IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21029 of 2014

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M/s Bharat Sanchar Nigam Ltd., Telecom District Bhagalpur, through its AGM (Admin and Planning), D.K.Singh, son of Sri Raghuvansh Singh, aged about 49 years, resdient of BSNL Quarter No.1, Type 4 Quarter, H.P.O. Compound, P.S.-Taklamanjhi, District-Bhagalpur.

... ... Petitioner/s

Versus

The Assistant Regional Provident Fund Commissioner , Adampur Chowk, Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Alok Kumar @ Alok Kr Shahi, Advocate
For the Respondent/s : Mr. Prashant Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 18-02-2019

Heard learned counsel for the petitioner and learned counsel for the E.P.F.

In the present case, the petitioner, who is a government company, is challenging the order dated 22.10.2014 (Annexure-4), which is the assessment order passed under Sections 7Q and 14B of E.P.F. Act, 1952 for the period 04/1996 to 03/2010 & 4/2010 to 03/2014.

Earlier, E.P.F Department initiated a proceeding under Section 7A of the E.P.F. & MP Act, 1952 for the failure to deposit the contribution of the contract employees employed by the B.S.N.L. for the period of May, 2002 to February 2004, which is reflected from the order dated 2.01.2006 (Annexure-3A) and total amount has been assessed for Rs. 12,01,495/- that was subject matter of challenge before this Court in CWJC No.11877 of 2006 and this Court interfered with the assessment order and remanded back the matter for fresh consideration. Collaterally, a proceeding under Sections 7Q and 14B have been initiated for the period May, 2002 to May, 2008 that includes the period involved in 7A proceeding inasmuch as the BSNL has accepted the deposit of certain amounts of contribution in delay and, accordingly, payment has already been made to the EPF Department, but the period with regard to 7A is also involved in 7Q and 14B proceeding and the proceeding under Sections 7Q and 14B should not be undertaken till the outcome of 7A proceeding when the assessment itself is at the stage of adjudication, finality has not been reached the question of initiation of proceeding under Sections 7Q and 14B is a misdirected proceeding and the same is vitiated. Learned counsel for the EPF fairly accepts, if certain period of 7A proceeding is involved in 7Q and 14B proceeding then certainly it will be subject to result of the 7A proceeding.

Learned counsel for the BSNL has submitted, in pursuance of the 7Q and 14B proceeding even for the contribution which accepted in delay depositing has already been deposited, recovery of the said amount again is not fair action of authority as EPF Authority (Authority) has attached the account of BSNL in turn recovered Rs.22,28,935/-.

The order passed in 7Q and 14B proceeding suffers from illegality on two accounts: First the authority has not considered the certain period involved in 7A proceeding is also involved in 7Q and 14B proceeding and second the order itself is very cryptic does not discloses the consideration of the fact involved with respect to imposing the interest as well as damage upon the petitioner.

In such view of the matter, the order dated 22.10.2014, as contained in Annexure-4, is set aside, but this Court makes it very clear that any proceeding relating to 7Q and 14B will depend on the outcome of the proceeding under Section 7A, which is still pending for consideration. So long the proceeding is not concluded, the Authority of EPF would not have a jurisdiction to initiate assessment proceeding under the head of delay and damage.

It is also made clear that the EPF Authority will return the amount to BSNL which has been recovered except for those period, the BSNL has accepted the same.

Accordingly, this writ application stands allowed with the aforesaid observation and direction.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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