

(2014) 01 TP CK 0015

In the Tripura High Court

Case No : Writ Petition (C) No. 211 of 2007

Shri Bimal Chandra Debnath Vs Tripura Small Industries Corporation Limited

Date of Decision : 31-01-2014

Acts Referred:

Citation : (2014) 01 TP CK 0015

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : Sekhar Dutta and Ms. D. Sengupta, for the Appellant; S. Saha, for the Respondent

Final Decision : Disposed Off

Judgement

U.B. Saha, J.—The instant writ petition is filed by the petitioner for quashing the order dated 06.07.2007 (Annexure-10), issued by the Managing Director, Tripura Small Industries Corporation Limited, wherein the Branch Officer (Accounts) was directed to start recovery of outstanding amount of Rs. 4,58,264/- from the petitioner month wise on deduction @ 50% of net salary drawn by him with effect from July, 2007 which is payable in the month of August, 2007 along with a prayer for stay. Heard Mr. Sekhar Datta, learned counsel appearing for the petitioner as well as Mr. S. Saha, learned counsel appearing for the respondents-Corporation.

2. The brief case of the petitioner is that the impugned order was issued by the respondent No. 2, the Managing Director of the Tripura Small Industries Corporation Limited without affording any reasonable opportunity to him. It is also the case of the petitioner that no money of the Corporation was lying with him as he had given the adjustments regarding the money entrusted to him. It is the further case of the petitioner that while he was functioning as Assistant Manager/in-charge of the R.K. Nagar Brick Kiln in the year 2002-2004, some labourers were engaged by him through labour sardars as per the instruction of the Branch Officer Bricks of TSIC Ltd. and admittedly he has received some amount from the Corporation through the Officer Bricks and made payment to

the labour sardars by way of advance payment for engaging labourers after obtaining proper money receipt from the labour sardars/contractors and all such money receipts of the labour sardars have been submitted before the appropriate authority. Thus, the petitioner is in no way liable for refunding the money as asked for by way of deduction.

3. The respondents-Corporation by way of filing their counter affidavit stated that submission of money receipts given by one labour sardar does not mean that the amount paid as advance to the said labour sardar was adjusted. The further case of the respondents is that the petitioner did not submit any application to the TSIC Ltd. for verification of the vouchers and records though he has submitted his reply to the memo dated 24.06.2006. It is the further case of the respondents-Corporation that the petitioner was given all opportunities vide Memo dated 27.07.2005, wherein it is stated that on scrutiny of the ledgers of the R.K. Nagar Brick kiln for the year 2002-04, it is found that out of the amount paid to different labour sardars/contractors/suppliers as advance by him during his incumbency as in-charge, a sum of Rs. 4,58,264/- still remains unadjusted. It is also stated that submission of trial balance does not absolve the petitioner from his liability of submitting adjustment showing realization of the money received by him from the Office of the TSIC Ltd. for making advance payment to the labour sardars. According to them, the trial balance is only the statement of Accounts showing the detail particulars of expenditure which does not mean that the amount shown as expenditure in that trial balance was realized/adjusted.

4. Mr. Dutta, learned counsel, while urging for the relief sought for, would contend that neither the authority initiated any disciplinary proceedings against the petitioner nor he was provided the copy of the audit report from which it can be evident that the money which was received by him either has not been adjusted or misused by him. He further submits that the petitioner has no objection even to pay the money as sought for subject to the same is lying with him. But if the money was disbursed otherwise, then the same could not be claimed by the respondents.

5. Mr. Saha, learned counsel appearing for the respondents-Corporation, in his usual fairness, submits that the petitioner vide his letter dated 25.07.2006 asked for a month to reply regarding the Memo dated 24.06.2006, wherein the petitioner was directed to refund the aforesaid amount of Rs. 4,58,264/- within 20 days, failing which a disciplinary action or legal action would be taken up, but fact remains that no such opportunity was provided to him for reply to the said Memo. He has also submitted that admittedly no disciplinary proceedings was initiated and not only that even the petitioner was not allowed to go through the records as prayed for by him as the petitioner was transferred to another place from his earlier place of posting at R.K. Nagar Brick Kiln.

6. After going through the entire records it appears that the petitioner was not provided the opportunity to rebut the claim of the concerned authority and more so, he was also not supplied the copy of the audit report and other relevant

papers to show that the aforesaid amount is lying with him. Recovery of amount is nothing but a penalty and before imposing any penalty the authority should provide a reasonable opportunity to the delinquent officer to give his explanation as the same is an integral part and parcel of principles of natural justice.

7. Mr. Dutta, learned counsel also tried to place some documents, i.e. audit report etc., before this Court at this stage. As those documents are not the part of the record, this Court declines to make any comment on those documents.

8. However, it would meet justice if the order is set aside and allow the authority to proceed afresh against the petitioner providing him an opportunity to see the relevant documents and also submit his detailed reply. Accordingly, the impugned order dated 06.07.2007 (Annexure-10) is hereby quashed. However, quashing of the impugned order would not be a bar for the respondents-Corporation to proceed afresh against the petitioner after providing him all reasonable opportunity like inspection of documents and submission of reply relating to the claim of the Corporation. This order also would not debar the authority from initiating disciplinary proceeding against the petitioner following the necessary procedure, if so advised.

9. The aforesaid order is passed as agreed to by the learned counsel for the parties. With the aforesaid directions, the instant writ petition is disposed of. No order as to costs.