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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20504 of 2014

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M/s Bharat Sanchar Nigam Ltd., Telecom District Munger, through its Accounts Officer, D.K. Pandey, son of Late P.N. Pandey, aged 55 years, resident of Bekapur, Telephone Exchange Campus, P.S. Munger, District-Munger

.... Petitioner/s

Versus

1. The Union of India through Commissioner, R.P.F., Patna
2. The Assistant Regional Provident Fund Commissioner, Bhagalpur

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 24576 of 2013

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M/S Bharat Sanchar Nigam Ltd., Telecom District Munger, through its Accounts Officer, Dhananjay Kumar Pandey, Son of Late P.N. Pndey, resident of office of T.D.M. Bepapul Telephone Exchange Campus, BSNL, P.S. Munger, District-Munger

.... Petitioner/s

Versus

1. The Union of India through the Regional Provident Fund Commissioner, Bhagalpur
2. The Regional Provident Fund Commissioner, Bhagalpur

.... Respondent/s

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Appearance:
(In CWJC No. 20504 of 2014)
For the Petitioner/s : Mr. H.P. Singh, Advocate
Mr. Alok Kumar @ Alok Kr Shahi, Adv.
For the Respondent/s : Mr. Prashant Sinha, Advocate
Mr. Sanjay Kumar (ASG)
For the Union of India : Mr. Sujeet Kumar Sinha, Advocate
(In CWJC No. 24576 of 2013)
For the Petitioner/s : Mr. Alok Kumar @ Alok Kumar Shahi
For the Respondent/s : Mr. Prashant Sinha, Advocate
Mr. Amrendra Narayan Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 13-01-2015

Mr. Harendra Prasad Singh, learned counsel has appeared for the petitioner in the two writ petitions and Mr. Prashant Sinha has appeared for the Employees Provident Fund Department and its authorities. The Union of India is represented by the Central Government Counsel.

Since the issues raised in the two writ petitions are inter linked hence they have been taken up together and with the consent of the parties the writ petitions have been heard on merits and are being disposed of at the stage of admission itself by this judgment.

The genesis of the order impugned in CWJC No. 20504 of 2014 is an order passed by the Regional Provident Fund Commissioner, Bhagalpur in exercise of powers vested in him under the provisions of Section 7A of the Employees Provident fund and Miscellaneous Provision Act, 1952 (hereinafter referred to as 'the Act') and the Scheme framed thereunder which is impugned at Annexure-1 to CWJC No. 24576 of 2013 and hence I would be referring to the pleadings as occurring in the said writ petition unless clarified with reference to the other writ petition.

According to the respondents, since the petitioner did not discharge its obligation cast under the order dated 24.9.2009 passed by the Regional Provident Fund Commissioner under Section 7A of the Act as contained in Annexure-1 to CWJC No. 24576 of 2013 that a subsequent order was passed by the Assistant Provident Fund Commissioner in exercise of powers vested under Section 14B and

Section 7Q of the Act whereby the petitioner was saddled with liability under both the provisions and required to deposit a sum of Rs. 63,65,497/-. The liability so created is for the period October, 2000 until 12.3.2010 and thus also includes the period which is the subject matter of the order passed under Section 7A of the Act.

A preliminary objection was raised by Mr. Sinha to question the maintainability of the writ petition arising from CWJC No. 24576 of 2013 *inter alia* on grounds that the same suffers from the vice of gross laches and delay and in absence of any explanation for the delay caused in preferring the writ petition after lapse of four years, it should be dismissed on this count alone. He has further objected to the maintainability of the writ petitions on ground of alternative remedy available to the petitioner under Section 7I of the Act which provides for a remedy of appeal to an aggrieved before the tribunal constituted under the Act.

Mr. Harendra Prasad Singh, learned counsel appearing for the petitioners while admitting to the delay has submitted that although the delay has not been explained in so many words in the writ petition but the fact is that the legal course to be taken by the department in the light of the order passed by the Regional Provident Fund Commissioner under Section 7A of the Act was discussed within the department and whereafter it was decided to prefer the writ petition which has consumed some time. He further submits that it is a settled position that availability of an alternative remedy is not a bar to exercise of jurisdiction under Article 226 of the Constitution of India in appropriate cases and since in the present case the order passed by the Regional Provident Fund Commissioner, Bhagalpur is not in consonance with the directions of this Court as contained in the order dated 30.3.2006 passed in CWJC No. 962 of 2006, a copy of which is placed at Annexure-2 to the writ petition nor the order passed is in tune with the provisions of Section 7A of the Act and is not based on any materials hence the writ petition would be maintainable.

I have heard learned counsel for the parties on the issue of maintainability and perused the records. Although no doubt the writ petition has been preferred after a delay of almost three and a half years but considering that the petitioner before this Court is a Government of India Corporation and taking note of the submissions of Mr. Singh explaining the delay in preferring the writ petition which though is not exhaustive but considering the issues raised, in my opinion is sufficient to warrant a consideration of the matter on merits hence I would not be drawn into the objection raised by Mr. Sinha and would consider the matter on its merits.

Facts of the cases briefly stated is that the petitioner, a Government of India Corporation was assessed to dues under the Act for the services obtained from the contractors in the matter of laying down underground cables in the district of Munger. An order of assessment was passed by the respondent Commissioner under the act and which was questioned by the petitioner through CWJC No. 962 of 2006 and by a Bench decision dated 30.3.2006 this Court forming an opinion that the order of assessment was not passed on appreciation of materials existing on record and without examination of the contracts entered into between the petitioner and the contractors, quashed the order of assessment and the matter was remitted back to the authority for passing a fresh order in the light of the stipulations made in the order. It is in the light of the liberty so granted by this Court in CWJC No. 962 of 2006 that a fresh order was passed on 24.9.2009 by the Regional Provident Fund Commissioner, Bhagalpur and whereunder a liability was again created for the period October, 2000 to February, 2005 and which has been questioned by the petitioner in CWJC No. 24576 of 2013. Since the petitioner took no steps to either question the order so passed by the Regional Provident Fund Commissioner nor discharged the obligation created thereunder, that a subsequent order was passed by the Assistant Provident Fund Commissioner in exercise of powers vested under Section 14B and Section 7Q of the Act on 21.10.2014 / 22.10.2014 for the period October, 2000 to 12.3.2010 which also includes the period which is subject matter of the other writ petition. The petitioner has questioned the same in CWJC No. 20504 of 2014.

I have heard Mr. Harendra Prasad Singh, learned counsel appearing on behalf of the petitioner in the two writ petitions and Mr. Prashant Sinha for the respondents. It is the contention of Mr. Singh appearing for the petitioner that the obligation cast on the respondent Regional Provident Fund Commissioner under the orders of this Court in the earlier round of litigation has not been given effect to nor has the Regional Provident Fund Commissioner discharged his obligation as mandated in the manner prescribed under the provisions of Section 7A of the Act inasmuch as even in absence of identification of the labourers in respect of whom the liability has been quantified, in a presumptuous manner the order of assessment has been passed by simply holding that 85 per cent of the total amount paid by the petitioner to the respective contractors would constitute the labour cost.

Learned counsel for the petitioners has submitted that an exercise under Section 7A of the Act mandates the Regional Provident Fund Commissioner to identify the liability qua the workmen in respect of whom the contribution is being determined and in absence of any such determination, the order becomes unsustainable for a liability created under the assessment has to be in respect of an identified individual. Learned counsel for the petitioner in support of his submission has relied upon a bench decision of this Court arising from CWJC No. 11499 of 2006 (Roxy Cinema vs. The State of Bihar) and a judgment of Supreme Court reported in **(1990) 1 SCC page 68 (F.C.I. vs. Provident Fund Commissioner).** It is on the strength of the judgments submitted by Mr. Singh that even when the obligation cast upon the Regional Provident Fund Commissioner stands explained, yet the Regional Provident Fund Commissioner has failed to discharge the same and has passed the order on presumptuous consideration.

The argument of Mr. Singh has been contested by Mr. Sinha on grounds that it was the responsibility of the petitioner as the principal employer of the labourers to clarify the matter more particularly since they rely upon a contract entered between them and the contractors, to obtain the services which included goods as well as labour services. It is submitted that even when this Court in the earlier round of litigations required the petitioners to clarify the position they presented no documents to vindicate their stand regarding absence of liability to make contributions in respect of the labour so hired.

Learned counsel for the department has referred to paragraph-36B of the Employees Provident Fund Scheme, 1952 to submit that it is the duty of the contractors to submit to the principal employer a statement showing recoveries of contribution in respect of the employee employed by or through him and to also furnish such information as required by the principal employer which the principal employer is required to furnish under the Scheme. With reference to the said provision it is submitted that being the principal employer, the petitioner cannot avoid his responsibility by simply taking refuge to the absence of the details of the labourer supplied to him by the contractors rather such duty is cast both on the contractors as well as the principal employer and since the petitioner admittedly is covered under the Act hence it was his responsibility to obtain the name of the labourers so employed by him through the contractors for laying down the undergrounds cables and furnish the same in the returns. He submits that in circumstances where the petitioner failed to cooperate in the proceedings, that the respondent Provident Fund Commissioner had no other option but to pass the order on the basis of materials on record which requires no interference.

Having heard learned counsel for the parties and taking note of the contest arising therefrom, the only issue which falls for consideration before this Court is whether the order passed by the Regional Provident Fund Commissioner in purported exercise of powers vested under Section 7A of the Act impugned in CWJC No.

24576 of 2013 is in tune with the provisions of the Act and the directions issued by this Court in CWJC No. 962 of 2006 and whether the judicial pronouncements on the manner of discharge of obligation by the Regional Provident Fund Commissioner under the provisions of Section 7A of the Act, has been followed.

The operative portion of the order of assessment as contained in Annexure-1 at paragraph-6 of the order impugned runs as follows:

> "6. The establishment has failed to provide the details of the amount spent on goods or wages of the employees. I am left with no scope than to consider the 85% of the contracted amount as spent on employees of the contractors and 15 % as profit margin of the contractor. The details are given below;
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> …….. …….. …….. ……. ………."

Whether this finding of the Regional Provident Fund Commissioner is in tune with the statutory provisions? The answer is in the negative. The discharge of obligation cast upon the Regional Provident Fund Commissioner and other statutory authorities for determination of money due from the employers under Section 7A of the Act is not a mechanical function rather it is a discharge of an obligation which is quasi judicial in nature. In fact Sub-section (2) of Section 7A vests all powers in such statutory authority as are vested in a Civil Court while trying a suit for enforcing attendance of any person; requiring discovery and production of documents; of receiving evidence on affidavit; or issuing commission for examination of witnesses. With such vast power conferred upon the authorities under Section 7A of the Act for determination of the amount due from the employer, a plain reading of the order impugned reflects an abdication of responsibility by the Regional Provident Fund Commissioner. By simply submitting that the petitioner did not cooperate in the proceedings nor presented the supportive documents, was not the end of the responsibility of the Regional Provident Fund Commissioner who had all powers to proceed therefrom and adjudicate upon the matter after seeking information from the contractors. The Regional Provident Fund Commissioner has completely failed to discharge his duty rather has taken the shortest possible route for arriving at a conclusion which is not expected of a statutory authority while performing adjudicatory quasi judicial function.

A contribution under the act is always relatable to a workman and is not a determination in vacuum. A quantification of liability on the basis of payment made to the contractor which is inclusive of goods and service does not end the responsibility of the Regional Provident Fund Commissioner and until such time that such determination is attached to an individual workman, the order would not withstand the test. This exercise in the present case is completely lacking. The issue is not whether the petitioner has discharged his obligation in submitting the required papers, the issue posed before this Court is whether the determination of the money due is in consonance with the Act and whether the Commissioner has satisfied himself as to the liability so created. Being a beneficial legislation not only the quantification is a necessary factor rather the order also has to accompany the identification of the beneficiary for whom a quantification has been made.

The Supreme Court in case of F.C.I. (supra) while referring to the provisions of Section 7A of the Act and discussing the powers vested in Commissioner while conducting an enquiry, has discussed the responsibility attached to such adjudication in paragaraph-9 of the judgment which runs as follows:

> "9. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all

> his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person.”

The issue that a quantification has to be on the basis of materials on record and only upon identification of the workman entitled to such benefit is no more res integra and stands settled by a number of judgments and reference in this regard is made to some of the judgments reported in **1997(1) PLJR 403 (K.G. Majithia vs. Union**); **(1998) 6 SCC 436 (Food Corporation of India vs. Union of India & ors.); (2000)9 SCC 540 (Ramala Sahkari Chini Mills Ltd. vs. Employees’ Provident Fund Tribunal & ors)**. The list continues but the legal position so settled yet has evaded the statutory authorities.

It is rather unfortunate that despite the legal position as regarding the manner of discharge of the quasi judicial adjudicatory powers vested in a statutory authority under Section 7A of the act stands settled long back, yet its appreciation is found wanting in the orders so passed.

The order impugned is lacking in all respects and even when this Court in the earlier round of litigation had directed the statutory authority to find out the nature of contract between the petitioner and the contractors before arriving at a conclusion in the matter, yet the order impugned at Annexure-1 suggests that no such exercise was undertaken and the deliberations was made on the basis of the documents which were already existing at the time of passing of the original order put to question in CWJC No. 962 of 2006 and set aside. Meaning thereby even in absence of any fresh material discovered subsequent to the disposal of the writ petition and without any fresh exercise undertaken by the authority to determine such liability, he has simply taken refuge on the materials which were already existing on record to quantify the liability. The order impugned in clear terms does not satisfy the prerequisites to exercise of power as mandated under Section 7A of the Act nor is in discharge of obligation cast under the orders of this Court passed in CWJC No. 962 of 2006 or is in tune with the judicial pronouncement on the issue and thus cannot be upheld and is accordingly set aside.

In result, the order dated 24.09.2009 passed by the Regional Provident Fund Commissioner, Bhagalpur under Section 7A of the Act impugned in CWJC No. 24576 of 2013 cannot be upheld and is accordingly set aside.

As a consequence of the order passed in CWJC No. 24576 of

2013, the order impugned in CWJC No. 20504 of 2014 passed under Section 14B and 7Q of the Act dated 21.10.2014 / 22.10.2014 also cannot be upheld and is accordingly set aside.

This Court notices that the said order also includes the liability for the period 2005 to 2010 which was not the subject matter of the order impugned in CWJC No. 24576 of 2013 and in which circumstances the statutory authority concerned would not be precluded from issuing a fresh order for the said period in accordance with law. However insofar as the issue raised in CWJC No. 24576 of 2013 is concerned, the matter is remitted back to the assessing authority for passing a fresh order in accordance with law and in tune with the legal provisions as well as the judicial pronouncements on the issue some of which finds discussion in this order and bearing in mind the directions issued in CWJC No. 962 of 2006.

The writ petitions are allowed.

(Jyoti Saran, J)

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