

(1998) 05 RAJ CK 0018
In the Rajasthan High Court
Case No : .C.H.C.P No. 2301 of 1996

Ramesh Singhania

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-05-1998

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 8F, 8G

Citation : (2000) 3 LLJ 1206 : (1998) 3 WLC 598

Hon'ble Judges : Rajendra Saxena, J;Gyan Sudha Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Gyan Sudha Misra, J.—This Habeas Corpus Petition has been filed by the petitioner Ramesh Singhania through his friend N. C. Jain, who was arrested by the respondent No. 3 Shri R.D. Sharma -The Recovery Officer-cum- Assistant Commissioner. Regional Provident Fund at Bikaner on May 7, 1996 who according to the petitioner did not disclose any reason to him prior to his detention and arrested him without any warrant of arrest. It has been alleged by him that on May 7, 1996, the respondent No. 3 alongwith Shri R.S. Pareek-Enforcement Officer and two unknown persons, who claimed themselves as officers of the Rajasthan Provident Fund Organisation, forcibly overpowered the petitioner Ramesh Singhania and pushed him into a hired jeep bearing a taxi number and was transported to the District Jail, Bikaner. The Jail authorities, however, refused to lodge the petitioner in jail whereupon he was taken to the Circuit House and confined there in a room. The friends and relatives of the petitioner objected to this action of the respondents, who were then informed that the petitioner has been arrested on account of non-payment of the dues payable under the Employees Provident Fund & Misc. Provisions Act, 1952 (hereinafter to be referred as the "Act of 1952") and in order to recover the dues, which was due against the concern belonging to him and his late father Shri Hanuman P. Singhania and late mother Smt. Draupadi Devi. He was arrested and put under

detention. Thereafter the petitioner was shifted to the District Jail, Bikaner at about 12.00 noon on May 8, 1996. This habeas corpus petition was thereafter filed by the next friend of the petitioner Shri N.C. Jain and after a preliminary hearing to the matter, the petitioner was granted bail by a Bench of this Court.

2. On further scrutiny of the circumstances due to which the petitioner was arrested, it has been traced out that the petitioner had been arrested since the petitioner's late father Shri Hanuman P. Singhania and his late mother Smt. Draupadi Devi in the capacity as an employer of the establishment had been directed to deposit atleast Rs. one lac against the alleged dues of late Shri Hanuman P. Singhania. The petitioner-Ramesh Singhania, however came out with the plea that he had absolutely no concern with the business of his late father Shri Hanuman P. Singhania or his late mother Smt. Draupadi Devi and he was not aware on what account, the amount was demanded from him.

3. The petitioner, however inspite of his plea was not produced before any Court after his arrest and he has alleged that he was forced to sign on certain papers which he refused. He has further come out with the plea that he had nothing to do with the business of either his father Shri Hanuman P. Singhania or his late mother Smt. Draupadi Devi since his father Shri Hanuman P. Singhania used to do business of mining and apparently had two mining leases in his favour and after his death on July 7, 1990 Smt. Draupadi Devi mother of the petitioner Shri Ramesh Singhania and wife of late Shri Hanuman P. Singhania inherited the properties of her husband on the basis of a will executed by Shri Hanuman Prasad Singhania-the father of the petitioner Ramesh Singhania. One of the lease was bearing No. 13/74 and the other lease was bearing No. 14/66 which was cancelled by the State Government on July 24, 1980 and Smt. Draupadi during her life time had also filed a suit against the State Government-Mining Department against cancellation which is pending. Late Smt. Draupadi Devi, however, continued to carry on the business in pursuance of the second lease bearing No. 13/74 until she expired on December 21, 1995. The petitioner's plea that at no point of time, either before or after the death of his mother and father, he was ever involved in their business in order to justify that his arrest is wholly illegal, unjustified and contrary to law. He has also further stated that no show-cause notice was ever served upon him under the provisions of the Act of 1952 and by no stretch of imagination or argument can he be treated as employer in relation to the dues which are outstanding against the employer even if he be his father.

4. On a show-cause notice being issued to the respondents, they have come out with the justification that the establishment Hanuman Prasad Singhania White Clay Mines, mining leases of Shri Kolayat J1, District Bikaner was covered under the provisions of the Act of 1952 vide its coverage letter dated November 14, 1977 with effect from August 1, 1977. Another mining lease in favor of the aforesaid firm owned by Shri Hanuman P. Singhania was also in existence vide its letter dated February 9, 1981. An important fact, however, has also been pointed

out by the respondents which is to the effect that the establishment is required to furnish details about the responsible persons of the establishment as per para 36 of the EPF Scheme of 1952 in Form 5-A. The said information was given way back on October 18, 1982 and in para 8 of the said information, the name of the owner of the establishment was given in which name of the petitioner Ramesh Kumar Singhania was mentioned at serial No. 7. Further fact relied upon by the respondents while justifying their action of arrest is that total dues of Rs. 5,06,889.45 (Rs. Five Lacs Six Thousand Eight Hundred Eighty Nine and paise Forty Five) were due against the establishment bearing Code No. RJ 2813. A further sum of Rs. 1,15,810.75 (Rs. One lack Fifteen Thousand Eight Hundred Ten and Paise Seventy Five) were also due against another establishment bearing Code No. RJ 2252. It has been stated that copies of notices issued u/s 7A of the Act to conduct enquiry for determination of the amount was also served upon the establishment including the petitioner Ramesh Singhania and the certificate of recovery as per provisions of the Act of 1952 was issued to the Recovery Officer to recover the amount under 8-B of the Act of 1952 since the petitioner was the owner and since he defaulted in making the payment, he was arrested in order to recover the amount since the respondents as a Recovery Officer for the Rajasthan State had authority to do so vide Gazette Notification dated November 21, 1995 vide Anne/R-12 to this writ petition. According to the respondents for the purpose of recovery of the EPF dues, a proceeding initially could have been initiated under the Public Demand Recovery Act but later on the mode and manner of recovery as available under the Income Tax Act was held applicable in cases of EPF dues also. The respondents, therefore, have submitted that the petitioner had alternative remedy under Rule 86 of the Income Tax (Certificate Proceeding) Rules, 1962 by way of an appeal before the Commissioner against the order passed by the Recovery Officer since the Rules of 1962 are applicable in the matter relating to EPF Act instead of Section 8G of the Act of 1952 and the petitioner according to the respondents also has remedy of review against the appellant order under Rule 87 of the Rules of 1962. The respondents have also urged that a habeas corpus petition should not be held maintainable in a matter of this nature and that no relief should be granted where custody is under an order passed by a competent authority and the respondent No. 3 being a competent authority to recover the EPF dues, was well within his rights to arrest the petitioner as he failed to respond to the demands made by the respondents. In support of his submission he has relied on a case reported in Col. Dr. B. Ramachandra Rao Vs. The State of Orissa and Others, Col. B. Ram Chandra Rao v. State of Orissa. Further it has been submitted that if the detaining authority was satisfied about the detention of the corpus of a person his order cannot be quashed and merits of the case cannot be looked into. In support of this submission too, a judgment reported in 1981 AIR SC 2005 State of Gujarat v. Adam Kasam Bhaya has been relied.

5. Challenging the arrest of the petitioner on the contrary, it has been submitted that the respondents have acted absolutely without authority of law and the

petitioner has wrongly and illegally been arrested under the provisions of Section 8B of the Act of 1952. Detailed facts have also been narrated by the petitioner in order to clarify that the petitioner had no concern with the affairs of his father's firm in whose favour the mining lease had been granted as also regarding proof of service of notice on the petitioner. However we do not propose to enter into these facts in details, as in our opinion, consideration regarding legality of the petitioner's arrest do not really depend on the question as to whether the petitioner is a legal heir of his deceased father or not as that would be a subject matter for the Civil Court to examine but what is important from our point of view is that when in Form 5-A of the EPF Scheme of 1952, the information was furnished by late Shri Hanuman P. Singhanian as the owner of the establishment and the petitioner also was a major at that time, he cannot possibly absolve himself of the responsibility to pay off the dues which was outstanding against the proprietor of the firm unless he succeeds in establishing before a Court of competent jurisdiction that he is not responsible to pay off the dues of the firm as he is not the legal heir of late Hanuman Prasad Singhanian.

6. However, the matter cannot be set at naught at this stage and the question still remains to be answered that even assuming the petitioner is the legal heir of his late parents H.P. Singhanian and Draupadi Devi and hence can be treated as the proprietor of the firm, whether he could have been arrested by the respondents in the manner in which it has been done and whether his can be sustained as legal and justified. For this purpose, it is relevant to notice that there are three modes prescribed u/s 8F & 8G of the Act of 1952 for recovery of the amount which are by way of attachment, sale of immovable property and the third course is by way of arrest of the employer and his detention in the prison, by appointing a receiver in the management of movable and immovable properties of the establishment. This provision instantly gives rise to the further question as to what prompted the respondents to straightaway resort to the last remedy of his arrest and detention without disclosing any reason as to why earlier two modes by way of attachment and sale of immovable property belonging to late H.P. Singhanian and his wife Draupadi Devi had not been resorted to by the respondents. The respondents have not stated any reason why the firm itself was not attached or no auction notice for sale of movable and immovable property and assets of the deceased Hanuman P. Singhanian and his wife were initiated or taken recourse to as in that case perhaps it was the petitioner who would have been under anxiety to establish that he is the legal heir of his deceased parents. We find no substance in the submission that merely because the competent authority was satisfied to take recourse of the ultimate mode of arrest, the Court should not question regarding its satisfaction as the case law relied upon by the respondents as laid down in *State of Gujarat v. Adam Kasam Bhaya* (supra) and *Col. B, Ram Chander Rao*" case (supra) are clearly distinguishable on facts. In the matter of *Col B. Ram Chandra Rao*'s case the learned Judges of the Apex Court had held that habeas corpus cannot be held maintainable at the instance of a person who is undergoing sentence of

imprisonment by virtue of conviction by a Criminal Court and in the matter of State of Gujarat v. Adam Kasam Bhaya (supra) the detention order was passed against the accused alleged of smuggling. The respondents advocate while relying on these decisions have resorted to a sweeping generalisation on facts where the glaring question is whether a person could be detained even without warrant of arrest by-passing even the basic legal formality in order to pay off the dues which are purely in the nature of a civil liability wherein the question to pay the dues itself was not beyond dispute.

7. As already stated, the ultimate mode of recovery adopted by the respondents and straightaway the petitioner was arrested without disclosing any reason and without any warrant of arrest. It is quite beyond the comprehension of this Court as to how the petitioner could be arrested even without a warrant of arrest and taken to the Circuit House in a manner which has been done in case of the petitioner. Hence even though we appreciate the anxiety of the respondents to recover the EPF dues payable by the respondents it is difficult to appreciate the manner in which the respondents have acted. We find absolutely no material on record to infer that the respondents ever initiated any proceeding for attachment of the properties belonging to Hanuman P. Singhania which according to the procedure of recovery should have been the earlier course.

8. We are also of the view that arrest of a person in such stringent manner in order to recover the dues which is in the nature of a civil liability ought to be resorted to only as a last course when all other methods of recovery fail. In our opinion this is also the true import of Section 8F & 8G of the Act of 1952 and the defaulters in a situation of this nature cannot be treated as a hardened criminal so as to arrest him even without a warrant of arrest as it has been done in this case specially when the two other alternative modes for recovery had not been exhausted. The respondents on the contrary unnecessarily in our opinion started digging the question as to whether the petitioner is a legal heir of the erstwhile proprietor of the firm or not instead of approaching to recover the dues against atleast the immovable property of the petitioner's father. This was surely a more acceptable and proper way for the respondents to proceed and why this has been skipped over in order to take recourse to the ultimate method straightaway, is not quite clear.

9. We are therefore, firmly of the view that the action of the respondents in arresting the petitioner without any warrant of arrest and not producing him before any Court even after 24 hours and clandestinely lodging him in the Circuit House was purely an extra-judicial act and conduct on the part of the respondents is highly deprecated.

10. Hence the arrest of the petitioner which had been done without any warrant of arrest or even atleast assigning any reason is set-aside as unwarranted, illegal and arbitrary. The petitioner who is on bail shall thereupon be set at liberty and would be discharged of his bail bonds.

11. We may, however further add that merely setting the petitioner at liberty may not be construed so as to absolve him of the liability to pay off the dues towards contribution of provident fund specially when his name finds place in Form No. 5-A as proprietor. Hence the respondents would be free to proceed in the matter for recovery of the dues outstanding against the petitioner according to the procedure established by law by first taking recourse to the two earlier modes of recovery enumerated. If, however, the earlier two methods fail to get the desired result, the respondents would be at liberty to get a warrant of arrest issued and thereafter arrest the petitioner after granting him full opportunity to clear off the dues.

12. With these directions the writ petition stands allowed but under the circumstances without costs.