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Ct-08

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MAT 1404 of 2023
with
I.A No. CAN 1 of 2023

M/s Eastern Coal Fields Ltd.
Vs.
Rabindra Nath Roy & Ors.

with

MAT 1403 of 2023

M/s Eastern Coal Fields Ltd.
Vs.
Iswari Lall & Ors.

Mr. Debnath Ghosh
Mr. Puspall Chakraborty
Mr. Saptarshi Mukherjee
... For the Appellant
in both the Appeals

Ms. Joyee Maiti
Mr. Saikat Koley
... For the Respondents/
Writ Petitioners
in both the Appeals

1. By consent of the parties the appeals are taken up together and disposed of by this common order.

2. We have heard the learned counsel appearing for the parties.

3. The writ petitioners are aggrieved by the decision of the Eastern Coal Fields Ltd. to close down the schools claimed to have been established by ECL in which the writ petitioners were appointed until their services were terminated by reason of closure without

payment. In the said proceeding learned Single Judge appointed Mr. Pradip Kumar Ghosh, advocate, as Special Officer to make a surprise visit in working day of the schools to know certain facts about the students and the teachers and also of the schools. The Special Officer submitted his report.

4. It appears that the Eastern Coal Fields Ltd. has filed an affidavit taking exception to the report. The said affidavit was affirmed on 19th May, 2023. The exception affidavit admittedly was served upon the learned advocate on record for the petitioners prior to the writ petition was taken up by the learned Single Judge. Learned advocate representing the writ petitioners admitted to have received such affidavit prior in point of time.

5. Learned Single Judge noticing that the exception of the special officer's report, in fact, not filed as per the direction of the court refused to accept the exception to the report and directed to disburse the payment of at least 3 months' salary to the petitioners from the date since the time it was not paid. A sum of Rs.6,00,000/- was directed to be deposited on 2nd May, 2023. The teachers were not receiving their regular remuneration on and from November, 2022.

6. In fact, the order directing depositing of Rs.6,00,000/- was unsuccessfully challenged, as would be evident from the order of the coordinate bench dated 12th May, 2023. The coordinate bench in dismissing the appeal, however, observed *“Having heard the parties and closely considering the materials placed, this Court finds that the Order impugned dated 2nd May, 2023 directing ECL to deposit a sum of Rs. 6 lakhs has the effect of proceeding to determine the financial obligations of ECL qua the nineteen schools which receive Grants-in-aid, which in turn provides for the sustenance of the teachers.*

While arguably, based on the decision in NALCO 4 (supra), ECL may contest the claim of the writ petitioners for establishing an employee-employer relationship with its additional argument that ECL has withdrawn its representatives from the Managing Committees of the said Schools, at the same time ECL cannot wriggle out of its binding obligation to keep providing the Grants-in-aid regularly month by month.

This Court finds that the Hon’ble Single Bench is correctly concerned with the fact that the teachers have not received their regular remuneration on and from November, 2022 and hence ECL is required to make a clear disclosure of the status of disbursement of its Grants-in-aid.

Furthermore, with basic education being declared as a constitutional right under the Right of Children to Free and Compulsory Education Act, 2009, the Hon’ble Single Bench can exercise jurisdiction to find out any violation of its constitutional obligations by ECL, being a state within the meaning of Article 12 of the Constitution of India.....

Before parting with this discussion, it must be also noticed that the Learned Special Officer appointed by the Hon’ble Single Bench found the nineteen schools to be operational, contrary to the findings of the internal Vigilance Department of the ECL. In such view of the

matter it is appropriate for the Hon'ble Single Bench to open the adjudication for deeper examination by passing appropriate interim orders. Prima facie, in the view of this Court, the Hon'ble Single Bench may invite an independent audit of the regular allocation and disbursal of the Grants-in-aid. ”

7. The payment of salary consequent upon the closure is dependent upon the adjudication being arrived at with regard to the nature of allocation of fund and also the employee and employer relationship. Learned Single Judge is in seisin of the matter.

8. Learned counsel for the E.C.L has contended that the writ petitioners are no more the employees of the E.C.L. This issue is pending adjudication in the writ petitions. The closure has not yet been declared illegal.

9. With a view to finding out the nature of contribution and disbursement made by E.C.L with regard to 19 schools an enquiry was directed to be made by the learned Single Judge that had resulted in a report being filed by the Special Officer. In fact, if the writ petitioners are in doubt about the nature of contribution and the Court is in doubt, then an independent audit of the regular allocation of the disbursement of the Grants-in-aid can be done and the learned counsel representing the E.C.L has submitted

that the E.C.L has no objection if an independent auditor is appointed to ascertain the true and proper nature of disbursement.

10. In this circumstance, until the exception to the report filed by the Special Officer is considered and the status of disbursement of the fund is ascertained, in our view, it would not be fair to direct release of the remunerations. The culpability of ECL needs to be ascertained and ECL cannot wriggle out of its obligation if there obligation to provide funds is otherwise established. ECL may also explore grants as part of CSR.

11. Mr. Debnath Ghosh, learned counsel representing the E.C.L, has submitted that out of Rs.6,00,000/- approximately 4.8 lakhs have already been disbursed. The amount already disbursed shall not be recovered in the mean time and it shall abide by the result of the writ petition. No further disbursement shall be made without the leave of the learned Single Judge. We request the learned Single Judge to take into consideration the exception to the report of the Special Officer before deciding on the issue of any further disbursement or depositing any further sum by E.C.L, if required. The department shall accept the exception to the

report of the Special Officer.

12. In view of the aforesaid the order impugned stands modified to the aforesaid extent. The above appeals being MAT 1404 of 2023, MAT 1403 of 2023 are disposed of on the aforesaid terms along with CAN 1 of 2023.

13. There will be, however, no order as to costs.

14. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

