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**(2018) 05 CAL CK 0240**  
**In the Calcutta High Court**  
**Case No : Writ Petition3969 (W) of 2018**

Nandita Das & Anr.

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

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**Date of Decision :** 21-05-2018

**Acts Referred:**

Employees' Provident Fund and Miscellaneous Provisions Act, 1952 — Section 2(e), 14B

**Citation :** (2018) 05 CAL CK 0240

**Hon'ble Judges :** SHIVAKANTKANT PRASAD, J

**Bench :** Single Bench

**Advocate :** Raj Mohan Chatteraj, Nilendra Monimoy Banerjee, Laila Khatun

**Final Decision :** Disposed Of

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## Judgement

Challenge in this writ application is the impugned order dated 14th February, 2018, passed by the Recovery Officer, Employee's Provident Fund

Organisaion, Regional Office, Howrah under the Ministry of Labour and Employment, Government of India, in the matter relating to outstanding

certificate dues for Rs. 1,88,845/- including cost charges of Rs. 1400/- for the period of 04/1996 to 12/2013 under section 14B of the EPF & MP Act,

1952 from M/s Goutam Cinema having P.F. Code WB/25817, inter alia, on the ground stated in the petition that there has been a malafide and biased

action taken against the petitioner by directing the department to issue warrant of arrest within the meaning of CP-26 against the legal heirs namely

Goutam Dutta.

It appears from the order impugned that on 29.01.2018 the certificate proceeding under CP-29 was issued and duly received by the Goutam Dutta and

Nandita Das and pursuant thereto Sitapati Dutta and Kausik Dutta agreed to pay the dues and Kausik Dutta also submitted demand draft of his own

share for Rs. 325/- by paying the full amount of his share whereas Kausik Dutta, his brother, has only paid sum of Rs. 10,000/- against the share of

outstanding dues of Sitapati Dutta and Kausik Dutta and Sitapati Dutta assured that he should pay the rest amount of his share within 31st March,

2018. However, since time was already granted to Goutam Dutta and Nandita Das but as on that day they were not agreed to pay the dues without

any valid reason, according to the authority being the Recovery Officer there was no ground for further proceeding under CP-25 hearing and directed

the department accordingly to issue warrant of arrest within the meaning of CP-26 against the legal heirs namely Goutam Dutta.

According to the provision embodied relating to arrest and detention of the defaulter there is a specific provision in 7.6.3 that the recovery officer

cannot order for warrant of arrest or detention against a woman. My attention has been drawn by the learned counsel appearing for the petitioners to

page nos. 45 and 46, being the annexure P-13, whereby the notice to the legal representative of Goutam Cinema were issued to Goutam Dutta and

Nandita Das, but Nandita Das has not been described as partner of Goutam Cinema. The said notice revealed that there has been outstanding dues of

Rs. 1,88,845 including cost charges of Rs. 1400/- for the period 04/96 to 12/2013. Kausik Dutta, a partner and one of the legal heirs the establishment

had paid his share amounting to Rs. 62,515/- except balance of his own share of charges amounting to Rs. 325/- which was required to be paid

immediately.

It further reveals that three partners and legal heirs of the establishment are Goutam Dutta, Smt Nandita Das and Sitapati Dutta who have not paid

there shares of the certificate dues @ 62,840/- each along with cost charges of Rs. 350/-. It is pointed out that Smt Prabati Bala Dutta was the

proprietor of the establishment who died on 15.05.2016 as per joint letter dated 30.04.2017. So obviously such letter must have been signed by all the

brothers and sister as legal heirs of their mother Parbati Bala Dutta . On the basis of that the Recovery Officer has proceeded against them

apportioned the share and outstanding amount payable by each of the legal heirs.

In K.L.Jalan and Others Vs. State of West Bengal and Anr. reported in 1993 SCC OnLine Cal 7 expression "employer" in relation to an

establishment has been defined in section 2(e). Paragraph 10 of the said

judgement reads as follows :-

10. It is pertinent to note that all the petitioners accused have been described establishment, and not a factory. The expression "employer" in

relation to an establishment (other than a factory) has been defined in S.2(e)

(ii) to mean "the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are

Managing Director or managing agent." It would seem significant and observable to not that Director of an establishment has clearly been excluded

from the said definition. It has thus been submitted on behalf of the petitioners-accused that in the absence of any specific averment in the complaints

that the petitioners, as Directors of the company/establishment, had ultimate control over the affairs of the establishment the learned Magistrate could

not conceivably have taken cognizance of the alleged offences. The expression "employer", as defined in S. 2(e) of the Act, and the expression

"person in charge of and responsible to" the company for the conduct of its business in S.14-A of the Act are distinct and different; and a person

cannot be prosecuted for non-compliance of the requirements of S.17(3), merely because he has been described as person in charge of and

responsible to the company for the conduct of its business."

The authority appears to have been taken note of the fact on the basis of the joint petition filed by the legal heirs of Prabati Bala Dutta since deceased,

proprietor of the establishment. A notice by the recovery officer was issued on 11.10.2017 by the Recovery Officer, Regional Office, Howrah to

Kausik Dutta, who has been described as a partner and notice of showcause was issued against him as to why warrant of arrest should not be issued

against him. Kausik Dutta was required to appear before the recovery officer on 02.11.2017 at the office of the said officer to show cause why he

should not be committed to the civil prison in execution of the said certificate or to liquidate the amount due by the said date. It would further appear

from annexure P-1 being memo dated 13.03.2014 issued by the Assistant/Regional Provident Fund Commissioner that it was addressed to M/s

Goutam Cinema whereby the establishment was given opportunity of being heard in the matter relating to outstanding provident fund amount and the

violation under the Act or complying the provision of the Act and employer's share. After receipt of the letter being annexure P5 dated

11.10.2017 Kausik Dutta addressed to his brothers and sisters who are petitioner no. 2 and respondent no. 6 in this application concerning recovery of

Rs. 210660/- and the showcause of warrant arrest issued by the recovery officer and in this regard the request was made to them to reach before

Kausik Dutta within seven days for their correspondence with recovery officer, regional office, Howrah on or before 02.11.2017.

In response to the show cause notice submitted before the recovery officer on 15.11.2017 to this effect that her father passed away in the year 2017

and the mother in the year 2016 and she was in the administration and that since the death of her parents youngest brother alone namely Kausik Dutta

is engaged with the affairs of the said cinema hall and had also enjoyed all benefits from the running of the said cinema hall and had neither been

vested with any responsibility nor he enjoying any privileges in respect of the said cinema hall in any matter whatsoever, pecuniary or otherwise.

Learned counsel for the petitioner submits that this representation made by the petitioner no.1 has not been taken into account by the recovery officer.

Be that as it may no coercive action has been taken as against petitioner no.1. the ordersheet further reveals that there are three partners who have

submitted the representation which were taken on record. But the order dated 15.11.17 passed by the recovery officer reveals that one Rana Das

partner had appeared on behalf of establishment. It is not understood as to why the representation of the said petitioner was taken into account or not

but when Rana Das the son of Nandita Das appeared before the authority, it signifies that she (Nandita Das) also happens to be a partner, otherwise

why her son should appear before the authority.

The matter is required to be heard on affidavits on nitty-gritty of law involved. The petitioner nos. 1 and 2 prayed for writ in the nature of mandamus

directing the respondent authority not to give effect to the order impugned dated 14th February, 2018 during disposal of the application and to provide

copies of the relevant documents in relation to impugned proceeding and to give opportunities to the petitioner to defend their case. The order sheet

would clearly reflect that the petitioners have participated in the proceeding. They may avail copies of the relevant documents in relation to impugned

proceeding to get an opportunity of being heard.

Whether petitioner no.1 and respondent nos. 6 and 7 are partners of the

establishment and or not in the affairs of the establishment which may be decided on affidavits before this Court. So an opportunity be given to the respondent to file affidavit of opposition within two weeks after summer vacation, reply if any, two weeks thereafter. Let there be a stay of the proceeding in respect of the warrant of arrest being CP-26 against Goutam Dutta provided he deposits a share as apportioned in respect of him being a sum of Rs. 62,840/- together with Rs. 325/- within ten days from date otherwise the authority is responded to effect execution of warrant being CP-26. Urgent Photostat certified copy of this order, if applied for, be given to the parties on the usual undertakings.