(2003) 03 JH CK 0027

In the Jharkhand High Court

Case No : CWJC No. 11871 of 1999 (P)

M.G.P. Workers Union APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Citation : (2003) 3 JCR 377

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : Abdul Hakim and U. Choudhary, for the Appellant; P.P.N. Roy and S. Khan for respondent Nos. 4-7 and B. Chaterjee, for NTPC, for the Respondent

Judgement

Vikramaditya Prasad, J.—Heard the learned counsel for the petitioner, respondent NTPC and respondent EPF.

2. This writ petition has been filed for two specific reliefs- (i) for canceling the Sub-Code Number granted to the Contractors and (ii) for a direction upon the respondent Nos. 1 to 3 to deposit the employer''s contribution with the employees contributions towards the Provident Fund for the workmen engaged in the NTPC by the various contractors since 1987 till date.

3. Shorn of the detailed fact is that there is an instruction issued by the Central Provident Fund commissioner, Annexure-6, which has deprecated the practice of allotment of the separate Sub-Code Number in the following terms :--

"No. 17(3)93/E.I/K.N. Dated 3.7.1998

To

All Regional Provident Fund Commissioners /Officers-in- Charge of Sub-Regional Offices Subject : Coverage of contract labour under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, issue of Code numbers.

Sir

It has come to notice that some Regional Offices are issuing code number to the contractors. Such contractors are not properly complying and the principal employees are also avoiding compliance on the ground that contractors are independently covered. It is also observed that some employers have started insisting that they will not award any contract to the contractors if they do not hold separate code number.

Instructions issued vide circular Numbers E. 111/6(7)83-KN dated 20.7.1990, 2nd. January, 1991, and number 17(3) 92/EJ dated 24.3.1994 regarding issuance of sub-code number are to be read and understood properly vide these circulars, only principal employers were permitted to be allotted sub-code numbers and not the contractors. Despite the clear instructions, the practice of allotment of separate code numbers to the contractors is still continuing.

The practice of allotment of separate code number to the contractor is contrary to the provisions of Section 6 of Employees'' Provident Fund and Miscellaneous Provisions Act, 1952, and para 30(3) of Employees'' Provident Fund Scheme, 1952. The responsibility of depositing contributions and various returns lies with the principal employers. Even if contractor has a code number, the responsibility remains with the principal employer, who cannot escape from the statutory liabilities.

Vide letter number D.O. No. R-11011/2/98-SS-II dated 18.5.1998, Government of India has directed to stop the practice of allotment of separate code number to the contractor forthwith and submit detailed list of contractors to whom separate code numbers have been allotted during the last two years, indicating as to whether or not such contractors have complied with the provisions of the Act for enabling the Ministry to take further necessary action in the matter.

You are therefore requested to stop the allotment of code number forthwith and furnish the above details indicating therein name of the contractor with code number, date from which covered, name of the principal employer, average number of employees employed, compliance position, date of last inspection carried out by Enforcement Officer and special remarks, if any."

4. From perusal of the aforesaid Annexure, it is apparent that in the year 1994, a direction was given not to allot sub-code number to the contractors, but since that practice was being continued, this Annexure-6 was issued again in the year 1998. What has happened in this case is that despite issuance of the aforesaid instructions, the Provident Fund Officials under the Scheme have granted sub-code numbers to the contractors. Therefore, despite the deductions, which appear to have been made, have not been deposited as per the Scheme.

5. The learned counsel appearing for the NTPC is now resisting the writ petition, saying that the contractors should also be noticed. The contractors have already been noticed and the notices have been served on the respondent Nos. 10-17 as per the affidavit at flag ''Y'', but none of them has appeared.

6. The Clause 30 of the Scheme has bearing in connection with the reliefs sought for in this case, which reads as follows :--

"30. Payment of contributions.--(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer''s contribution) and also, on behalf of the members employed by him directly or by or through a contractor, the contribution payable by such members (in this Scheme referred to as the member''s contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contributions payable by such employee (in this Scheme referred to as the member''s contribution) and shall pay to the principal employer the amount of member''s contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer''s contribution) and also administrative charges.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges."

Perusal of the aforesaid provisions of the Scheme makes it clear that the absolute liability is on the principal employer and not on the contractor, it is rather the principal employer who has to proceed first by depositing his share of the contributions and then he has to realize it from the contractors. When a sub-code is allotted to the contractor, then it is in derogation to the provisions of the Scheme itself. Obvious it is that Annexure-6 has been issued, taking into consideration the consequences of the allotment of sub-code numbers to the contractors vis-a-vis the provisions aforesaid in the Scheme. In that circumstance, the sub-code number allotted to the contractor apparently is in contravention of the Policy of the Scheme and that cannot be sustained also in the light of Annexure-6. But it appears that under Annexure-6, in clear terms the officials have been directed not to allot sub-code number but they have also been asked to submit details of such allotments for the previous two years so that the matter may be examined and some appropriate directions is issued. In that view of the matter, this Court is restraining itself from passing any order to that effect of cancellation or direction upon the NTPC to make its contributions. This Court, nevertheless, directs the Regional Provident Fund Commissioner, respondent No. 7, to examine this matter as per Section 7 of the scheme. It goes without saying that during enquiry, all the concerned parties will be given an opportunity of being heard. The enquiry must be completed within a period of three months from the date of receipt/ production of a copy of this order and the decision will be taken on the following points :--

(i) Cancellation of the sub-code numbers allotted to the contractors, respondent Nos. 10 to 17, and

(ii) The liability of the NTPC for depositing the contributions during the relevant period as mentioned in the writ petition.

7. With the aforesaid directions, this petition is disposed of.

