25.11.2021
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F.M.A. 1379 of 2017

With

I.A. CAN 1 of 2017 (Old CAN 6025 of 2017)

Assistant Provident Fund Commissioner (Damage) & Anr.

Vs.

The West Bengal Power Development Corporation Limited & Ors.

Mr. Shiv Chandra Prasad,
Mr. Nikhil Kumar Gupta .... for the appellants.

Mr. Ranjay De,
Mr. B. Banerjee ... for the respondent no.1.

This intra-Court mandamus appeal has been filed by the Assistant Provident Fund Commissioner (Damage), Sub-Regional Office, Howrah being aggrieved by the order dated 19th April, 2017 passed in W.P. No. 2045(W) of 2017 filed by the West Bengal Power Development Corporation Limited, a Government of West Bengal enterprise, being the 1st respondent herein.

The order impugned in this appeal is an interlocutory order and the appellants / organisation is aggrieved by an observation made in the order and a direction issued in the order. The observation is to the effect that the appellants / organisation acted with undue haste and proceeded in the matter of recovery of the amount from the State Bank of India. The second grievance is with regard to a direction issued to the Provident Fund authorities to keep the amount recovered from the State Bank of India in a short-term fixed deposit.

The learned counsel appearing for the appellants / organisation submitted that the appellants / organisation has followed the correct procedure stipulated under the Act and there has been no undue haste shown in the matter of recovery. It is submitted that the appellants / organisation has filed the affidavit-in-opposition in the writ petition wherein the entire facts are clearly being set out and documents have also been placed before the Court and today a supplementary affidavit has also been filed by the appellants. Further, the learned counsel for the appellants submitted that the amounts which have been recovered from the employer are the dues payable to the innocent employees / workmen and directing the same to be deposited in a nationalised bank would be prejudicial to the interest of the workmen.

So far as the first contention is concerned, we are in agreement with the learned counsel for the appellants that at an interlocutory stage, a positive finding or observation would not auger well because the final adjudication is yet to be completed. Therefore, such finding is vacated.

So far as the direction to keep the recovered money in a fixed deposit is concerned, we find, at this juncture, the order need not be disturbed, which was passed as early as in 2017 for more than one reason. Firstly, the amount is now secured and subject to the outcome of the writ petition, which can always be disbursed in the manner known to law. Secondly, as per the direction issued by the learned Single Bench, the affidavits have been exchanged and the writ petition is ripe for hearing. Therefore, we are inclined to make a request to the learned Writ Court to hear the writ petition at the earliest convenience and if feasible before the Court closes for Christmas vacation, 2021.

In the result, the writ appeal is partly allowed and the observation made with regard to undue haste in the matter of recovery of amount stands vacated and in respect of the amount which has been directed to be invested in a nationalised bank, the same shall continue and abide by the ultimate result in the writ petition. We grant liberty to the learned counsel of either side to place the copy of this judgment and order before the appropriate Learned Single Bench so that the matter can be heard at an early date.

In view of the observations made hereinabove, nothing survives for decision in the application being I.A. CAN 1 of 2017 (Old CAN 6025 of 2017) and the same is disposed of without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)