
(1998) 03 CAL CK 0018

In the Calcutta High Court

Case No : Criminal A. No. 3933 of 1997 APOT No. 622 of 1997

N.T.P. Corporation Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 03-03-1998

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 3A, 7A

Citation : (1999) 2 LLJ 330

Hon'ble Judges : R.K. Mitra, J;B.P. Banerjee, J

Bench : Division Bench

Judgement

B.P. Banerjee and R.K. Mitra, JJ.—The National Thermal Power Corporation Limited filed a writ application being aggrieved by an order dated January 10, 1996 fixing the liability to pay and to deposit a sum of Rs. 4,31,82,834.60p. On account of certain employees of the contractor, who, it is stated, was appointed by the National Thermal Power Corporation Limited not for the purpose of generation of electricity but for the purpose of doing some other works in the Township. At this stage we are not concerned with this point as it appears to us that the question that requires to be considered on the basis of records and documents was that whether the Corporation had employed the workers by themselves or through a contractor or in connection with the work of the establishment and that for this purpose it is necessary on the part of the provident fund authorities to get the particulars of the workers or employees employed by the contractor. In the instant case, it appears that on the basis of the report of the investigating team certain materials were obtained and the liabilities were fixed. One thing is clear that in case such liability is there in view of the extended meaning of the definition of the term "employee" as provided in Clause (f) of Section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the employees provident fund authorities have to keep money on account of the individual workers or employees who are the ultimate beneficiary. But from the order itself it does not appear that the workmen and

the employees had not been and could not have been identified. Monies so collected had ultimately to be kept in the account of the employees concerned who are the ultimate beneficiaries and they must also know that if the liability is there on the part of the Corporation or anybody else and no provident fund amount is lying to their credit, in that event, the money has to be given back to such employees. It is a social welfare measure (sic) made for the benefit of the employees concerned.

2. It is alleged by the learned Counsel appearing on behalf of the Provident Fund authorities that the obligation was on the part of the principal employer to disclose the particulars and to deposit the money which they failed to do.

3. In view of the provisions of Section 7-A(2) of the Act for the purpose of making an effective determination of an objection and/or liability, the officers conducted enquiry were conferred with the same power as are vested in a Court under the CPC for trying a suit in respect of enforcing the attendance of any person or examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavit, issuing commissions for the examination of witnesses and any such enquiry should be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code. It is also true in view of the provisions of Sub-section 3-A of Section 7A that in case the documents are not produced, in that event, the authorities are competent to determine the amount due from the employer on the basis of the evidence during such enquiry or documents available on record, This Sub-section 3-A does not absolve responsibility of the officers making determination of money due from the employer to employees. The question whether the workers were employed by the Corporation directly or through the Contractor has to be determined on the basis of the contracts and that for the purpose of ascertaining the name and address and the particulars of the workers, it would be necessary for summoning the contractor and/or examining them for the purpose of getting materials for making effective determination. It is the contractors who are in a position to know the name and address of the workers, who are engaged by the contractor for the purpose of the work which was entrusted by the Corporation. But in the instant case, simply issuance of a summon or notice to appear would not be sufficient but the authorities concerned are bound to force them to appear in exercise of the power conferred in sub-section (2) of the Section 7-A as the authorities concerned had to collect material for the purpose of discharging their statutory duties and responsibilities imposed under the law. Accordingly, we are of the view that it would not be proper on the part of this Court to make final determination or to make any observation which will ultimately affect the proposed determination which is required to be made by the authorities concerned in accordance with law.

4. Accordingly, we direct the respondent to keep the order dated October 1, 1996 in abeyance and give the petitioner an opportunity to produce documents and we also direct the Corporation to produce all records and documents which are in

their possession in respect of the contract. Thereafter, the authorities concerned if they are unable to find out relevant material required for the purpose of determination as indicated above, in that event, they would take steps in the matter and further for the purpose of getting name and address of the employees and the workmen each and every contractor should be summoned and their attendance should be enforced before the authorities concerned and after giving opportunity to all the parties, and after hearing the matter in accordance with law, the authorities concerned will pass a fresh order either confirming the order or revoking and/or altering the order that had already been passed. Steps in terms of this order should be taken as expeditiously as possible preferably within 2 months.

5. The view we have taken of is no (sic.) useful purpose will be served in keeping the writ application pending which stands disposed of. It is made clear that all the parties should cooperate with the provident fund authorities for the purpose of making determination in this matter as required under the law.

6. It is also made clear that we have not adjudicated any of the points on merit which are left open and the petitioner Corporation would be entitled to raise all points which are available to them before the said authorities.

7. All parties to act on a signed Xerox copy of this Dictated Order on the usual undertaking.