

(2011) 08 GUJ CK 0001
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1746 of 2010 in Special Civil Application No. 885 of 2010

Harish F. Shah

APPELLANT

Vs

Employees Provident Fund Organization

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(e), 8B(b)
Employees State Insurance Act, 1948 — Section 15, 17, 2(15), 2(17), 85B
Factories Act, 1948 — Section 100, 2(17), 2(e), 40(1), 7

Citation : (2012) 133 FLR 307 : (2012) 2 GLH 338 : (2012) 3 LLJ 512

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Mihir Joshi, with Mr. Manav A. Mehta, for the Appellant; Niral R. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Mr. J.B. Pardiwala, J.—In this Appeal, the appellant -original petitioner seeks to challenge the judgment and order dated 23rd July 2010 passed by the learned Single Judge, whereby the learned Single Judge rejected the petition confirming the arrest warrant issued against the appellant - petitioner u/s 8B(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, "the EPF Act"). Facts relevant for the purpose of deciding this Appeal can be summarised as under :-

(1) The appellant is the erstwhile Chief Managing Director of Dairy Den Limited, a Company incorporated under the provisions of the Companies Act, 1956.

(2) The Company was engaged in the business of dairy equipments/ products. The Company stopped functioning in the year 2003 and was declared as non-performing assets.

(3) The authorized officer of the Bank of India took over the possession of the

properties, more particularly, the premises situated at A/29. GIDC. Electronic Estate, Sector 25. Gandhinagar under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short. "SARFAESI Act") some time in the month of August 2004.

(4) Record reveals that at the time when the Bank took over the possession of the secured assets, provident fund dues to the tune of Rs. 20,09,683=00 remained unpaid by the Company. Therefore, by a letter dated 14th February 2006, the Employees' Provident Fund Organization - respondent No. 1 informed the Bank about its outstanding dues and requested the Organization not to proceed further with the sale of the properties of the Company.

(5) The Bank was further informed that if it wants to proceed with the sale of the properties of the Company then in that case the outstanding amount of provident fund dues would be recovered from the sale proceeds of the secured assets.

(6) Record reveals that the Bank, on 10th March 2006. gave a public notice under the SARFAESI Act for holding public auction of the secured assets of the Company. In the said notice, the Bank acknowledged the outstanding provident fund dues of the Company to the tune of Rs. 20,09,683=00. As the offers received by the Bank were below the reserve price, the secured assets could not be sold. Therefore, public auction.

One Shri Anil P. Jain showed interest in purchasing the secured assets and, therefore, vide letter dated 28th September 2006 he gave an offer to the Bank to purchase the properties for Rs. 117 lakhs. Shri Jain acknowledged the provident fund dues and agreed to discharge the same.

(7) It appears that some complications cropped up regarding the payment of provident fund dues and, therefore, the appellant herein, on behalf of the Company, wrote a letter on 28th September 2006 to the authorized officer giving consent for sale of the properties under a private arrangement. It appears that the appellant agreed to discharge the liability of provident fund dues along with Shri Anil Jain. Thereafter, on 10th October 2006 the appellant requested the respondent - Authority to grant installments for payment of outstanding provident fund dues, to which the respondent - Authority acceded and granted 24 installments.

As per the arrangement, Shri Jain was to make payment to Dairy Den Limited and Dairy Den Limited, in turn, was to make the payment of provident fund dues in installments. However, eventually, Shri Jain did not make any payment. As a result of which, the installment of provident fund amount was not paid. Ultimately, the respondent - Authority issued an arrest warrant against the appellant u/s 8B(b) of the EPF Act. It is at this stage that the appellant thought fit to challenge the action of the respondent - Authority of issuing the arrest warrant, by filing Special Civil Application No. 885/2010.

2. The principal contention before the learned Single Judge was that the

Authority should have resorted to attachment and sale of the movable or immovable properties of Dairy Den Limited and only thereafter the arrest warrant could have been issued, if necessary. The second contention before the learned Single Judge was that the appellant herein as a Director of the Company cannot be held liable as the Director would not be covered under the definition of the term "employer" as defined u/s 2(e) of the EPF Act.

3. The learned Single Judge negated both the contentions and rejected the writ petition. This is how the appellant - original petitioner is before us in this Appeal.

4. We have heard learned senior Counsel Mr. Mihir Joshi appearing with learned Advocate Mr. Manav A.Mehta for the appellant, and learned Advocate Mr. Niraj R. Mehta for the respondent - Provident Fund Authority.

5. Learned Counsel for the appellant put forward the following contentions :--

(1) That the learned Single Judge failed to appreciate that the order of issuance of arrest warrant against the appellant is ex-facie untenable and bad in eyes of law.

(2) That the learned Single Judge failed to appreciate that the warrant of arrest is issued without jurisdiction.

(3) That the learned Single Judge failed to appreciate that the respondent Organization has violated the principles of natural justice by not affording an opportunity of hearing to the appellant before issuing warrant of arrest.

(4) That the learned Single Judge failed to appreciate that the respondent Organization could not have issued the warrant of arrest against the appellant as he is neither the owner nor the occupier nor the manager of the establishment. The recovery of provident fund arrears is for the period between October 2001 and July 2003. During this time, the appellant was neither the occupier nor the manager of M/s. Dairy Den Limited, a public limited Company. The establishment, which is a factory, is owned by M/ s. Dairy Den Limited.

(5) That the learned Single Judge failed to appreciate that the appellant, by way of Annexure-L to the petition had produced evidence to show that he was neither the owner nor the manager nor the occupier of the establishment. The EPF Act provides for the arrest of employer and his detention in prison as one of the modes for recovery of provident fund dues. The Act also defines the word "employer.

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;

The appellant not being an employer, the warrant of arrest could not have been issued against him.

(6) That the learned Single Judge failed to appreciate the ratio laid down by the Hon"ble Supreme Court in Employees" State Insurance Corporation Chandigarh Vs. Gurdial Singh and Others, and Employees State Insurance Corporation Vs. S.K. Aggarwal and Others, .

Both these judgments deal with the liability of Directors of a Company under the Employees" State Insurance Corporation Act. The Hon"ble Supreme Court, while considering the definition of "principal employer" which is pari-materia with the definition of "employer" u/s 2(e) of the EPF Act holds that Director would not be covered under the definition of "principal employer" clause(i) when the occupier and the manager have been duly named.

(7) That the learned Single Judge failed to appreciate that the respondent Organization has already issued a show-cause notice dated 17th August 2007 to one Shri Anil P. Jain who had purchased the property of M/s. Dairy Den Limited, on which the respondent Organization had registered its charge. The respondent Organization asked Mr. Jain to show-cause as to why the said property attached by it should not be sold off to recover its dues. The show-cause notice further stated that if nothing was heard in the matter by 27th August 2007 it would initiate necessary actions for selling the property. The learned Single Judge failed to appreciate that the respondent Organization having initiated action for recovery of its dues by auctioning the said property, arrest of the employer and his detention in prison could not have been made.

(8) That the learned Single Judge failed to appreciate that the respondent Organization failed to comply with the directions issued by this Hon"ble Court in Special Civil Application No. 14560/ 2008 vide order dated 22nd September 2009.

That the learned Single Judge erred in concluding that it was an admitted fact that the appellant was responsible for making the payment of the provident fund dues. The learned Single Judge failed to consider that the day on which the appellant gave its consent for sale of properties under a private agreement, Mr. Anil Jain had also addressed a letter to the Bank showing his inclination to purchase the properties and also showing his willingness to discharge the provident fund dues. In this scenario, it was only Anil Jain who could be held responsible for paying the dues.

6. To fortify the above referred contentions, he relied upon two judgments of the Supreme Court (i) in the matter of Employees" State Insurance Corporation Chandigarh Vs. Gurdial Singh and Others, ; and (ii) in the matter of Employees

State Insurance Corporation Vs. S.K. Aggarwal and Others, .

7. Learned Counsel relied upon paragraphs 2 and 3 of Employees" State Insurance Corporation Chandigarh Vs. Gurdial Singh and Others, , which read as under :-

2. There is no dispute that clause (ii) does not apply. What is relevant to consider is whether the liability of Director is covered under clause (1) and if it is, clause (iii) being residuary would not apply and in case it is not covered by clause (i), the matter would be regulated by clause (iii). Admittedly the Company had a factory and it is not in dispute that the occupier of the factory had been duly named. It is also not in dispute that it had a manager too. In view of the clear terms in the definition, we are of the view that Director did not come within clause (i) but the occupier being there, clause (i) applied and in that view of the matter, clause (iii) could have no application.

3. Learned Counsel for the appellant relied upon two decisions as precedents. In the case of the Bombay High Court in Suresh Tuisidas Kalichand v. Collector of Bombay (1980)2 Lab L.J. 81, the Court found liability by relying upon clause (ii) of the definition without first ascertaining whether the matter was covered by clause (i). Now on our finding in the instant case that clause (i) applied we do not have to go to clause (iii) where the liability is of the person who is responsible for the supervision and control of the establishment. The other decision on which reliance has been placed is in the case of B.M. Chatterjee Vs. The State of West Bengal and Another, . that was a case where a learned Single Judge proceeded on the footing that the Directors were owners of the Company. We called upon the learned Counsel for the appellant to substantiate the proposition that Directors in the absence of anything more would have to be treated owners of the Company and he has candidly accepted the position that in the absence of facts and proof of actual position, Directors cannot be treated ipso facto as owners. Thus no support is available from the precedents. We are of the view that the High Court was right in its conclusion that the liability was of the Company and in the event of their being an occupier, he was liable to meet the demand.

8. So far as the second judgment is concerned Employees State Insurance Corporation Vs. S.K. Aggarwal and Others, . paragraphs 3 to 10 have been relied upon, which read as under :-

3. Section 2(17) of the Employees" State Insurance Act, however, defines the principal employer as either owner or occupier - taking care of all eventualities. When the owner of the factory is the principal employer, there is no need to examine who is occupier. The owner will be the principal employer u/s 40.

4. The Employees" State Insurance Act does not define the term "employer" although under Sections 85-B and 85-C of that Act the term "employer" is used.

5. The provisions of Section 40 in the light of these definitions have been

considered by various High Courts in order to decide whether a director of a limited Company can be considered as the principal employer liable to pay contribution u/s 40. A Division Bench of the Bombay High Court in the case *Suresh Tuisidas Kilachand v. Collector of Bombay*, 1984 Lab IC 1614, held that a director of a Company by virtue of being a director is not principal employer contemplated by Section 2(17) of the Employees' State Insurance Act. He is not personally liable to pay employer's contribution under the Act. In the context of Section 2(17) read with Section 2(15) the Court held that whether a person is occupier or not has to be ascertained with reference to whether he is in ultimate control over the factory. When the definition of principal employer in Section 2(17) refers to the "owner" or "occupier" of a factory, the principal employer can be either the owner or the occupier depending upon the facts of each case. When there is an owner of the factory that owner must be considered as the principal employer liable for contribution.

6. u/s 40 the words "owner" and "Occupier" have been used disjunctively. The Court also referred to Section 100 of the Factories Act and said that even under the Factories Act, 1948, the Legislature has clearly contemplated that in the case of a factory, a Company can be the "occupier". Therefore, when the owner of a factory is a Company it is the Company which is the principal employer and not its director. The Bombay High Court overruled the judgment of the single Judge of the Bombay High Court in so deciding.

7. The same view has been taken by the Madhya Pradesh High Court in the case of *Employees' State Insurance Corporation, Indore v. Kailashchandra*, 1989 Lab IC 760. The Madhya Pradesh High Court also said that when there is a default in payment of contribution by the Company, the managing director, or other directors cannot be made personally liable. The contribution can be recovered from the Company as the principal employer.

8. In the case of *Employees' State Insurance Corporation Chandigarh Vs. Gurdial Singh and Others*, , this Court held that the directors of a private limited Company were not personally liable to pay contributions under the "Employees' State Insurance Act, 1948. The Court was considering a case where a private limited Company was the owner of the factory and the occupier of the factory had been dully named under the Factories Act 1948. The Court said that the directors did not come within the definition of clause 1 of Section 2(17) of the Employees' State Insurance Act. This Court also disapproved of the decision of a Single Judge of the Bombay High Court which has been subsequently overruled by the Division Bench of the Bombay High Court in the case of *Suresh Tulsidas Kilachand v. Collector of Bombay*, 1984 Lab IC 1614 (supra).

9. Therefore, even if we read the definition of "principal employer" under the Employees' State Insurance Act, 1948 in Explanation 2 to Section 405 of the Indian Penal Code, the directors of the Company, in the present case, would not be covered by the definition of "principal employer" when the Company itself owns the factory and is also the employer of its employees at the head office.

10. In any event, in the absence of any express provision in the Indian Penal Code incorporating the definition of "principal employer" in Explanation 2 to Section 405, this definition cannot be held to apply to the term "employer" in Explanation 2. As the High Court has observed, the term "employer" in Explanation 2 must be understood as in ordinary parlance. In ordinary parlance it is the Company which is the employer and not its directors either singly or collectively.

9. Per contra, learned Advocate Mr. Niraj Mehta appearing for the respondent - Authority submitted that the learned Single Judge has not committed any error, much less an error of law in rejecting the petition. He has submitted that the two judgments of the Supreme Court which have been relied upon are not applicable in the facts of the present case. He has submitted that the two judgments of the Supreme Court are in connection with the Employees' State Insurance Corporation Act and not the Employees' Provident Funds and Miscellaneous Provisions Act. He submitted that the provisions of the Employees' State Insurance Corporation Act, 1948 are substantially different from the provisions of the EPF Act. He further submitted that the EPF Act is a beneficent piece of social welfare legislation made at promoting and securing the well-being of the employees and the Court may not adopt a narrow interpretation of the provisions which will have the effect of defeating the very object and purpose of the Act.

10. Having given our anxious thoughts and considerations to the rival contentions of the respective parties, we are of the view that the following question of law falls for our consideration :-

(1) Whether the arrears of the provident fund and other amounts payable by a private limited Company under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 can be recovered from its erstwhile Chief Managing Director

11. For the purpose of deciding the issue raised in the petition, it will be useful to notice Sections 2(e), 8 and 8-B of the Act. The same read as under :-

2. Definitions. In this Act, unless the context otherwise requires. -

(a) to (d) xx xx xx xx xx

(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 7of 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;

8. Mode of recovery of moneys due from employers. Any amount due -

(a) from the employer in relation to an establishment to which any scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable u/s 14-B, accumulations required to be transferred under sub-Section (2) of Section 15 or under sub-Section (5) of Section 17, or any charges payable to him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or

(b) from the employer in relation to an exempted establishment in respect of any damage recoverable u/s 14-B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified u/s 17 or in respect of the contribution payable by him towards the Pension Scheme under the said Section 17.

may, if the amount is in arrears, be recovered by the Central Provident Fund Commissioner or such other officer as may be authorised by him, by notification in the Official Gazette, in this behalf in the same manner as an arrear of land revenue.

8-B. Issue of certificate to the Recovery Officer -

(i) Where any amount is in arrear u/s 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.

(i) 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.

12. An analysis of Section 2(e) shows that where the establishment is a factory, its owner or occupier including the agent of such owner or occupier, legal representative of the deceased owner or occupier falls within the definition of employer. In relation to any other establishment, the person or Authority having ultimate control over the affairs of the establishment falls within the definition of the employer. Where the affairs of the establishment are entrusted to a Manager, Managing Director, Managing Agent falls within the definition of employer. Section 8 provides for recovery of money dues from the employer as arrears of land revenue. Section 8-B(1) lays down the modes of recovery. It empowers the Recovery Officer to effect the recovery from the establishment or the employer by attachment or sale of movable or immovable property of the establishment or the employer, 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 employer. Proviso to Section 8-B(1) lays down that if the Recovery Officer intends to resort to the mode of attachment and sale of property, then it should be first qua the properties of the establishment and the properties of the employer shall be touched only if the amount collected from the sale of properties of the establishment is not sufficient for recovering the whole of the arrears.

13. In view of the above analysis of the relevant provisions and the undisputed facts, it is not possible to accept the contention of the learned Counsel for the appellant that the appellant cannot be proceeded against the recovery of the arrears of the provident fund and other amounts due under the Act.

14. The appellant has not disputed the fact that he was the Chief Managing Director of the Company at the relevant point of time when the assets of the Company were taken over by the Bank under the provisions of the SARFAESI Act. It is also not disputed that he gave an assurance to the respondent - Authority that he will be making good the dues towards the provident fund in installments. However, the appellant's only defence is that there was an arrangement entered into with one Mr. Jain in this regard but, as Mr. Jain did not pay the money to the appellant, the appellant, in turn, could not deposit the amount of installments with the respondent - Authority.

15. We are of the view that there may be a dispute between the appellant and Mr. Jain but, that by itself will not absolve the appellant from discharging his part of obligation and liability under the Act to make good the dues towards the provident fund.

16. Now so far as the two judgments which have been relied upon by the appellant is concerned, the same would not be applicable in the present case. As a matter of fact, in almost identical facts, the Division Bench of Punjab and Haryana High Court, in the case of Mohan v. Regional Provident Fund Commissioner and another, reported in 2002-III-LLJ 779 Punjab and Haryana, had an occasion to deal with the same contention which has been canvassed before us, and in the case before the Punjab and Haryana High Court also the

judgment of the Supreme Court in the case of Employees" State Insurance Corporation, Chandigarh v. Gurdial Singh (supra) was relied upon. The Division Bench, speaking through His Lordship Mr. Justice G.S. Singhvi (as His Lordship then was), held in paragraphs 13, 14, 15, 16, 17 and 18 as under :-

13. The decisions relied upon by the petitioner to avoid his liability under the Act do not have any bearing on the present case because in those cases, Bombay High Court and the Supreme Court had dealt with the provisions of the Employees" State Insurance Act, 1948 which are substantially different from the provisions of the Act. Section 2(17), 40(1) & (4) and 45-G(1), (2), (3)(i) & (ix), (4) and (5) of the 1948 Act which were considered in the aforementioned cases, read as under :--

2. Definitions. - In this Act, unless there is anything repugnant in the subject or context,-

(17). "Principal employer" means-

(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;

(ii) in any establishment under the control of any department of any Government of India, the Authority appointed by such Government in this behalf or where no Authority is so appointed, the head of the Department.

(iii) in any other establishment, any person responsible for the supervision and control of the establishment.

40. Principal employer to pay contribution in the first instance.

(1) The Principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.

(4) Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

45-G. Other modes of recovery.-(1) Notwithstanding the issue of a certificate to the Recovery Officer u/s 45-C, the Director General or any other officer authorised by the Corporation 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 factory or establishment or, as the case may be, the principal or immediate employer who is in arrears, the Director General or any other officer authorised by the Corporation in this behalf may require such person to deduct from the said amount the arrears due from such factory or establishment or, as the case may be, the principle or immediate

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 Corporation.

(3)(i). The Director General or any other officer authorised by the Corporation 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 factory or establishment or, as the case may be, the principal or immediate employer or any person who holds or may subsequently hold money for or on account of the factory or establishment or, as the case may be, the principal or immediate employer, to pay the Director General 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 factory or establishment or, as the case may be, the principal or immediate employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ix) Any person discharging any liability to the principal or immediate employer after the receipt of a notice "under this sub-Section shall be personally liable to the Director General or the officer so authorised to the extent of his own liability to the principal or immediate employer's liability for any sum due under this Act, whichever is less.

(4) The Director General or the officer so authorised by the Corporation in this behalf may apply to the Court in whose custody there is money belonging to the principal or immediate employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

(5) The Director General or any officer of the Corporation may, if so authorised by the Central Government by general or special order, recover any arrears of amount due from a factory or any establishment or, as the case may be from the principal or immediate employer by distraint and sale of its or his movable property in the manner laid down in the Third Schedule to the income tax Act, 1961 (43 of 1961).

14. In *Suresh Tulsidas Kilachand v. Collector of Bombay*, a Division Bench of the Bombay High Court considered the question as to whether individual director of a Company cannot be held to be in control of the factory belonging to the Company unless he has been notified as occupier for the purposes of the Factories Act, 1948 and, therefore, he cannot be personally held liable to clear the arrears under the 1948 Act.

15. In *Mansigh L. Bhakta and others v. State of Maharashtra and others*, a learned Single Judge of Bombay High Court took the same view and held that the director of the Company cannot be held personally liable for recovery of arrears under the 1948 Act.

16. In *Employees' State Insurance Corporation, Chandigarh v. Gurdial Singh*,

their Lordships of the Supreme Court held that directors do not come within Clause (i) of Section 2(17) of the 1948 Act.

17. In our opinion, the ratio of these decisions cannot be applied to the case in hand because the definition of the employer contained in Section 2(e) of the Act in relation to an establishment other than a factory is totally different and the issue relating to the liability of the manager, managing director etc.. would depend on the finding as to whether he is in the control of the affairs of the establishment. In the present case, we have found that the petitioner was in the control of the affairs of the establishment of the Firm and the Company and, therefore, he falls within the definition of the employer. Therefore, he cannot escape the liability to pay the arrears.

18. We are further of the view that the modes of recovery specified in clauses (a), (b) and (c) of Section 8-B(1) of the Act are alternative modes and not exclusive of each other and it is open to the Recovery Officer to resort to one or more of the modes. The use of the expression "by one or more of the modes mentioned below" in the substantive part of Section 8-B(1) makes it clear that the legislature has, with a view to ensure that the dues payable under the Act are recovered, empowered the Recovery Officer to resort to one or all the modes for recovery of the arrears. The only rider placed on the exercise of power by the Recovery Officer is that in the case of attachment and sale of any property, he must first do so qua the properties of the establishment and take proceedings against the properties of the employer for recovery of the whole or any part of the arrears only where the attachment and sale of properties of the establishment is insufficient for recovery of the whole amount specified in the certificate. However, there is nothing in Section 8-B(1) and other provisions of the Act from which it can be inferred that the Recovery Officer cannot adopt the mode specified in Clause (b) of Section 8-B(1) before exhausting other modes of recovery.

17. A Similar question was considered by the Division Bench of Punjab and Haryana High Court in *Sobhag Textile Limited v. Regional Provident Fund Commissioner, Haryana and another*, 2000(3) RSJ 178, wherein the Division Bench held as under :-

Sub-Section (1) of Section 8-B of the 1952 Act prescribes alternative modes of recovery of the arrears on the basis of certificate issued by the authorised officer. Attachment on sale of movable or immovable property of the establishment or, as the case may be, and arrest of the employer and his detention in prison are two of the three modes which can be adopted by the Recovery Officer. Proviso appearing below clause (c) of Section 8-B(1) of the 1952 Act lays down that attachment and sale of any property of the employer can be taken only if the amount due cannot be recovered from the properties of the establishment. However, there is nothing in the said proviso from which it can be inferred that respondent No. 2 is not entitled to have recourse to the mode prescribed in clause (b) of Section 8-B(1) before taking recourse to the sale of property u/s 8-

B(1)(a) and in the absence of any such embargo, it is not possible to agree with Shri Grover that the notice issued by respondent No. 2 should be declared illegal, arbitrary and unjustified."

18. In view of the above discussion, we hold that the action of the respondent - Authority in issuing the arrest warrant against the appellant -original petitioner u/ s 8-B(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was well within the powers and jurisdiction of the Authority and tenable in law.

19. For the reasons aforesaid, we do not see any reason to disturb the judgment and order dated 23rd July 2010 passed by the learned Single Judge in Special Civil Application No. 885/2010. In this view of the matter, we dismiss the Appeal with no order as to cost.