It appears to be an admitted position that before initiating proceeding against the petitioner in pursuance of order dated 28.7.2004 under section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, no notice was issued to the petitioner. The Recovery Officer vide order dated 25.2.2014 issued summon to the petitioner, in response of which the petitioner submitted his representation nonetheless, a show-cause notice for warrant of arrest has been issued on 1.7.2014. No doubt, the liability as determined under section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a statutory liability however, it has to be kept in mind that before initiating a proceeding for recovery of the said amount from legal heirs, the Regional Provident Fund Commissioner is under duty to issue show-cause notice to the legal heir of the deceased person. The representation submitted by the petitioner before the Recovery Officer, has not been considered and a show-cause notice for warrant of arrest has been issued against the petitioner. I do not find any reason disclosed in order dated 1.7.2014 by which, a show-cause notice for warrant of arrest has been issued against the petitioner. The said notice does not record that the petitioner has been trying to conceal himself or he has intended to dispose of the property and therefore, the order dated 1.7.2014 is not in accordance with the provisions of the Code of Civil Procedure. In view of above discussion, the writ petition is allowed. The respondents are permitted to proceed against the petitioner afresh, if found necessary, in accordance with law after affording a reasonable opportunity of

hearing to the petitioner.