HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION NO. 24521 OF 2020

Between:

Sri Laxmi Ganapathi Constructions, Rep. by its Owner, Smt. M.Kaveri Rao, W/o. Ravi, 35 Years, H.No. 11-103, Subhash Colony, Bhupalpally, Bhoopalpally, Jayashankar Bhupalapally District.

...PETITIONER

AND

1. The Singareni Collieries Company Ltd., Rep. by its Chairman and Managing Director, Singareni Bhavan, Khairatabad, Hyderabad.
2. The General Manager, (Contract Management), Singareni Collieries Company Limited, Kothagudem Area, Kothagudem, Khammam District - 507 101
3. The Chief General Manager, Singareni Collieries Company Ltd., Bhupalapalli Area, Jayashankar Bhupalapalli District.
4. The Regional Commissioner, Coal Mines Provident Fund Organization, Millennium Complex, I.B.Colony, Street Opp. to Bus Stand, Godavarikhani - 505 209 Karimnagar District.

...RESPONDENTS

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 a Writ, Order or direction particularly one in the nature of Writ of Mandamus declaring the action of the Respondents in insisting for complying with Clause 37(d) of the work order No. 7600045308, dt. 10.10.2020 with regard to enrolment of the workmen and staff of the petitioner as members of the Coal Mine Provident Fund and deduction of Coal mines provident fund from the amounts payable to the Petitioner as per the work order No. 7600045308, dt. 10.10.2020 as arbitrary and illegal and further declare that the provisions of the Coal Mine Provident Fund and Miscellaneous provisions Act 1948 are not applicable to transport contract.

IA NO: 1 OF 2020

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 direct the Respondents not to deduct or effect recovery of the amounts towards Coal Mine Provident Fund pending disposal of the above writ petition.

Counsel for the Petitioner: SRI M. SRIKANTH

Counsel for the Respondent Nos. 1 to 3: SRI J. SREENIVASA RAO,
S.C. FOR SINGARENI COLLIERIES

Counsel for the Respondent No.4: SRI K.L.N. RAGHAVENDER REDDY,
S.C. FOR COAL MINES PROVIDENT FUND ORGANIZATION

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION NO.24521 OF 2020

ORDER:

This Writ Petition is filed for the following relief:

> *"...to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in insisting for complying with Clause 37(d) of the Work Order No.7600045308 dated 10.10.2020 with regard to enrolment of the workmen and staff of the petitioner as members of the Coal Mine Provident Fund and deduction of Coal Mines Provident Fund from the amounts payable to the petitioner as per the Work Order No.7600045308, dated 10.10.2020, as arbitrary and illegal and further declare that the provisions of the Coal Mine Provident Fund and Miscellaneous Provisions Act 1948, are not applicable to transport contract and pass such other order or orders may deem fit and proper in the circumstances of the case."*

When the matter is taken up, it is submitted by the learned counsel for the petitioner that the issue in the present Writ Petition is squarely covered by the common order, dated 30.03.2011, passed by this Court in W.P.No.11107 of 2009 and batch.

Sri J. Srinivasa Rao, learned Standing Counsel appearing for respondent Nos.1 to 3 and Sri K.L.N. Raghavender Reddy, learned Standing Counsel for the Coal Mines Provident Fund Organization, appearing for respondent No.4 do not dispute the aforesaid submission.

The operative portion of the aforesaid order reads as under:

"Hence, the Writ Petitions are disposed of, directing that,

(a) the Regional Commissioner or any Officer authorized by him shall first issue a notice to the petitioners to decide whether the activity undertaken by the petitioners comes within the definition of Coal Mine. It shall be open to the petitioners to submit explanation:

(b) in the event of the activity being declared as the one in coal mine, the employees shall be enrolled as members, subject to their fulfilment of the prescribed conditions, the respondents shall assign account numbers and issue cards; and the deductions shall be made with reference to the account numbers and cards so issued, periodically;

(c) till such time, no deductions shall be made, but if it is held that the petitioners are liable, at a later point of time, they shall be under obligation to pay the arrears also;

(d) the amount deducted from the petitioners, so far, shall be kept in FDRs and the manner in which it shall be utilized shall be decided, depending upon the outcome of the exercise undertaken above; and

(e) the authority of the Coal Mines Provident Fund shall ensure that it does not deduct any amount, without reference to a particular employee, who is admitted to the Provident Fund."

In view of the above, following the above said common order and for the reasons recorded therein, this Writ Petition is also disposed of in terms thereof.

Miscellaneous applications, if any, pending shall stand closed. There shall be no order as to costs.

SD/- K.AMMAJI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Chairman and Managing Director, Singareni Collieries Company Ltd., Singareni Bhavan, Khairatabad, Hyderabad.
2. The General Manager, (Contract Management), Singareni Collieries Company Limited, Kothagudem Area, Kothagudem, Khammam District - 507 101
3. The Chief General Manager, Singareni Collieries Company Ltd., Bhupalapalli Area, Jayashankar Bhupalapalli District.
4. The Regional Commissioner, Coal Mines Provident Fund Organization, Millennium Complex, I.B.Colony, Street Opp. to Bus Stand, Godavarikhani - 505 209 Karimnagar District.
5. One CC to Sri M. Srikanth, Advocate [OPUC]
6. One CC to Sri J. Sreenivasa Rao, S.C. for Singareni Collieries [OPUC]
7. One CC to Sri K.L.N. Raghavender Reddy, S.C. for Coal Mines Provident Fund Organization (OPUC)
8. Two CD Copies.

Along with a Copy of the Common Order dated 30.03.2011 in W.P.No.11107 of 2009 and batch.

MP

HIGH COURT

DATED:31/12/2020

ORDER

WP.No.24521 of 2020

HIGH COURT FOR THE STATE OF TELANGANA
05 JAN 2021
* DESPATCHED *

DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

SSV.
9 copies
Dt- 5/01/2021

2009 and batch.

14

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

<u>Writ Petition Nos.11107/2009, 6536, 6557, 6558 & 6567 of 2011</u>

<u>COMMON JUDGMENT:</u>

In this batch of writ petitions, common question arises for consideration. Hence, they are disposed of, through a common judgment.

The petitioner in W.P.No.11107 of 2009 is M/s Mallikarjuna Transport, and in all other writ petitions, it is Sri Srinivasa Transport. The petitioners were assigned the contract by M/s Singareni Collieries Company Ltd., (for short 'the Company') for transporting of coal from an incline to the dumping units, for different periods.

In every contract, the particulars as to lead, Kilometers, approximate quantity of coal to be transported, the rate per tonne for each of the destinations, and, ultimately, the total value of the contract are furnished. It is also stipulated that, it shall be the obligation of the contractor to engage machines or trucks, workmen, and to make contributions under different enactments.

The Company made deductions of different kinds from the bills payable to the petitioners. One such deduction is the contribution to Coal Mines Provident Fund (for short 'CMPF'), at 10.5/6% of the bill. The petitioners challenge this deduction, on the ground that most of the workers engaged by them are on daily or weekly wage basis; none of them are members of the CMPF, and that there is no basis for it. It is stated that the necessity to make deduction of contribution would arise, only when an employee of the petitioners has become a member of the CMPF, and contribution must be credited to the account of the employee. The petitioners submit that there is absolutely no basis for making deduction for such huge amounts, from time to time.

The Company filed a counter-affidavit. It is stated that the deduction is being made, as required under Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (for short 'the Act'), and the petitioners cannot escape from the statutory liability. It is also stated that a Scheme was framed in the year 1948, and the details thereof are mentioned. It is stated that the Commissioner of Coal Mines Provident Fund, which is a party in the writ petitions, has to decide such issues, and that the petitioners cannot avoid their obligation to make contribution.

Sri V. Ravi Kiran Rao, learned counsel for the petitioners advanced arguments on behalf of the petitioners. He submits that the activity undertaken by the petitioners cannot be treated as the one, in the 'coal mine', much less, the workers engaged by them are covered by the definition under Section 2(b) of the Act. Learned counsel submits that, in exercise of power under the Act, a scheme was framed by the Central Government, providing for constitution of a fund, for the benefit of the coal mines employees, and a Trust, to operate it. After referring to the relevant provisions, learned counsel submits that, it is only when an employee becomes the member of the CMPF, that the obligation would arise, either for the principal employer, i.e. the Company, or the Contractor, to make the contribution. He has also placed reliance upon the judgment of the Supreme Court to contend that a transport contractor cannot be treated as an employer, much less his activity, as that of a coal mine.

Sri Deepak Battachargee, learned Standing Counsel for the Coal Mines Provident Fund and Sri Nandigama Krishna Rao, learned Standing Counsel for the Singareni Collieries, on the other hand, submit that the work entrusted to the petitioners is very much an activity pertaining to coal mine, and that the employees engaged in it are covered by the provisions of the Act. According to them, once the deduction of the contribution is effected, it would be extended to the persons for whose benefit it was deducted, at a later point of time.

The Act was brought into existence for the benefit of the workers in the coal mines. In exercise of power under the Act, the Central Government framed the Coal Mines provident Fund, Family Pension, and a Trust, to operate the same. The salient features of the Scheme are that, the employees, who are engaged in the coal mines, are to be made members of the CMPF, and are issued cards, apart from being assigned numbers. That in turn create obligation on the part of the employee and the employer to make contribution to the fund. The benefits arising out of the fund in favour of the members are also enlisted. The allotment of account numbers, issuance of cards, the renewal thereof, etc., are provided for under Clauses 39, 40, 41 and 42 of the Scheme. The membership in the fund is coextensive with the employment in the coal mines.

It is not in dispute that the petitioners are assigned the work of transporting coal, which is already extracted from the mines.
A serious doubt arises, as to whether the activity assigned to them can be treated as the one, in 'coal mine'. The definition of 'coal mine', under Section 2 (b) takes in its fold, vast number of activities enlisted

from Clause (i) to (xiii). In these writ petitions, it is not necessary to make a final pronouncement, as to whether the transport activity of coal falls within that definition.

Even where an activity is referable to a 'coal mine', the necessity for an employer to make contribution to the CMPF arises, only when an employee is made a member of the fund. The parameters for an employee to become a member of the fund are stipulated under the Scheme. Nowhere in the correspondence between the parties, it is evident that any effort was made by the respondents, to ascertain these facts. The contributions are being deducted, just on the basis of the number of workers, that are supposed to be engaged.

It is only when such worker is made the member of the fund, that a meaningful contribution can be made. If deduction is made, without the worker being the member of the fund,
it amounts to an illegal collection, if not undue enrichment on the part of the respondents. The Act does not contemplate the deductions being made, even where, neither account numbers are assigned, nor membership cards are issued to the employees.
As and when a responsible officer undertakes such an exercise,
the question, as to whether the activity being undertaken amounts to that of a coal mine; can also be examined. It would be premature for this Court to make any pronouncement on such questions.

Hence, the writ petitions are disposed of, directing that,

a) the Regional Commissioner or any Officer authorized by him shall first issue a notice to the petitioners to decide whether the activity undertaken by the petitioners comes within the definition of Coal Mine. It shall be open to the petitioners to submit explanation;

b) in the event of the activity being declared as the one in coal mine, the employees shall be enrolled as members, subject to their fulfillment of the prescribed conditions, the respondents shall assign account numbers and issue cards; and the deductions shall be made with reference to the account numbers and cards so issued, periodically;

c) till such time, no deductions shall be made, but if it is held that the petitioners are liable, at a later point of time, they shall be under obligation to pay the arrears also;

d) the amount deducted from the petitioners, so far, shall be kept in FDRs and the manner in which it shall be utilized shall be decided, depending upon the outcome of the exercise undertaken above; and

e) the authority of the coal mines provident fund shall ensure that it does not deduct any amount, without reference to a particular employee, who is admitted to the provident fund.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.30-03-2011.

Note
L.R copy to be marked.
(B/O)