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10.12.2021
Ct. No. 16

FMA 1544 of 2016
with
IA No. CAN 1 of 2015 (Old No. CAN 11182 of 2015)

**Regional Provident Fund Commissioner-I, Regional Office,
Bhavishya Nidhi Bhawan, Dinbazar, Jalpaiguri & ors.**

**VS.
NTPC Limited & ors.**

Mr. S. C. Prasad

... for the appellant

Mr. Soumya Majumder
Mr. Uttam Kumar Mondal
Ms. Shagun Baid

... for the respondent

This appeal filed by the Employees Provident Fund Organisation is directed against an order dated 07.09.2015 passed in AST 229 of 2015 filed by the first respondent, namely, NTPC Limited, a Government of India Enterprise. The writ petition was filed challenging the order passed by the appellant organization dated 05.08.2015 which is an order under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (in short, the 'said Act'). Though several grounds were raised by the first respondent/writ petitioner, the primary ground on which the challenge was made to the said order was on the ground of a wrong understanding of the directions issued by the Division Bench in the earlier appeal being APOT 622 of 1997 dated 03.03.1998. Consequently, it was argued that the order was in violation of principles of natural justice and outcome of non-application of mind and, therefore, NTPC Limited was entitled to file a writ petition against the said order though an appellate remedy is provided under the said Act. The learned Single Judge after going through the

order impugned before it, allowed the writ petition and directed to determine the liability afresh. Further direction was also issued to complete such exercise within a period of six months and also not to give effect to the order dated 05.08.2015. The correctness of the said order is questioned before us in this appeal.

Learned counsel appearing on behalf of the appellant organization would vehemently contend that the learned Single Judge ought not to have remanded the matter for the second time when the Division Bench on earlier occasion had remanded the matter and thereafter elaborate exercise was done by the appellant organization, several persons were examined and all the efforts have been rendered wasteful and ultimate victim is the employee. Further, it is submitted that the writ petition ought not to have been entertained as there is effective alternative remedy of appeal under the said Act and there is a condition of pre-deposit to be made by the management, if they have to file an appeal which was not complied with by the writ petitioner.

Learned counsel appearing on behalf of the respondent/writ petitioner submits that the learned writ court had rightly remanded the matter as it found that the order suffers from infirmity on a wrong understanding of the judgment of the Division Bench in the earlier round of litigation. Therefore, it is submitted by the learned counsel that a fresh exercise may be done. Further, it is submitted with regard to the amount which has already been lying

with the appellant organization, it is not clear as to whether it reached the employees. In reply to such submission, learned counsel appearing on behalf of the appellant submitted that substantial amount has been disbursed to the employees upon production of proper identification and only the claims of 104 employees are pending for want of proper authentication and the appellant organization will ensure that the amount is to be paid to the right person with right quantum.

We have elaborately heard learned counsel for the parties and perused all the materials on record placed before us. The learned Single Judge was of the view that the order impugned dated 05.08.2015 before it was passed on account of wrong understanding or misunderstanding of the scope and observation made by the Division Bench in its judgment dated 03.03.1998 in APOT 622 of 1997. To examine the correctness of the said finding, we have carefully perused the judgment of the Division Bench as well as the materials placed before us by either side. The Division Bench while disposing of the appeal directed the appellant organization to keep the order dated 01.10.1996 (order under Section 7A of the said Act) in abeyance and gave the respondent/writ petitioner an opportunity to produce documents and directed the appellant organization to produce all records and documents which are in their possession in respect of the contract. Thereafter, the appellant authority, if they are unable to find out the relevant materials required for the purpose of determination

as indicated in the judgment, would take steps in the matter and further for the purpose of getting name and address of the employees and workmen, each and every contractor should be summoned and should be enforced before the authorities of the appellant concern and after giving an opportunity of hearing to all the parties in the matter in accordance with law, the authorities concerned will pass an order afresh either confirming the order of revoking and/or altering the order that have already been passed. A time frame has also been fixed. Thus, what was required to be done by the appellant organization in coordination with the respondent management and the other stakeholders and contractors were clearly spelt out by the Division Bench. Therefore, it needs to be seen as to whether such exercise was conducted. On a reading of the order dated 05.08.2015, we find that the exercise directed to be undertaken by the appellant have been properly understood and the workmen employees engaged in the establishment were identified through contractors and there were more than four persons representing the establishment and there were also more than 65 persons representing the various contractors and 14 persons representing various trade unions as well.

After considering the materials available on record, what the appellant organization was required to do has already been spelt out by the Division Bench. It can also confirm the earlier order dated 01.10.1996 but while confirming such order, independent reasons have to be

given because a detailed enquiry has been conducted. Statements have been recorded. Certain documents have been collected. The organization was also empowered to pass fresh orders, however, a small mistake crept in at that stage when the appellant organization passed order dated 05.08.2015 by stating that there is no dispute regarding the dues determined in the original order under Section 7A of the said Act dated 01.10.1996.

Thus, in our considered view, it was rightly construed by the learned Single Judge that the appellant organisation misunderstood the earlier order passed by the Division Bench. What the appellant organization ought to have done is that based on the outcome of the enquiry they ought to have taken an independent decision and arrive at a conclusion and pass a reasoned order which exercise have not been done. The learned Single Judge was justified in remanding the matter. Therefore, to that extent, we agree with the observation of the learned Single Judge. Insofar as the question as to whether the entire exercise already done by the organization has to be interfered by us, we hold that there is no fault attributed to the organization with regard to persons who were called for the said enquiry both on the side of the contractors as well as the side of the trade unions. Therefore, one more exercise to summon all of them would be thoroughly a wasteful endeavour and unnecessary. We say so because already the material is available with the appellant organization. Therefore, we are of the view that the penultimate portion of the order passed

by the appellant organization alone requires to be set aside and a fresh order shall be passed by the appellant organization on the available materials which were secured pursuant to the enquiry conducted on the directions issued by the Division Bench.

In the result, the writ appeal is partly allowed and the direction issued by the learned Single Judge is modified to the extent by setting aside the order dated 05.08.2015 in its entirety keeping all the materials which have been directed by the appellant organization through enquiry conducted, we direct the appellant organization to pass a fresh speaking order on the materials which they have collected and come to a conclusion and take a decision in the matter. This exercise should be completed within a period of eight weeks from the date of receipt of the server copy of this order.

With the above observations, the instant appeal stands **disposed of**. Consequently, the connected application also stands **disposed of**.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)