(2011) 01 KAR CK 0089

In the Karnataka High Court

Case No : Writ Petition No. 34272 of 2009

T.T. P. Technologies Pvt. LTD. — APPELLANT

Vs

The Regional Provident Commissioner (C and R) and The Assistant Provident Fund Commissioner Recovery Officer — RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 8 B, 8 G
State Financial Corporations Act, 1951 — Section 29

Citation : (2011) 01 KAR CK 0089

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : S.V. Shastri, for the Appellant; Harikrishna Holla, for the Respondent

Judgement

H.N. Nagamohan Das, J.—In this writ petition the Petitioner has prayed for a writ in the nature of certiorari to quash the demand notice dated 28.10.2009 as per Annexure E issued by Respondent No. 2.

2. An establishment called M/s. Aldea Electronics Private Limited (for short the establishment) was covered under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short ''the P.F. Act''). This establishment borrowed loan from the Karnataka State Financial Corporation (for short ''the Corporation'') through its branch at Tumkur by pledging the movables and immovables. This establishment subsequently committed default in payment of the loan amount. Consequently the secured creditor - Corporation had taken over the assets of the establishment by exercising its power u/s 29 of the State Financial Corporation Act. Thereafter the secured creditor brought the machinery, land and building of the establishment for sale through public auction. One M/s Skanda/Venkataramana Gupta became the highest bidder and the Petitioner was the second highest bidder. Since the first highest bidder committed default in depositing 25% of the bid amount, his bid was cancelled. The secured creditor negotiated with the Petitioner herein being the second highest bidder and sold

the property for a particular price. Clause 5 in the sale agreement between the Petitioner and secured creditor, is relevant for the purpose of this case and the same reads as under:

5. The statutory dues like commercial tax, central excise, provident fund claims, property tax, water tax, employees stale insurance arrears etc, shall be borne by you. However, we note to reserve your right to contest these liabilities without effecting the interest of the Corporation.

3. When the matter stood at that stage the Respondents issued a notice to the Petitioner on 12.01.2007 as per Annexure B stating that the Petitioner committed default in payment of statutory dues to the extent of Rs. 33,44,354/- and they have already initiated action for recovery u/s 8-B to 8-G of the P.F. Act. Further in this notice at Annexure B the Respondents directed the Petitioner to clear the dues. In the meanwhile there was writ proceedings before this Court in W.P. No. 17382/2006 filed by the establishment against the secured creditor - Corporation questioning the proceedings u/s 29 of the State Financial Corporation Act. The Petitioner got impleaded in this W.P. No. 17382/2006. Finally this Court by order dared 29.12.2005 disposed W.P. No. 17382/2006 and refused to interfere with the sale in favour of the Petitioner. Subsequently a Division Bench of this Court confirmed the order of learned Single Judge in W.P. No. 17382/2006 in W.A. No. 2367/2007. Thereafter the Petitioner by communication dated 17.12.2007 as per Annexure D requested the Respondents to withdraw the demand notice as found at Annexure B and requested to hold an enquiry u/s 7-A of the P.F. Act. Now the Respondents have issued the demand notice as per Annexure E dated 28.10.2009. Hence, this writ petition.

4. Heard arguments on both the side and perused the entire writ papers.

5. From the notice at Annexure B dated 12.01.2007 issued by the Respondents it is seen that the establishment committed default in paying the statutory dues to an extent of Rs. 33,44,354/-. This notice further specifics that the Respondents have initiated recovery proceedings u/s 8-B to 8-G of the P.F. Act. This material on record discloses that the Respondents have already determined the dues payable. A reading of the agreement between the secured creditor and the Petitioner manifestly makes it clear that the Petitioner has undertaken the liability to pay the provident fund claim. Further this clause also specifies that the Petitioner is entitled to contest the liability. Therefore the Petitioner is under an obligation to clear the provident fund claims. If for any reason, the Petitioner is aggrieved by the determination of Provident fund dues made by the Respondents, then they arc at liberty to question the same before the appropriate Appellate Authority, in accordance with law.

6. The Petitioner is not entitled to ask for determination of the dues payable. Since the Respondents have already determined the dues payable by the Petitioner the question of reopening of the same by the authority will not arise. However the Petitioner now having stepped into the shoes of the establishment is

entitled to question the determination made by the Respondents in accordance with law. if they so desire.

7. With the above observation, the writ petition is hereby disposed off. In the event of the Petitioner filing an appeal within a time frame of four weeks from today, the Appellate Authority shall consider the question of delay liberally. Interim order granted by this Court in this writ petition shall continue for a period of another two weeks.