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APHC010263582013

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3459]**
(Special Original Jurisdiction)

FRIDAY, THE 3rd DAY OF JULY 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM

WRIT PETITION Nos.34772, 36137 & 36435 of 2013

WRIT PETITION No.34772 of 2013

Between:

1. EMPLOYEES PROVIDENT FUND ORGANISATION,, REP. BY ASSISTANT PROVIDENT FUND COMMISSIONER, SUB REGIONAL OFFICE, EMPLOYEES PROVIDENT FUND ORGANIZATION, VUDA LAYOUT, NAD POST, VISAKHAPATNAM.

...PETITIONER

AND

1. A P STATE FINANCIAL CORPORATION, REP BY ITS BRANCH MANAGER, NEWRESAPUVANI PALLEM, NEAR DOCTOR BULLAYYA COLLEGE, VISHAKAPATNAM-13
2. M/S GURU RAGHAVENDRA ENGG WORKS P LTD, SRI HD GOVIDAPPA MD, KALIDAS NAGAR, PARIKTREY, CHIEKMONGALURU. DISTRICT KARNATAKA
3. EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, REP. BY ITS REGISTRAR, (MINISTRY OF LABOUR AND EMPLOYMENT, GOVT. OF INDIA) 4TH FLOOR, CORE 2, SCOPE MINAR, LAXMINAGAR, DELHI. 110 092.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any writ or order or direction more particularly in the nature of Certiorari to call for records in ATA No.86(1)2012 on file of 3rd respondent appellate Tribunal and declare the impugned orders in said appeal No.ATA No.86(1)2012 dt.7-12-2012 as illegal, unjust and quash the same and consequently uphold the recovery notice/prohibitory orders issued by the EPFO

IA NO: 1 OF 2013(WPMP 43241 OF 2013

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of impugned orders of the Employees Provident Fund Appellate Tribunal in ATA No.86(1)2012 dt.7-12-2012 pending disposal of Writ petition in the interest of justice

IA NO: 1 OF 2014(WVMP 224 OF 2014

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim orders passed by this Hon'ble court dt. 03.12.2013 in WPMP No. 43241 of 2013 in W.P. No. 34772 of 2013 and pass

Counsel for the Petitioner:

1. T BALAJI(SC FOR EPFO)

Counsel for the Respondent(S):

1. Y N LOHITA
2. G R SUDHAKAR

WRIT PETITION No.36137 of 2013

Between:

1. EMPLOYEES PROVIDENT FUND ORGANIZATION, REP.BY ASSISTANT PROVIDENT FUND COMMISSIONER,SUB REGIONAL OFFICE,EMPLOYEES PROVIDENT FUND ORGANIZATION, VUDA LAYOUT, NAD POST, VISAKHAPATNAM

...PETITIONER

AND

1. AP STATE FINANCIAL CORPORATION, REP.BY ITS BRANCH MANAGER, NEWRESAPUVANI PALLEM, NEAR DOCTOR BULLAYYA COLLEGE, VISAKHAPATNAM-13

2. M/S BHARATHI PRECISION TOOLS P LTD, SHRI K.MADHAVA RAO, DIRECTOR, S/O.RAMAKRISHNA, M-80, HILL TOWNSHIP, SUNABEDA 762002, ORISSA STATE

3. EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, REP.BYITS REGISTRAR, (MINISTRY OF LABOUR AND EMPLOYMENT GOVT OF INDIA), 4TH FLOOR, CORE 2, SCOPE MINAR, LAXMINAGAR, DELHI-110092

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any writ or order or direction more particularly in the nature of certiorari to call for records in ATA.No.85(1) 2012 on file of 3rd respondent appellate Tribunal and declare the impugned orders in said appeal No.ATA .No.85(1)2012 dated 7.12.2012 as illegal, unjust and quash the same and consequently uphold the recovery notice/prohibitory orders issued by the EPFO and pass

IA NO: 1 OF 2013(WPMP 44924 OF 2013

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of impugned orders of the Employees Provident Fund Appellate Tribunal in ATA.No.85(1)2012 dated 7.12.2012 pending disposal of the writ petition

IA NO: 1 OF 2014(WVMP 263 OF 2014

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim orders passed by this Hon'ble Court dt. 11.12.2013 in W.P.M.P. No. 44924 of 2013 in W.P. No. 36137 of 2013 and pass

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to expedite hearing of the writ petition post the same in the third week of August 2018 and pass

Counsel for the Petitioner:

1. T BALAJI(SC FOR EPFO)

Counsel for the Respondent(S):

1. Y N LOHITA
2. G R SUDHAKAR

WRIT PETITION No.36435 of 2013

Between:

1. EMPLOYEES PROVIDENT FUND ORGANISATION., REP. BY ASSISTANT PROVIDENT FUND COMMISSIONER, SUB REGIONAL OFFICE, EMPLOYEES PROVIDENT FUND ORGANIZATION. VI...DA LAYOUT. NAD POST. VISAKHAPATNAM.

...PETITIONER

AND

1. A P STATE FINANCIAL CORPORATION, REP BY ITS BRANCH MANAGER. NEWRESAPUVANI PALEM, NEAR DOCTOR BULLAYYA COLLEGE. VISHAKAPATNAM-13
2. M/S NITASHA VENEER INDUSTRIES PVT LTD, SRI PRAKSH DWARAKA DAS WADHWA. DIRECTOR C 3/7. KHAIRA NAGAR, SV ROAD SANTHA CRUZ MUMBAI-54.
3. EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, REP. BY ITS REGISTAR. (MINISTRY OF LABOUR AND EMPLOYMENT. GOVERNMENT OF INDIA) 4TH FLOOR. CORE 2. SCOPE MINAR. LAXMI NAGAR, DELHI 11092

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any writ or order or direction more particularly in the

nature of Certiorari to call for records in ATA No.84(1)2012 on file of 3rd respondent appellate Tribunal and declare the impugned orders in said appeal No.ATA No.84(1)2012 dt.7-12-2012 as illegal. unjust and quash the same and consequently uphold the recovery notice/prohibitory orders issued by the EPF0

IA NO: 1 OF 2013(WPMP 45280 OF 2013

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of impugned orders of the Employees Provident Fund Appellate Tribunal in ATA No.84(1)2012 dt. 7- I 2-2012 pending disposal or Writ petition in the interest of justice.

IA NO: 1 OF 2014(WVMP 229 OF 2014

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim orders passed by this Hon'ble Court dt.12-12-2013 in WPMP No.45280 of 2013 in WP No.36435 of 2013

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to expedite hearing of the Writ petition post the same in the third week of august 2018 and pass

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to expedite hearing of the writ petition and post the same in the third week of august 2018 and pass

Counsel for the Petitioner:

1. T BALAJI(SC FOR EPFO)

Counsel for the Respondent(S):

1. Y N LOHITA
2. G R SUDHAKAR

This Court made the following:

COMMON ORDER:

Since these three writ petitions arose from out of common order and the point involved is one and same, they are heard together and being disposed of by this common order.

2. The petitioner, Employees Provident Fund Organization (EPFO), is challenging the validity of the orders dated 07.12.2012 passed by the 3rd respondent, Employees Provident Fund Appellate Tribunal, which erroneously set aside the recovery notices/prohibitory orders dated 21.04.2011 issued by the petitioner to the Syndicate Bank, Visakhapatnam, with which the 1st respondent, Andhra Pradesh State Financial Corporation, maintained an account.

3. For convenience, it is necessary to narrate the brief facts in W.P.No.36317 of 2013 for consideration.

a) The 2nd respondent (M/s. Bharathi Precision Tools (P) Ltd.) is an establishment covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the EPF Act, 1952). The 1st respondent had extended loan facility to the 2nd respondent. Subsequently, the 2nd respondent committed default in repaying the loan as well as depositing the statutory provident fund dues for the periods from February 1982 to February 1988 and from March 2000 to June 2000. Consequent to the default in repayment of the loan, the assets and

properties of the 2nd respondent, which were pledged as security with the 1st respondent, were taken over and sold by the 1st respondent in auction.

b) The petitioner sent a notice requesting the 1st respondent to pay the overdue provident fund amounts out of the proceeds of the sale of the pledged assets of the 2nd respondent.

c) After the 1st respondent denied liability on 18.04.2011, the petitioner issued the impugned prohibitory orders on 21.04.2011. The 1st respondent subsequently agreed to settle the dues *vide* communication dated 30.04.2011, leading to the Recovery Officer collecting a banker's cheque on 02.05.2011.

d) After expiry of over one year, the 1st respondent preferred an Appeal before the 3rd respondent challenging the recovery proceedings/prohibitory order dated 21.04.2011. The appellate authority erroneously allowed the Appeal, holding that the recovery notice and prohibitory orders issued by the EPFO do not fall within the ambit of Section 17B of the Act, thereby necessitating the filing of the present writ petition by the petitioner.

e) The main ground raised by the petitioner is that the 3rd respondent failed to consider the priority claim of EPF dues over other debts in terms of Section 11 (2) of the EPF Act, 1952, and further, the Act provides priority of EPFO dues over all other debts and the 3rd respondent, without considering the claims made by EPFO, has erroneously allowed the

appeal by referring to the provisions of Section 17B, which has no application to the facts of the case, as the claim of the EPFO is not under Section 17-B, but it is in terms of Section 11(2) of the EPF Act, 1952.

4. This Court, having heard the submissions of Sri T.Balaji, learned counsel for the petitioners, and learned Standing Counsel for 1st respondent-Corporation, and having carefully perused the case records, proceeds to record its findings for the final disposal of the present writ petitions.

5. Learned counsel for the petitioners has placed reliance on Para No.68 of the decision of the Hon'ble Supreme Court in ***Maharashtra State Co-operative Bank Limited v. Assistant Provident Fund Commissioner and others***[1], wherein it was held as follows:

> *"68. As mentioned earlier, sub-section (2) was inserted in Section 11 by the Amendment Act 40 of 1973 with a view to ensuring that payment of provident fund dues of the workers is not defeated by the prior claims of the secured and/or of the unsecured creditors. While enacting sub-section (2), the legislature was conscious of the fact that in terms of existing Section 11 priority has been given to the amount due from an employer in relation to an establishment to which any scheme or fund is applicable including damages recoverable under Section 14-B and accumulations required to be transferred under Section 15(2). The legislature was also aware that in case of delay the employer is statutorily responsible to pay interest in terms of Section 17. Therefore, there is no plausible reason to give a restricted meaning to the expression "any amount due from the employer" and confine it to the amount determined under Section 7-A or the contribution payable under Section 8."*

[1](2009) 10 Supreme Court Cases 123

a) The primary defence of the 1st respondent that it is a secured creditor holding pledged assets, cannot survive the mandate of Section 11(2) of the EPF Act, 1952. Sec. 11(2) creates an absolute statutory 'First Charge' on the assets of the establishment, which explicitly overrides all other debts, whether secured or unsecured.

6. *Per contra,* learned counsel for the 1st respondent, while reiterating the averments in the counters, denied all the contentions raised by the petitioner. He further submits that the dues payable by the loanee were for the period from 1982 to 1990. The petitioner had failed to take action against the 2nd respondent-Establishment and, for the first time, by the order dated 21.04.2011, proceeded to attach the 1st respondent corporation's bank account. The first charge claimed by the PF Authorities subsists or is effective only while the assets remain in the defaulting unit's possession. The first charge contemplated in favour of the PF authorities, whether statutory or contractual, is liable to be enforced within a period of three years from the date the amounts fell due, under the Limitation Act. Further, the dues payable by the defaulting unit cannot be recovered from this respondent corporation, having regard to the involuntary sale lawfully affected by this respondent corporation, exercising the powers under Section 29 of the State Financial Corporations Act, 1951.

7. A few provisions of the EPF Act, 1952 warrant consideration prior to examining Section 8F of the Act, under which, in the considered view of this Court, the impugned orders appears to have been issued.

8. In this regard, it is relevant to extract Sections 8F, sub-section (2) of Section 11, and Section 17B of the EPF Act, 1952 as under:

i) Section 8F deals with other modes of recovery and reads as under:

> (1) Notwithstanding the issue of a certificate to the Recovery Officer under section 8B, the Central Provident Fund Commissioner or any other officer authorised by the Central Board may recover the amount by any one or more of the modes provided in this section.
>
> (2) If any amount is due from any person to any employer who is in arrears, the Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may require such person to deduct from the said amount the arrears due from such employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Provident Fund Commissioner or the officer so authorised, as the case may be:
>
> Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procecure, 1908 (5 of 1908).

ii) Section 11 of the EPF Act, 1952 provides for priority of payment of contributions over other debts and sub-section (2) of Section 11 reads as thus:

> "(2) Without prejudice to the provisions of sub-section (1), if any amount is due from an employer whether in respect of the employee's contribution (deducted from the wages of the employee) or the

employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts."

iii) Section 17B of the EPF Act,1952 reads as under:

"Liability in case of transfer of establishment.—Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, in respect of the period up to the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer."

9. A thorough examination of Sections 8F, 11(2), and 17B of the EPF Act, 1952 shows that the employer's responsibility to contribute and pay other dues arising from an establishment transfer is specifically outlined in Section 17B. In this case, the assets were sold. Although the employer did not carry out the transfer, the 1st respondent transferred the establishment to a third party after it was seized. The legal provisions do not suggest that transfers by entities other than an employer defined under the EPF Act are covered by Section 17B.

10. Under Section 11(2) of the EPF Act, 1952, any amount owed by an employer by law constitutes a '*first charge*' on the company's assets. This

gives the highest priority over other claims, irrespective of other applicable laws.

11. By virtue of Section 11(2) of the EPF Act, 1952, any amount due from an employer constitutes a 'first charge' on the assets of the establishment. This statutory charge overrides all other debts, whether secured or unsecured, it remains effective irrespective of whether the assets are in the active possession or position of the defaulting unit at the time of enforcement.

12. The 1st respondent's contention that statutory or contractual liability under the EPF Act, 1952 cannot be enforced after three years by invoking the Limitation Act is legally untenable. It is settled law that recovery mechanisms under social welfare legislation, such as the EPF Act, are governed by their own special statutory frameworks and are not strictly barred by the standard three-year limitation period applicable to commercial civil debts.

13. The factual matrix shows that the default pertains to two distinct spells i.e., from February 1982 to February 1988 and from March 2000 to June 2000. Although the 1st respondent initially resisted the notices dated 02.03.2011 and 15.04.2011 calling them belated, the 1st respondent paid the entire default amount in May, 2011 after the issuance of prohibitory

orders dated 21.04.2011. This unconditional payment, without any formal protest, amounts to a constructive waiver of their earlier objections.

14. The position of the EPFO authorities is completely protected by Section 17B of the EPF Act, 1952, which establishes joint and several liability during the transfer of an establishment. This Court relies on paragraph 68 of the ruling of the Hon'ble Supreme Court in ***Maharashtra State Co-operative Bank*** referred to supra.

15. The legislature deliberately declared that, irrespective of when a debt is created, dues under the EPF Act, 1952 would always remain a first charge and be paid first out of the establishment's assets, overriding all provisions of other provincial or general enactments.

16. In view of the foregoing discussion and since the underlying amounts have already been recovered and the law explicitly favours the priority of provident fund dues over any other claims, this Court is of the opinion that no surviving grievance or cause of action remains to be adjudicated in these matters.

17. With the above observation, all the Writ Petitions are disposed of. No order as to costs.

As a sequel, miscellaneous applications, pending if any, shall stand closed.

JUSTICE SUMATHI JAGADAM

3rd July, 2026
cbs

Whether the order is:

Speaking	-	Reasoned	Yes
Reportable	-	Non-Reportable	Yes

THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM

Writ Petition Nos.34772, 36137 and 36435 of 2023

3rd July, 2026

cbs