
(2001) 05 CAL CK 0057
In the Calcutta High Court
Case No : Writ Petition No. 1872 of 1998

Premchand Jute Mills Ltd. and Others	APPELLANT
Vs	
Regional Provident Fund Commissioner	RESPONDENT

Date of Decision : 14-05-2001

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14A, 2, 8, 8E

Citation : (2002) 93 FLR 1107 : (2002) 2 LLJ 776

Hon'ble Judges : M.H.S. Ansari, J

Bench : Single Bench

Advocate : Sumit Talukdar and Rajashri Kajaria, for the Appellant; Vinay Mishra and Anil Kr. Gupta, for the Respondent

Final Decision : Partly Allowed

Judgement

M.H.S. Ansari, J.—Petitioner No. 1 is the company, which is the owner of the jute mill known as Premchand Jute Mills. Petitioners Nos. 2 and 3 are the directors and shareholders of petitioner No. 1-company.

2. It is stated that earlier, i. e., during the period 1969 till 1997, the said jute mill was run by Sonajuli Tea and Industries Ltd. (now in liquidation) as lessees. The then directors of petitioner No. 1-company took possession of the jute mill on or about May 20, 1983, from the official liquidator pursuant to an order passed by this High Court in Company Petition No. 539 of 1979.

3. It is stated that on and from March, 1994, till May, 1998, the jute mill was run by respondents No. 5 and 6 under the agreement executed by and between the parties. According to the petitioners, under the aforesaid agreements dated March 19, 1994, and June 1, 1996, all statutory dues were liabilities of respondents Nos. 5 and 6 including the liabilities under the scheme framed under the Provident Fund Act.

4. It is the case of the petitioners that respondents Nos. 5 and 6 failed to pay the

entire statutory dues under the Provident Funds Act, 1952, during the period they operated the jute mills under the respective agreements. Between 1996 and February, 1997, the petitioners received three demand notices for Rs. 20,30,781 in the aggregate for the period March, 1995, to October, 1996, which according to the petitioners is covered by the aforesaid two agreements dated March 19, 1994, and June 1, 1996. Copies of the said demand notices are marked as Annexure D to the writ application.

5. The aforesaid demand notices collectively marked Annexure D are based upon the determination of dues made u/s 7A of the Act of 1952. The contention of the petitioners is that it was mandatory on the part of the provident fund authorities to make such determination after giving petitioner No. 1 a reasonable opportunity of representing its case. Since no notice of hearing was given to petitioner No. 1, it is contended that the purported determination of liability u/s 7A being in violation of natural justice is void and consequently the demand notices based thereon are bad in law.

6. The petitioners were served with summons from the Court of the Chief Judicial Magistrate, Howrah intimating the petitioners that the complaint case under Sections 14(1-B) and 14(1-A) and 14AA read with paragraph 76(b) of the Scheme of 1952 had been instituted, inter alia, against the petitioners for default in making payment of provident fund dues. The said complaints are collectively marked as Annexure F. According to the petitioners, the allegations made in the complaints do not make out any offence and, therefore, no useful purpose would be served in allowing the complaint cases to continue. This is on the ground that the petitioners during the period March, 1994, to May, 1998, were not responsible for the running of the jute mills.

7. The petitioners have also questioned the action of the provident fund authorities in effecting the attachment by order dated July 29, 1998, issued by the recovery officer collectively marked as Annexure K for the alleged liabilities to the tune of Rs. 1,22,53,193.

8. For realisation of the aforesaid sum, the Recovery Officer also by a notice dated July 31, 1998, addressed to respondent No. 7 directed respondent No. 7 not to pay the conversion charges of Rs. 65,000 per month which respondent No. 7 is required to pay to the petitioners under the aforesaid agreement for running the jute mills. By the said notice, respondent No. 1 was directed to pay the said sum of Rs. 65,000 per month to the Regional Provident Fund Commissioner towards the dues of Rs. 1,22,53,193.

9. It is further stated that on the basis of a purported warrant of arrest dated August 17, 1998, issued by the Recovery Officer (Annexure M), petitioner No. 3 was sought to be arrested for default in making payment of the certificate dues amounting to Rs. 1,22,53,193 together with interest. The said warrant of arrest dated August 17, 1998, has been issued for recovery of a sum of Rs. 1,22,53,193 covering the period March, 1995, till May, 1996, and for which

complaint cases have already been initiated by the provident fund authorities.

10. On behalf of the provident fund authorities, respondent No. 1, an affidavit-in-opposition has been tiled. Therein, it is stated that the Premchand Jute Mills Ltd. is covered under the Code No. WB of 1991 with effect from November 1, 1992. The lessee company, Sonajuli Tea and Industries Ltd. having gone into liquidation on August 13, 1979, Premchand Jute Mills Ltd. took charge of the jute mills as per order dated May 16, 1983, and . started production in June, 1989. They were complying with the provisions of the Act. It is not disputed that the said petitioner No. 1 from time to time made agreements with different agencies to run the said jute mills. It is stated that the jute mills is a chronic and habitual defaulter in the matter of payment of provident fund dues and submission of provident fund returns. The provident fund dues from the period June, 1989, onwards are not being paid. As such, dues for the said period were assessed and determined u/s 7A of the said Act and demand notices were issued on various dates but as the same was not paid, legal action was initiated under Sections 8 and 14 of the Act and u/s 406/409 of the Indian Penal Code.

11. Upon a writ application being Matter No. 607 of the 1993 filed by A.K. Sen and Mr. Roy J. Montosh, personnel manager and director of the lessee company being Matter No. 607 of 1993, interim order of injunction dated May 1, 1993, was passed which later stood vacated due to violation made by the lessee-company and thereafter the matter was dismissed for default by order dated February 9, 1996. Petitioner No. 1 entered into agreement with one Economic Merchandise Pvt. Ltd. on June 1, 1996, and action was initiated for recovery of the dues from the said lessee company whereupon a writ petition being W. P. No. 58 of 1997 was filed which was ultimately dismissed by order dated August 7, 1998.

12. The present lessee Sri Shyam Sakhambari Granites Pvt. Ltd. took over the jute mills under agreement dated March 26, 1998, on conversion basis for a period of five years and commenced manufacturing at the said jute mill on and with effect from May 5, 1998. A writ petition being W. P. No. 1,4688 (W) of 1998 was filed by the said company challenging the order dated July 31, 1998, of the Recovery Officer regarding payment of Rs. 65,000 per month as conversion charges to the provident fund authorities for realisation of PF dues. The matter is still pending adjudication.

13. It is stated that the total default of petitioner No. 1 (Premchand Jute Mills Ltd.) and its converter Economic Merchandise Pvt. Ltd. is Rs. 111. 86 lakhs out of which the dues of petitioner No. 1, Premchand Jute Mills Ltd. alone amount to Rs. 74.46 lakhs.

14. It is further stated that the employees of the jute mills are considered to be the employees of the petitioner and the respondents have acted rightly in initiating legal action u/s 14 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and as there is violation of Section 14(1-B) or

14(1-A) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, or para. 76(b) of the Scheme, 1952, as such the complaints have been rightly lodged as the petitioners have been evading their liability regarding payment of dues under the aforesaid Act and the scheme framed thereunder.

15. It is further stated that the certificate dues in question amounting to Rs. 1,22,53,193 and for realisation of the same attachment was effected including a direction to respondent No. 7 to pay Rs. 65,000 per month to respondents Nos. 1 and 2 towards conversion charges payable by respondent No. 7 to petitioner No. 1. The said order of attachment having been questioned, the respondent authorities could not take further action for realisation of the said conversion charges.

16. On behalf of Shri Shyam Sakambari Granites (P) Ltd., respondent No. 7, an affidavit-in-opposition has been filed. The said respondent No. 7 rely upon the agreement dated March 26, 1998, whereunder it is stated that their liability to pay the conversion charges amounting to Rs. 65,000 per month to petitioner No. 1 and that of outstanding dues and past liabilities statutory or otherwise of petitioner No. 1 as on March 26, 1998, or for the period prior thereto is to be borne by the owners of Premchand Jute Mills Ltd. It is stated that since the said agreement of March 26, 1998, respondent No. 7 from time to time paid an aggregate of Rs. 4,84,963 to petitioner No. 1 and has been regularly paying the monthly conversion charges of Rs. 65,000 per month to petitioner No. 1. Reference has been made to the restraint order passed by the Recovery Officer and also the direction by him with regard to the deposit of the conversion charges with the statutory authority. Reference has also been made to the action of the respondent authorities attaching the raw jute and finished products of respondent No. 7 whereupon a writ petition was filed questioning the aforesaid action.

17. It is specifically denied that the said respondent No. 7 is liable to pay the dues or the aforesaid sum of Rs. 1,22,53,193 or any part thereof. It is also specifically denied that the petitioners are neither the owners nor the occupiers of the jute mills.

18. As regards the notice of demand, Annexure D is concerned, it is seen that the assessment was made u/s 7A of the Act and notice in that behalf had been issued whereas petitioner No. 2 as director of the company submitted his representation. No appeal was filed against the aforesaid assessment nor the same has been questioned otherwise except in the instant writ petition on the ground that petitioners Nos. 2 and 3 are not the occupiers or persons having ultimate control over the affairs of the mill. Learned counsel for the petitioner Mr. Sumit Talukdar appearing along with Ms. Rajashri Kajaria relied upon the definition of "employer" in Section 2(e) of the Act of 1952 which reads as under:

"2.(e)(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."

19. It is the contention of Mr. Talukdar that the jute mill is a factory and, therefore, in terms of the definition of "employer" u/s 2(e), the owner of the factory is the company itself and when the owner of the factory can be ascertained, there is no need to examine who is the occupier. On this reasoning, it is contended that petitioners Nos. 2 and 3 cannot be held responsible for any default committed by the company, viz., petitioner No. 1. The company being petitioner No. 1 who is the employer can alone be proceeded. Reliance for the said proposition is placed upon the judgment of the Supreme Court in *Employees State Insurance Corporation Vs. S.K. Aggarwal and Others*, .

20. On the other hand, Mr. Vinay Mishra, learned advocate, appearing along with Mr. Anil Kr. Gupta for the provident fund authorities relied upon an unreported Division Bench judgment of this Court in MAT No. 239 of 2000 dated February 9, 2000, wherein it was held as under:

"The term "employer" has been defined in Section 2(e) of the Act, Mr. Mitra's contention that a director of a company where the company is the owner of the factory cannot fall within definition of "employer" does not appear to be correct. In the case of *Srikanta Datta Narasimharaja Wodiyar Vs. Enforcement Officer, Mysore*, their Lordships of the Supreme Court while dealing with this situation clearly held that the director of a company where the company was the owner of the factory or the establishment would come within the scope and definition of the term "employer" and thus liable to action under the provisions of the Act."

The Division Bench further considered the matter in the light of paragraph 36-A of the Scheme and observed as under:

"Not only that, in the present case before us, under paragraph 36-A of the *Employees' Provident Funds Scheme, 1952*, formulated under the Act a statement in Form No. 5-A has to be filed by the employer containing various details including the particulars of all owners, occupiers, directors and so on and so forth. In the affidavit-in-opposition filed on behalf of the respondents, it has clearly been stated that the aforesaid statement was filed by the company. A copy of the statement annexed with the affidavit-in-opposition clearly shows that the name of the petitioner figured as one of the directors of the company. Not only that, the petitioner participated in the proceedings relating to the adjudication of the liability and the extent thereof."

Another learned single judge in *Vinod Kr. Biyala v. Regional Provident Organisation* 2000 2 CLT 443, considered the question in relation to the recovery

proceedings u/s 8B of the Act and also in relation to Form No. 5A and it was declared as under:

"Under para. 6A of the Scheme, the employer is to furnish particulars of the ownership of the factory in Form No. 5A. It has already been discussed that the petitioner has described himself as one of the directors of the company who had the ultimate control over the affairs of the factory or the establishment. He also had sent the intimation to the Regional Provident Fund Commissioner by registered post. In Col. No. II of Form No. 5A which specified the particulars of the persons in charge of and responsible for the conduct of the establishment. Therein it was noted that the licensee, namely, the petitioner being one of the directors was in charge of the company. It is true, in a criminal action mens rea is one of the important elements to fashion the guilt against the accused but in a civil action such ingredient is not required to be proved. The provision of the Act is a welfare legislation enacted for the benefit of the employees engaged in the factory or the establishment. The provident fund amount payable by the petitioner and other directors being the share of the employee as well as the employer. The liability of the petitioner has been discussed at length above."

In *Srikanta Datta Narasimharaja Wodiyar v. Enforcement Officer, Mysore* (supra), the matter was considered in the light of para. 36-A of the Scheme which enjoins the employer to furnish particulars of the ownership of the factory and Section 14A which deals with offences by companies. It was declared as under 1993-II-LLJ-531 at 534:

"Para. 76 also fastens criminal offence for non-compliance of the provisions of the Scheme on the persons incharge of and responsible for the management or control of the establishment. It could thus be seen that every person, who at the time of the offence was committed, was in charge of and was responsible to the establishment for conduct of its business as well as the company shall be liable to be proceeded against and punished accordingly. It is seen that Form No. 5-A read with para. 36-A gives an option to the employer to furnish particulars of ownership and the branches of the department, owners, occupiers, directors, partners, manager or other person or persons who have ultimate control over the affairs of such factory or establishment in charge of and responsible for the conduct of the business of the company and compliance of the statutory obligation fastened under the Act and relevant schemes. Particulars in column 8 as regards owners and column 10 relates to manager or occupier and their names, addresses, etc., and column 11 refers to the persons in-charge of and are responsible to the management of the establishment or factory are specified. In Form 5-A, as seen earlier in columns 8 and 11, it was specifically stated that the managing director, joint managing director and directors including the appellant are not only owners of the factory, but are in charge of and responsible for the management of the factory and the establishment. In paragraph 3 of the complaint, it was specifically stated, "that Accused Nos. 2 to 6 (appellants) are the persons in charge of the said establishment and are responsible for the

conduct of its business. They are thus required to comply with all the provisions of the Act and the Schemes in respect of the said establishment." It is made mandatory to the employer to abide by the same and non-compliance thereof is liable for prosecution u/s 14A of the Act. Section 14(1-A) relied on by Sri Nesargi relates to only liability for punishment for contravention or making default to comply with Section 6 or Section 17(3-A) in so far as it relates to the payment of inspection charges and para. 38 of the Scheme in so far as it relates to payment of administrative charges. That has no application as regards the offence covered u/s 14A by the companies are concerned. Accordingly, we hold that the appellant having been declared himself as one of the persons in charge of and responsible for the conduct of the business of the establishment or the factory, the complaint and non-compliance thereof having been enumerated in subsequent paras. of the complaint, it was validly made against the appellant along with other accused for the alleged contravention. Necessary allegations bringing out the ingredient of offence have been made out in the complaint. Therefore, the learned Magistrate has rightly taken cognizance of the offence alleged against the appellant."

23. Mr. Vinay Kr. Mishra also relied upon the judgment of PANIGARHI J. in *Sanyala Lahiri and Co. Ltd. v. C. B. Paul* 1995 CrL LJ 3945 . That was a case u/s 482 of the Criminal Procedure Code seeking the quashing of complaint, which had been lodged for failure of employer to pay the provident fund contribution in contravention of Section 6 of the Act, 1952. On the authority of the judgment of the Supreme Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, and *Janata Dal Vs. H.S. Chowdhary and Others*, , it was held that "the Court should refrain from interfering when the complaint discloses the commission of an offence". The Court also considered another contention as to the liability of directors even if it was assumed that the company had defaulted and it was observed as under:

"Learned counsel for the petitioners further advanced another contention inviting my attention that assuming for a moment that petitioner No. 1 defaulted in contributing its share of provident fund, how other directors could be responsible to face the criminal prosecution. I am afraid if any further discussion made at present regarding the inclusion of other directors, it may prejudice either parties. In my opinion these issues are premature and those can be solved at an appropriate stage by the Court below."

24. Another learned single judge in *Sajjan Kumar Jhunhunwala v. State of West Bengal* 1993 3 A I CrL LR 201, considered similar contentions in relation to the complaints lodged by the Provident Fund Inspector the quashing of which was prayed for u/s 482 of the Criminal Procedure Code. The learned judge on the application of the provisions of Section 14A dismissed the application. It was, however, observed therein that the question whether the accused were actually in charge of the business or someone else, is a matter of evidence and cannot be thrashed out at this stage without full scale evidence before the trial Court.

25. In *J.K. Industries Ltd. and Others Vs. Chief Inspector of Factories and Boilers*

and Others, , the question that arose for consideration before the Supreme Court was whether in the case of a company which owns or runs the factory it is only a director of the company who can be notified as the occupier of the factory within the meaning of proviso (ii) of Section 2(n) of the Act or whether the company can nominate any other employee to be the occupier by passing a resolution to the effect that the said employee shall have "ultimate control over the affairs of the factory". No doubt, the case before the Supreme Court was in relation to the Factories Act. The Supreme Court observed as under at p. 744 of LLJ:

"There is, therefore, nothing unreasonable in fixing the liability on a director of a company and making him responsible for compliance with the provisions of the Act and the rules made thereunder and laying down that if there is contravention of any of the provisions of the Act or an offence is committed under the Act, the notified director, and in the absence of the notification, any of the directors of the company, shall be prosecuted and shall be liable to be punished as the deemed occupier. "A law has to be judged for its constitutionality by the generality of cases it covers, not by the freaks and exceptions it martyrs". (see R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another,)."

26. And the conclusions arrived at by the Supreme Court in that case, as summed up by it and to the extent having some relevance to the enquiry on hand, are as under:

"(1) In the case of a company, which owns a factory, it is only one of the directors of the company who can be notified as the occupier of the factory for the purposes of the Act and the company cannot nominate any other employee to be occupier of the factory;

(2) Where the company fails to nominate one of its directors as the occupier of the factory, the Inspector of Factories shall be at liberty to proceed against any one of the directors of the company, treating him as the deemed occupier of the factory, for prosecution and punishment in case of any breach or contravention of the provisions of the Act or for offences committed under the Act."

The question as to whether a director of a private company who is neither an occupier nor a manager can be prosecuted u/s 14A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, for violation of the Provident Funds Scheme has been considered by the Supreme Court in Srikanta Datta "s case (supra). The answer to that question, it was observed by R.M. SAHAI J., depends on the scheme or the Act, the liability it fastens on the directors of the company and applicability of the penal provisions to the statutory violation or breach of the scheme framed under it. Reference was made to the statutory provisions contained in Sections 14 and 14A which provide for penalties. The scope of the two sections, it was observed, is the same. Section 14 applies to whosoever is guilty of avoiding payment of provident fund and to the employer, if he commits breach of the provisions mentioned in its various clauses, whereas Section 14A fastens liability on certain persons, if the person committing the

offence is a company. Section 14A is wider in its sweep and reach. Section 14 applies to any one who is an employer or owner or is himself responsible for making payment. Whereas Section 14A fastens the liability on all those who are responsible or are in charge of the company for the offences committed by it. The expression "was incharge of and was responsible to the company for the conduct of the business" in Section 14-A(1), it was held, are very wide in their import, the same could not be confined to the employer only. In the same judgment, K. RAMASWAMI J. dealt with para. 76 of the Scheme, the relevant portion whereof has been extracted supra. In the very same judgment, the Supreme Court distinguished its judgment in Employees' State Insurance Corporation Chandigarh Vs. Gurdial Singh and Others, . In the light of the provisions contained in Section 14A and para. 76 of the Scheme, the judgment relied upon by Mr. Talukdar in Employees' State Insurance Corporation v. Aggarwal, (supra) is accordingly distinguishable from the matter on hand.

27. In the light of the aforesaid judgment of the Supreme Court and the Division Bench judgment in MAT No. 239 of 2000, the contention of Mr. Talukdar that the company, petitioner No. 1, alone can be proceeded against has to be rejected.

28. Mr. Talukdar contended that the distinguishing feature in the matter on hand and the cases cited at the Bar is that in those cases cited, there was a statement filed by the company in Form No. 5-A. In the instant case, no such Form No. 5-A has been either filed by the company or relied upon by the respondents to fasten the liability under the Provident Funds Act or the Scheme framed thereunder upon the directors.

29. Under the provisions of para. 36-A read with Form No. 5-A an option has been conferred upon the employer to furnish particulars of ownership and the branches of the department, owners, occupiers, directors, manager or other person or persons who have ultimate control over the affairs of such factory or establishment in charge of and responsible for the conduct of business of the company and compliance of the statutory obligation fastened under the Act and the relevant Scheme. Merely because the petitioner company did not choose to exercise the said option, it cannot be stated that the directors of the company are absolved of the liability under the Act and/or the scheme framed thereunder. Had such option been exercised, the matter would have been entirely different. If in Form No. 5-A filed under the aforesaid para. 36A of the Scheme, the names had been furnished, petitioners Nos. 2 and 3 could perhaps have contended with some basis that as their names are not included in the said Form, they cannot be proceeded against for the liabilities of the company. Such Form in 5-A not having been filed, it is open to the authorities under the Provident Funds Act to proceed against any one of all the directors who could be prosecuted and upon establishment of the charge punished in case of any breach or contravention of the provisions of the Act or in the scheme and/or for offence committed under the Act/Scheme.

30. In the complaints lodged against petitioners Nos. 2 and 3 wherein they have

been arrayed as accused Nos. 2 and 3, there is a specific averment that "accused Nos. 2 and 3 were at all material times was/were the person/persons in charge of the said establishment and was/were responsible to it for the conduct of its business.. ." It is further averred that they have, in view of the facts and circumstances stated, committed offences under Sections 14(1-A) and 14(2) read with Section 14-A(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, read with para. 76(b) of the Scheme, 1952. Necessary allegations bringing out the ingredients of offence have been made out. The complaints in the light of the judgments of the Supreme Court in Srikanta Datta "s case (supra) and of this Court in Sanyal Lahiri and Co. Ltd. and Sajjan Kumar Jhunjhunwala warrant no interference. The respondents' authorities, it must be held, were well within their powers to lodge complaints against the petitioners including petitioners Nos. 2 and 3.

31. However, in so far as warrant of arrest dated August 17, 1998, being Annexure M is concerned, I am of the view that as the same was not preceded by issuance of a notice of show cause or after affording an opportunity of hearing to petitioner No: 3 the same cannot be sustained. In the Division Bench judgment in MAT No. 239 of 2000, dated February 9, 2000, the Division Bench had upheld the warrant of arrest of the petitioner in that case u/s 8-B(1)(b) on the ground that the passing of the order of arrest was preceded with issuance of notice of show cause and after hearing the advocate for the directors of the company.

32. Under the 1952 Act, power has been conferred for initiating penal action against the defaulting party in addition to the power to recover the dues. Justice Ms. RUMA PAL (as her Lordship then was) in W. P. No. 1095 of 1998 (unreported) in the case of Sri Sayan Ghosh v. Regional Provident Fund Commissioner, West Bengal, observed as under:

"... The provisions for recovery are in the nature of civil proceedings. The provisions relating to penalty are in the nature of criminal proceedings. The object, scope and basis of the two are different.

33. Sections 8 to 8-E relate to the civil process for recovery of the amounts due under the 1952 Act. Sections 14 to 14-C 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 the 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.

It was further held as follows:

"There is no bar. u/s 8B to the Recovery 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 u/s 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."

34. In the circumstances and for the reasons aforestated, it must be held that the action taken by the Recovery Officer affecting attachment of conversion charges by notice u/s 8F of the Act dated July 31, 1998, being Annexure L suffers from no legal infirmity. For the said reason, the action of the Recovery Officer in proceeding to recover the dues by such modes as are statutorily available to him u/s 8B of the Act cannot be found fault with. It is accordingly declared that it shall be open to the respondent authorities to take such steps as may be open to them in law for recovering the amounts due by attachment and sale of the properties movable and immovable of petitioner No. 1-company. This is of course subject to the conditions that there are no orders of restraint from any other Court of competent jurisdiction.

35. The warrant of arrest, being Annexure M, is accordingly quashed and set aside, however, with liberty to the Recovery Officer, Provident Fund Organisation to take such action as may be open to him in law after issuing a show-cause notice and in compliance with the principles of natural justice.

36. In the result, the writ application is allowed in part quashing and setting aside the warrant of arrest dated August 17, 1998, being Annexure M, however, with liberty as aforestated to the Recovery Officer to proceed afresh in accordance with the law.

37. In so far as the other reliefs in relation to the actions initiated by the Recovery Officer pursuant to the certificates and demand notices arc concerned, the writ application is dismissed with costs quantified at 200 G.Ms.

38. Interim orders granted by this Court shall stand vacated forthwith. The special officer appointed by this Court for sale of certain assets of petitioner No. 1-company for payment of the provident fund dues shall stand discharged forthwith.

39. Let urgent xerox certified copy of this judgment and order be furnished to the parties, if applied for, on priority basis.