4 & 5 **16.12.2021**

gd/ssd

FMA 813 OF 2021
IA NO: CAN 1 OF 2021
IA NO: CAN 2 OF 2021

HCC-L&T, PURULIA JV
VS
RECOVERY OFFICER AND ORS.

WITH

FMA 698 OF 2021
IA NO: CAN 1 OF 2021

M/S. ROHIT CONSTRUCTION
VS
HCC-L&T, PURULIA JV AND ORS.
(Through Video Conference)

Mr. Soumya Majumder,
Mr. Aasish Choudhury,
Mr. Suryaneel Das,
Mrs. Aindirla Basu
..for the Appellant in FMA 813 OF 2021 & Respondent no.1 in FMA 698 OF 2021.

Mr. Shiv Chandra Prasad
..for the P.F. Authority.

Mr. Kumar Jyoti Tewari,
Ms. Rajlakshmi Ghatak,
Mr. Aniruddha Tewari
..for the Appellant in FMA 698 OF 2021 & Respondent in FMA 813 OF 2021.

FMA 813 of 2021 is at the instance of the principal employer and FMA 698 OF 2021 is at the instance of the contractor.

In both these appeals order of the learned Single Judge dated 08.03.2021 is under challenge whereby the learned Single Judge has directed to deposit of the principal amount of Rs.8,83,383/- and has further directed that out of this amount a sum of Rs.5,00,000/- will be deposited by the contractor and a sum of Rs.3,83,283/- will be deposited by the principal employer. It is further observed by the learned Single Judge if the contractor does not deposit his share of Rs.5,00,000/- within a fortnight, then the same will be deposited by the principal employer.

The submission of learned counsel appearing for the principal employer i.e. the appellant in FMA 813 of 2021 is that the order was passed by the Provident Fund Commissioner under Section 7A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 as against the contractor and not against the principal employer. Therefore, the CPFC could not have issued the recovery notice as against the principal employer. He has further submitted that the proceedings are in the nature of garnishee proceedings and that in terms of Section 8F(2) of the Act the amount due from any person to any employer who is in arrears, can be recovered but the principal employer is not an arrear because there is no order at least.

Learned counsel appearing for the appellant/contractor in FMA 698 of 2021 has submitted that the principal employer was duly noticed in the proceedings under Section 7A and he was given an opportunity and at the commencement of the contractor he had given notice to the CPFC admitting his liability to pay the amount and now the work has been completed long back. He further submitted that in this background the learned Single Judge ought not have passed any order in respect of the deposit of amount by the contractor.

Learned counsel for the CPFC submits that in terms of Para 30 of the Employees' Provident Fund Scheme, 1952 the principal employer is liable and that in terms of Para 36 A and B of the Scheme it is the liability of the principal employer and even in terms of Section 8F(2) the liability falls on the principal employer.

Having heard the learned counsel for the parties and the perusal of the record, we have noticed that the principal employer by way of the writ petition had approached the learned Single Judge challenging the demand notices dated 24th of June, 2020 and 8th of September, 2020 and undisputedly the principal employer had employed the contractor by issuing the work order in respect of the work of its establishment. The communication dated 10th of February, 2003, which has been placed on record, reveals that the principal employer while making a prayer to grant a separate code number had conveyed to the CPFC that being the principal employer, it will be liable to comply with the provisions of the Act and the Scheme. Record further reflects that in the proceedings taken up by the CPFC at the stage of passing the order under Section 7A the principal employer was noticed and at the stage of hearing the review application also notice were duly sent to the principal employer. The CPFC has assessed the principal amount of Rs.8,26,831/- under Section 7A and the interest as Rs.8,83,383/- under Section 7Q thus demand of total amount of Rs.17,10,214/- was raised.

Learned Single Judge keeping in view the fact that it was a welfare legislation and also considering that the amount due and payable was not paid in pursuance to the orders of the CPFC as an interim measure in order to strike the balance has issued a direction to deposit part of the amount by the contractor and a part thereof by the principal employer and further directing that failure on the part of the contractor to deposit the amount by the principal employer. The said order appears to have been passed keeping in view the provisions contained under Para 30 of the Provident Fund Scheme. The issue on merit is yet to be adjudicated by the learned Single Judge, therefore, whatever contentions the counsel for the appellants are raising before this Court, it will be open to them to raise it before the learned Single Judge.

Having examined the matter in the light of the provisions of the Act and the Scheme, we do not find any error in the order of the learned Single Judge. We have restrained ourselves from going into the merits of the controversy as any observation made by this Court will prejudice the right of the parties. We make it clear that whatever observations we have made in this order, they are, for a limited purpose of examining the correctness of the order of the learned Single Judge. The writ petition itself will be decided by the learned Single Judge on its own merit without being influenced by any observation made in this order. We find no case for interference in the order of the learned Single Judge.

At this stage, learned counsel for the appellant/employer has submitted that a sum of Rs.3,83,283/- has already deposited and has prayed for extension of time to deposit the remaining amount of Rs.5,00,000/-.

In the circumstances of the case, we permit the appellant/employer to deposit the remaining sum of Rs.5,00,000/- within a period of two weeks from today.

The operation of the interim order passed by the learned Single Judge will be subject to deposit of the amount by the employer on the above terms.

The appeals are accordingly dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

e