IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1518 of 2017

In

Civil Writ Jurisdiction Case No.416 of 2015

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M/s Bharat Sanchar Nigam Ltd. Telecom District Saharsa through its Accounts Officer, Md. Jalil Aktar Son of Late Md. Jalil Akhtar resident of Telecom District Manager Campus, Gandhi Path, P.S. Saharsa, District - Saharsa.

... ... Petitioner/Appellant

Versus

The Assistant Regional Provident Fund Commissioner, Bhagalpur.

... ... Respondent/s

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with

Letters Patent Appeal No. 1519 of 2017

In

Civil Writ Jurisdiction Case No.1323 of 2015

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M/s Bharat Sanchar Nigam Ltd., Telecom District Saharsa, through its Accounts Officer, Md. Jamil Aktar, Son of Late Md Jalil Akhtar, aged- 54 years, Resident of Telecom District Manager Campus, Gandhi Path, P.S.- Saharsa, District- Saharsa.

... ... Appellant/s

Versus

The Assistant Regional Provident Fund Commissioner, Bhagalpur.

... ... Respondent/s

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Appearance :

(In Letters Patent Appeal No. 1518 of 2017)

For the Appellant/s : Mr. Alok Kumar Shahi

For the Respondent/s : Mr. Prashant Sinha

(In Letters Patent Appeal No. 1519 of 2017)

For the Appellant/s : Mr. Archana Sinha @ Archana Shahi

For the Respondent/s : Mr. Prashant Sinha

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 02-08-2018

It is feeling aggrieved by the judgment and order dated 29.06.2017, passed by a learned Single Judge of this Court in CWJC No. 416 of 2015 and CWJC No. 1323 of 2015 respectively, whereby it is taking note of the alternative remedy present under Section 7-I of the Employees' Provident Funds And Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the P.F. Act') as well as taking note of the law settled by the Hon'ble Supreme Court in the judgment reported in **(2010) 8 SCC 110** ***(United Bank of India vs. Satyawati Tondon & Ors.)*** that the learned Single Judge has dismissed the writ petition, allowing the appellant-writ petitioner to avail of the alternative remedy so available in law under 'the P.F. Act' that these two appeals have come to be filed.

The appellant-writ petitioner is a Government of India Corporation having its establishment across the State and has raised a grievance against the statutory discharge by the authorities of the Provident Fund Department under 'the P.F. Act'.

While L.P.A. No. 1518 of 2017 arises from CWJC No. 416 of 2015, whereby the appellant-writ petitioner has prayed for issuance of writ of certiorari for quashing the order dated 18.11.2014, passed by the Regional Provident Fund Commissioner through SRO, Bhagalpur, in purported exercise of powers vested under Section 14B read alongside Section 7Q of 'the P.F. Act' for alleged default by the appellant-writ petitioner in depositing the remittances under the Act, L.P.A. No. 1519 of 2017 arises from an order passed in CWJC No. 1323 of 2015, whereby the petitioner had questioned the order, dated 24.09.2009 of the same authority passed in the purported exercise of powers vested in Section 7A of 'the P.F. Act' in assessment of the dues for the period 03/2002 to 02/2004 (incorrectly referred to as 10/2002 to 02/2005 in the writ petition.

We need not unnecessarily detain ourselves to examine the rival contention arising in the present litigation because it is rightly contended by Mr. Alok Kumar Shahi, learned counsel appearing on behalf of the appellant-writ petitioner, that the issue is covered by the opinion of the Division Bench in L.P.A. No.619 of 2015 heard along with L.P.A. No.664 of 2015 filed by the respondent-Organization to question an order passed by one of us (Jyoti Saran, J) while exercising writ jurisdiction in matters arising from CWJC No.24576 of 2013 and CWJC No.20504 of 2014 and which challenge of the department ended in dismissal by the order dated 20.07.2016 passed by the division bench, thus, confirming the order passed by the Writ Court.

We have examined the order passed in CWJC No. 24576 of 2013 and CWJC No. 20504 of 2014. These writ petitions were filed by the Munger establishment of the appellant-corporation questioning an identical exercise by the respondent-authorities under ‘the P.F. Act’ for assessment of the dues under Section 7A of the Act as well as for imposition of damages under Section 14B read alongside Section 7Q of ‘the P.F. Act’ and when objection was raised by the department, not only on the delayed action by the appellant-Organization but also on the issue of alternative remedy. The Writ Court, on examination of the objection so raised by the respondent-Department to oppose the challenge to the assessment order passed by the Regional Provident Fund Commissioner as well as the order of penalty, rejected the objection taking note of the apparent infraction of the statutory procedure by the respondent-assessing authority in assessment of the dues as well as in mechanical imposition of penalty. We are persuaded to reproduce the relevant part of the opinion so expressed by the Single Bench:-

> “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 authorized 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 judgmentsand 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."

Each of the two objections raised for resisting the present proceeding was raised before the writ Court while opposing the challenge relating to Munger but was negated and the opinion of the Single Judge has been confirmed by the Division Bench in following terms :-

"We have heard learned counsel for the appellant and find no merit in the present Letters Patent Appeals. It is well settled that availability of alternative remedy does not bar the jurisdiction of the Writ Court. It is in the judicial discretion of the Writ Court to interfere in the proceedings or not even if the alternative remedy is available. Such discretion is in the facts and circumstances of the case. Since the order passed by the Regional Provident Fund Commissioner was found to be wholly illegal, therefore, the Writ Court interfered with the order passed by the Regional Provident Fund Commissioner. The mere fact that the learned Single Bench has interfered with the order is not a ground

> to accept the plea of alternative remedy in the Letters Patent Appeal.
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> Similarly, the plea of delay in approaching the Writ Court is again lies in the judicial discretion of the court. It is well settled that there is no limitation prescribed for invoking the jurisdiction of the Writ court. The delay and laches are the possible grounds on which the Writ Court can refuse to interfere in a particular *lis*, but if the order is found to be untenable, the interference by the Writ Court cannot be said to be untenable only for the reason that the writ application was filed after some delay.
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> In view of the said fact, we do not find any error in the finding recorded by the learned Single Bench which may warrant interference in the present Letters Patent Appeals. The same are, therefore, dismissed."

We have examined the assessment order passed by the Regional Provident Fund Commissioner in purported exercise of powers under Section 7A of 'the P.F. Act' which is impugned in CWJC No. 1323 of 2015 and we do find that the foundation for the said assessment also lies in a proceeding arising from CWJC No. 962 of 2006 filed by the present appellant to question proceedings initiated by the respondent-Department in respect of its establishment across the districts, including the district, in question i.e. Saharsa and it is acting pursuant to the order passed by this Court in CWJC No. 962 of 2006, that the assessment order in question has been passed which is followed by the penalty order under Section 14B read with Section 7Q of 'the P.F. Act' which is impugned in the said writ petition arising CWJC No. 416 of 2015.

In other words, the foundation for the statutory discharge by the Department which was the subject-matter of the earlier round of proceeding relating to Munger as referred to above and the challenge herein, both arise from a common order of this Court passed in CWJC No. 962 of 2006.

We have heard learned counsel for the parties and perused the records. Despite opportunity given to Mr. Sinha, learned counsel representing the Department to demonstrate whether the challenge on procedural infraction by the assessing authority, raised in the present proceeding relating to the district of Saharsa, is in any manner different from the procedure challenge put up in the earlier round relating to the district of Munger, we record our conclusion that nothing different was demonstrated. In the circumstances noted and since demonstrably the issue raised by the appellant-writ petitioner insofar as the district of Saharsa is concerned, stands on identical footing as the matter relating to the district of Munger, no useful purpose would be served by relegating them to the forum of alternative remedy. Even though, the opinion of the learned Single Judge would not suffer any infirmity, on its proposition but for maintaining uniformity of opinion on identical matters and since a relegation of the appellant-writ petitioner to the forum of alternative remedy, would not give any other conclusion, in view of the opinion recorded in the previous round of proceeding, we are persuaded to put a quietus to the contest bearing note of the opinion of the division bench on the issue of alternative remedy in the Munger matter.

For the reasons so discussed, we allow these appeals and consequentially allow the writ petitions, thus quashing the order passed by the Regional Provident Fund Commissioner in purported exercise of powers vested under Section 7A of 'the P.F. Act' dated 24.09.2009 impugned at Annexure-1 to CWJC No. 1323 of 2015, together with the order passed under Section 14B read with Section 7Q passed by the same authority dated 14.03.2014 impugned at Annexure-1 to CWJC No. 416 of 2015. The liberty, however, would be reserved with the respondent-statutory authority to proceed afresh, but in accordance with law.

The order of the learned Single Judge impugned in the two appeals stands modified to the extent indicated above.

The Letters Patent Appeals are accordingly, allowed, but without no order as to cost(s).

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

HR/Ashish/-

AFR/NAFR	AFR
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