
(2006) 04 MP CK 0029
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2039 of 2006

Vinod Tiwari

APPELLANT

Vs

Employees Provident Fund Organisation and Another

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 18, Order 16 Rule 20, 30, 32
Criminal Procedure Code, 1973 (CrPC) — Section 98
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A,
7A(1), 7A(2), 7A(3A)

Citation : (2006) 110 FLR 400 : (2006) 3 JLJ 8 : (2006) 2 MPLJ 7491 : (2006) 2 MPLJ 491

Hon'ble Judges : A.K. Patnaik, C.J.; S.M. Samvatsar, J

Bench : Division Bench

Advocate : Suresh Agarwal and Padmashree Agarwal, for the Appellant; S.L. Gupta, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, C.J.

This is a petition under Article 226 of the Constitution filed by the petitioner for quashing the order dated 17-4-2006 passed by the Assistant Commissioner, Employees Provident Fund Organisation, Gwalior directing that the petitioner be detained in civil prison until next date of hearing.

The facts briefly are that the petitioner was running a Motor Workshop styled "Tiwari Motors" at Bhind Road, Gwalior. A proceeding u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act") was initiated by the Assistant Commissioner, Employees' Provident Funds Organisation, Gwalior against the petitioner and in the said proceedings an order for inquiry was passed. The petitioner initially appeared in the said proceedings and contended that his establishment was not covered under the Act inasmuch as the number of employees working in the establishment were less than 20.

When after appearing on several dates the petitioner did not appear on some dates, the Assistant Commissioner issued non-bailable warrant of arrest against the petitioner by order dated 14-3-2005. On 7-6-2005, Counsel for the petitioner appeared and prayed for some time for securing presence of the petitioner and the Assistant Commissioner fixed the case to 8-6-2005 for appearance of the petitioner. When on 8-6-2005 the petitioner did not appear, the Assistant Commissioner passed orders for issue of non-bailable warrant of arrest against the petitioner. The petitioner challenged the warrant of arrest before this Court in a writ petition but did not succeed. Thereafter, on 17-3-2006 the petitioner appeared before the Assistant Commissioner and the Assistant Commissioner passed an order that the petitioner be freed on bail on furnishing a bail bond and a personal bond of Rs. 10,000/- each. In the said order dated 17-3-2006, Assistant Commissioner made it clear that the bail granted is strictly subject to the condition that the employer shall submit the summoned records on the next date of hearing, i.e., on 23-3-2006. On 23-3-2006 the petitioner produced copies of his Income Tax returns for the period 1999-2000 to 2002-2003 and further stated before the Assistant Commissioner that the establishment was lying closed from 2000 onwards and that no records have been maintained after closure of the establishment. The matter was adjourned to 28-3-2006 when an application for adjournment was filed and the matter was again adjourned to 10-4-2006. On 10-4-2006, the Assistant Commissioner again adjourned the matter to 17-4-2006. On 17-4-2006 the petitioner appeared in person before the Assistant Commissioner but since the petitioner did not produce the records except the Income Tax returns, the Assistant Commissioner directed that the petitioner be detained in civil prison until the next date of hearing.

The direction in the order dated 17-4-2006 to detain the petitioner in civil prison has been challenged in this writ petition, we reproduce here the relevant portion of the said order dated 17-4-2006 containing the reasons for the directions issued by the Assistant Commissioner to detain the petitioner in civil prison:

Bail was granted to Vinod Tiwari by the Officer-in-Charge, Police Station, Gole Ka Manid, Gwalior on 2-10-2000 for appearance before this authority. Subsequent to this directions were issued again on 17-3-2006 towards granting bail to Vinod Tiwari, Proprietor, on strict condition that the records shall be submitted on the date of next hearing. No records have been submitted except income tax returns. The present case is running from the last seven years only for production of records by the employer.

From above discussion it is manifest that the establishment's contention that records have not been prepared is stale and intended to avoid liability under the Act. Statutory dues of employees are not being paid and numerous of them running from pillar to post for getting their dues liquidated.

In view of the facts mentioned above the plea of the establishment that the records were not maintained is manifestly incorrect, false and intended to misguide this authority. In the above circumstances it is directed that the EO

shall visit the establishment and shall use his powers u/s 98 of the Criminal Procedure Code for search and seizure of the records in

question. In view of the conduct of Vinod Tiwari, the Proprietor, towards falsification of records and submission of false records/affidavit it is not possible to allow the bail granted to him vide orders dated 17-3-2006 to continue and it is directed that Vinod Tiwari be detained in civil prison until the date of next hearing.

Case is adjourned to 24-4-2006.

Let jail warrant be prepared.

Mr. Suresh Agarwal, learned Counsel for the petitioner, submitted that it will be clear from the aforesaid reasons in the order dated 17-4-2006 passed by the Assistant Commissioner that the petitioner has been detained in civil prison only because he has not produced records other than income tax returns. He submitted that u/s 7A of the Act read with the Code of Civil Procedure, 1908 for short "the CPC", the Assistant Commissioner has no such power to direct a person to be detained in civil prison if he fails to produce the records. He submitted that Sub-section (3-A) of Section 7A of the Act provides that where the employer, employee or any other person fails to produce any document or to file any report or return when called upon to do so, the Officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of evidence adduced during such inquiry and other documents available on record. He submitted that if the petitioner did not produce the records on the ground that his establishment was closed from the year 2000, then it was open for the Assistant Commissioner to have decided upon the applicability of the Act to the establishment of the petitioner or determine the amount due from the petitioner on the basis of the evidence already adduced during such inquiry and other documents available on record but he had no power at all to direct the petitioner to be detained in civil prison. He cited a judgment of Andhra Pradesh High Court in the case of Vignan Education Development Society, Ongole v. Assistant Provident Fund Commissioner and Authority, Guntur and Ors. reported in 1995 (II) LLJ 190, in which it has been held that where the employer fails to respond to notice issued by the Assistant Provident Fund Commissioner, he can at best draw an adverse inference and pass an ex parte order and cannot issue a warrant of arrest against him.

Mr. S.L. Gupta, learned Counsel for the respondents, on the other hand, submitted that under Sub-section (2) of Section 7A of the Act, the Officer conducting the inquiry has been vested with the same powers as are vested in the Court under the CPC trying a suit in respect of enforcing the attendance of any person or examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavit and issuing commission for examination of witnesses. He argued that by virtue of the said provision in Sub-

section (2) of Section 7A of the Act, the provisions of Section 32 of the CPC would be applicable and under the said provisions the Court may direct a person to be detained in civil prison in case he does not appear or does not produce the documents which have been directed to be produced. He further argued that by virtue of the provisions of Sub-section (2) of Section 7A of the Act the provisions of Order XVI, Rule 18, CPC will also be applicable which empower the Court to order detention of a person in civil prison. In support of his submissions he cited the decision of the Supreme Court in *Food Corporation of India v. Provident Fund Commissioner and Ors.* 1990 SCC (L & S) 1, in which it has been held that the Commissioner under the Act who is a statutory authority has to exercise powers vested on him to collect the relevant evidence before determining the amount payable under the Act. He also relied on the decision of the Calcutta High Court in *N. T.P. Corporation Ltd. v. The Regional Provident Fund Commissioner and Anr.* 1998 (80) FLR 218, in which it has been held that officers conducting inquiry under the Act would have the same powers as are vested in the Court under the CPC for trying a suit in respect of enforcing the attendance of any person or examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavit, issuing commissions for the examination of witnesses and further that provisions of Sub-section (3-A) of Section 7A of the Act does not absolve the officers conducting the inquiry of the responsibility of making determination of money due from the employer to the employees.

We have perused the decision of the Supreme Court in the *Food Corporation of India v. Provident Fund Commissioner and Ors.* (supra), and the decision of the Calcutta High Court in *N.T.P. Corporation Ltd. v. The Regional Provident Fund Commissioner and Anr.* (supra), cited by Mr. Gupta and we do not find in the said two decisions that the question raised in this writ petition as to whether the Assistant Commissioner can direct detention of a person in civil prison in case of failure on his part to produce the records has been decided. This question has also not been decided by the Andhra Pradesh High Court in *Vignan Education Development Society, Ongole v. Assistant Provident Fund Commissioner and Authority, Guntur and Ors.* (supra), cited by Mr. Suresh Agarwal, learned Counsel for the petitioner. Hence, we proceed to examine and decide this question in this judgment.

There is no specific provision in Section 7A of the Act authorising any of the authorities under the Act to direct detention of a person in civil prison in case he fails to produce the record which he has been summoned to produce. Sub-section (2) of Section 7A however provides that the Officer conducting the inquiry under Sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Civil Procedure Code, for trying a suit for enforcing the attendance of any person or examining him on oath and for requiring the discovery and production of documents. The provisions of CPC which provide for detention of a person in civil prison are contained in Section 32 and Order XVI Rule 18, Civil Procedure Code, which are quoted hereinbelow:

32. Penalty for default.- The Court may compel the attendance of any person to whom a summons has been issued u/s 30 and for that purpose may-

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine upon him (not exceeding five thousand rupees);
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

Order XVI, Rule 18. Procedure where witness apprehended cannot give evidence or produce document.- Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

Clause (d) of Section 32 of CPC quoted above is the only provision providing for detention of a person in civil prison and it states that the Court may compel the attendance of any person to whom summons have been issued u/s 30 and for that purpose may order him to furnish security for his appearance and in default commit him to civil prison. The expression "for that purpose" clearly indicates that the detention of a person in civil prison can be ordered by the Court only for the purpose of compelling his attendance. There is nothing in Section 32 of the CPC to indicate that the Court can detain a person to civil prison if he does not produce any record or documents which he has been summoned to produce. Similarly a reading of Rule 18 of Order XVI of the CPC quoted above shows that where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to detain in civil prison. Thus, the power under Order XVI, Rule 18 of the CPC can be exercised by the Court only for the purpose of ensuring the appearance of the person and not when he fails to produce any document or record which has been summoned to produce.

Mr. Gupta, learned Counsel for the respondent, vehemently submitted that in the absence of any provision in the law for detaining a person in civil prison on his failure to produce the document or records which he has been summoned to produce, no one will volunteer to produce any such document or records which if produces may lead to adverse consequence for him in the inquiry. Any provision for detention of a person in civil prison would have serious consequences on the

personal liberty of a person and unless the legislature makes express provisions authorising detention of a person in civil prison, if he does not produce the documents or records which he has been summoned to produce, the Court cannot hold that by implication the Act authorises the detention of a person in civil prison for failure on his part to produce the document or records which has been summoned to produce.

It is not as if the consequences for a person not producing the records or documents which he have been summoned to produce have not been provided either in the CPC or in the Act. Order XVI, Rule 20 of the CPC provides that where any party to a suit present in the Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document, then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit. Similarly, Sub-section (3-A) of Section 7A of the Act clearly provides that where the employer, employee or any other person required to attend the inquiry under Sub-section (1) fails inter alia to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of evidence adduced during such inquiry and other documents available on record.

In the absence of any provision in either the Act or the CPC for detention of the petitioner in civil prison for failure to produce the records summoned to be produced, the impugned order dated 17-4-2006 passed by the Assistant Commissioner is without the authority of law. Since the petitioner's right to personal liberty under Article 21 of the Constitution has been grossly violated by the impugned order, we quash the impugned order insofar as it directs detention of the petitioner in civil prison for failure on his part to produce the records summoned.

The writ petition is allowed and the petitioner be released from civil prison forthwith.