(2005) 04 OHC CK 0049

In the Orissa High Court

Case No : Writ Petition (C) No. 10513 of 2003

Protection Manufacturers (P) Ltd. and Another — APPELLANT

Vs

Regional Provident Fund Commissioner and Others — RESPONDENT

Date of Decision : 29-04-2005

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 8, 8F, 8F(3)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2005) 106 FLR 936 : (2005) 2 OLR 51

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Sanjit Mohanty, N.C. Sahoo, S. Patnaik, D. Das, S. Nanda, S. Mohanty and S.K. Nanda, for the Appellant; Sarat Ch. Satpathy, (For O.P. Nos. 1 and 4), Prasanta Kishore Ray, P.K. Nanda, A.R. Swain and P.K. Acharya, (For O.P. No. 2), for the Respondent

Judgement

A.S. Naidu, J.—This writ petition has been filed assailing the direction issued by the Regional Provident Fund Commissioner, Faridabad, opposite party No. 1, to the I.C.I.C.I. Bank Ltd., opposite party No. 3, to freeze the bank account No. 61/5/406 belonging to the petitioners'' company. The said direction is said to have been issued in exercise of powers conferred upon opposite party No. 1 authority u/s 8 of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 read with the Employees'' Provident Funds Scheme, the Employees'' Pension Scheme, 1995 and the Employee'' Deposit Linked Insurance Scheme, 1970. The petitioners submit that the said order has been issued for realisation of a sum of Rs. 5,02,532.00 payable by opposite party No. 2 M/s. Condor Power Products Private Ltd. to the Fund on the ground that the petitioners are liable to pay certain amount to the said opposite party. According to the petitioners, opposite party No. 2 has ceased to be a supplier of goods to their company w.e.f. January, 2003 and there is no outstanding dues payable by the petitioners to the said opposite party No. 2 nor any money of opposite party No. 2 has been held up by the petitioners'' company. The petitioners further assert that the direction issued by the Provident Fund authority, opposite party No. 1 to the I.C.I.C.I Bank, was on the basis of surmises and conjectures and the said direction is liable to be quashed.

2. On receiving the Rule, opposite parties 1 and 4 have filed a counter affidavit. It is averred that a proceeding u/s 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called the ''Act'') was initiated against opposite party No. 2, M/s. Condor Power Products Pvt. Ltd. On receiving notice a show cause reply was filed by the said opposite party. After hearing, a sum of Rs. 5,29,022.00 was found payable by opposite party No. 2 under the Act. On enquiry the Regional Provident Fund Commissioner, opposite party No. 1, came to know that certain amounts payable to opposite party No. 2 towards supply of goods had remained outstanding against the petitioners. It was further learnt that a proceeding u/s 138 of the Negotiable Instruments Act had been initiated by opposite party No. 2 against the petitioners and the same was pending. On being satisfied that money payable to opposite party No. 2 was due from the petitioners and that the petitioners held up money payable to opposite party No. 2, the authority exercised its power u/s 8F of the Act and issued necessary direction to the I.C.I.C.I. Bank. Thus opposite party No. 1 has not committed any illegality or error and the direction issued is just, proper and in consonance with law.

3. Petitioners have filed a rejoinder, inter alia, repudiating the averments made in the counter affidavit filed by opposite parties 1 and 4 and have taken a positive stand that they are not liable to pay any amount to opposite party No. 2 and the direction issued by opposite party No. 1 in exercise of powers u/s 8F of the 1952 Act to the I.C.I.C.I Bank, Bhubaneswar to freeze the Bank account of the petitioners, without affording any opportunity of hearing to the petitioners is unjust, illegal and cannot be sustained in law.

4. I have heard learned counsel for the parties at length. I have also meticulously perused the documents annexed to the writ petition and counter affidavit. There is no ambiguity in the legal proposition that the Provident Fund Commissioner and/or any authority under the Act has the power u/s 8F of the Act to recover the amount assessed by adopting any of the modes prescribed under the said Section.

5. For the sake of brevity and better understanding Sub-section 3(i) of Section 8F of the Act is quoted hereinbelow;

"3(i) The Central Provident Fund Commissioner or any other Officer authorized by the Central Board 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 employer or, as the case may be, the establishment or any person who holds or may subsequently hold money for or on account of the employer or as the case may be, the establishment, to pay to the Central Provident Fund

Commissioner 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 in sufficient to pay the amount due from the employer in respect of arrears or the whole of the money when it is equal to or less than that amount."

In the case at hand, the Provident Fund Commissioner, Faridabad, opposite party No. 1, has exercised his power u/s 8F of the Act on the assumption that the petitioners owed money to the defaulter assessee and the said assumption was on the basis of the accounts of the defaulter submitted before the authority, and enquiries made by the said authority behind the back of the petitioners. The authority arrived at a conclusion that the petitioners were liable to pay Rs. 53.25 lakhs to opposite party No. 2, the defaulter company, towards cost of materials supplied to them. But then the specific case made out by the petitioners in the writ petition as well as in the rejoinder is that opposite party No. 2 ceased to be a supplier of their company w.e.f. January, 2003 and to the knowledge of the petitioners there was no outstanding dues of opposite party No. 2 towards supplies made to them, nor any amount was payable by them to opposite party No. 2, the defaulter. When there is a dispute with regard to liability, this Court feels, the petitioners should have been afforded an opportunity to establish that they owned or were otherwise liable to pay any amount to opposite party No. 2. In the instant case, admittedly, no opportunity was given to the petitioners nor were they heard in support of their contention that the stand of opposite party No. 2 that the amount shown to be payable to it by the petitioners was false and frivolous. Principles of natural justice are inbuilt in quasi judicial proceedings. Although there are no positive words in the Statute requiring that the party should be heard, yet the justice of the common law will supply the omission of the Legislature. The principle audi alteram partem mandates that no one shall be condemned unheard, as has been held by the Supreme Court in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . Neither the said principles were followed nor any opportunity was given to the petitioners. The direction issued to seize the bank accounts of the petitioners thus cannot be sustained. But then, it appears by order dated 16.10.2003 passed in Misc.Case No. 10191/2003 this Court has directed the I.C.I.C.I. Bank to maintain the minimum balance of Rs. 5,02,532.00 in the account of the petitioners. It was further directed that the said amount shall not be remitted to anybody including the RPF Commissioner, Faridabad without leave of this Court. The said order is in vogue for more than a year. In order to protect the interest of all the parties, ends of justice and equity will be better served if the petitioners are given an opportunity to appear before opposite party No. 1 and put forth their case within a period of four weeks from today. After hearing the petitioners if the said Provident Fund authority is satisfied it will vary the direction issued to the I.C.I.C.I. Bank and/or pass necessary orders in consonance with law. The interim order passed by this Court shall continue till fresh decision is taken by the RPF authority and I accordingly direct.

It is made clear that if the petitioners fail to appear before opposite party No. 1 within the time stipulated as above, it will be open to opposite party No. 1 to enforce the direction issued to the Bank.

With the aforesaid observation/direction this writ petition is disposed of.