(2010) 12 UK CK 0200

In the Uttarakhand High Court

Case No : Writ Petition No''s. 87, 263, 265 and 267 of 2005

U.A. Transport Corporation APPELLANT

Vs

Employees Provident Fund Organisation RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 17B, 7A(3), 7Q

Citation : (2011) 128 FLR 945 : (2011) 3 LLJ 43 : (2011) LLR 418

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—Heard learned Counsel for the parties.

2. Since the controversy involved in the above writ petitions is same, therefore all the writ petitions are being disposed of by a common order.

3. By means of these writ petitions, Petitioners have sought writ in the nature of certiorari quashing the recovery certificates, issued by the Respondent.

4. Briefly stated the facts of the case are that Petitioner Corporation came into existence w.e.f. 31.10.2003 in pursuance to Central Government Notification dated 27.10.2003, vide Uttaranchal Government Notification dated 31.10.2003, copy of which have been annexed as annexure-4 and 5 to the writ petition No. 87 of 2005 (M/S). It is further stated in the writ petition that the assets and liabilities transferred to the successor corporation to the extent mentioned in the notification issued by the Central Government and no other liability can be legally fastened upon the Petitioner beyond the liabilities mentioned in the notifications of Central Government and Uttaranchal Government. It is further stated in para12, 13 and 14 of the writ petition (No. 7 of 2005), that notices were issued against U.P.S.R.T.C. for making payment of damages (under Section 14B of The Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (herein after referred as the Act) and interest (under Section 7Q of the Act) Notices issued against U.P. State Road Transportation Corporation (herein after referred as

U.P.S.R.T.C.), have been annexed with the writ petitions and said fact is not disputed. In the impugned order itself notice issued to U.P.S.R.T.C. has been referred. It is further contended that on 22.09.2004, Respondent authority made assessment of interest and penalty against U.P.S.R.T.C., amounting to Rs. 28,69,632.00 but the impugned order has been passed against the Petitioner Corporation.

5. Learned Senior Advocate for the Petitioner has argued that in the relevant years, the employer was U.P.S.R.T.C. and the Corporation has been created under notification issued in the year 2003. He further contended that the impugned demand is of the previous period prior to the publication of notification in the year 2003.

6. In the counter affidavit filed on behalf of the Respondent, it is stated in para-8 that in the present case there is only a change of ownership, which do not affect the liability of Uttarakhand Transport Corporation in accordance to Section 17B of the Act. Section 17B of the Act, is being reproduced as under:

17B. Liability in case of transfer of establishment-Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, lease or license or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, in respect of the period up to the date of such transfer:

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

7. Learned Counsel for the Respondent vehemently urged that Petitioner has an alternative remedy of filing an appeal u/s 7(1) of the Act.

8. Learned Senior Advocate for Petitioner drew attention of this Court to Sub-section (3) of Section 7A of the Act, which provides that no order shall be made unless the employer concerned is given a reasonable opportunity of representing his case. In the case at hand, this fact is not disputed that notice was not issued to the Petitioner corporation but it was issued to UPSRTC, as has been mentioned in the impugned order. If the recovery is made against the Petitioner Corporation, as per provision of 17-B of the Act, the Petitioner is liable to pay jointly or severally the contribution and other sums due from the employer under any provision of the Act or the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be and the opportunity of hearing is mandatory provision before passing of such impugned order. If the impugned order is passed without giving opportunity of hearing, it is violation of principle of natural justice and fair play. Therefore, it would in the interest of natural justice that reasonable opportunity of hearing be given to the Petitioner, as per provision of Section 7A(3) of the Act.

9. Having heard learned Counsel for the parties, in view of the above facts and provision of Section 7A(3) of the Act this Court is of the view that all the writ petitions are liable to be disposed of with a direction to Respondent No. 1. The writ petitions are disposed of directing Respondent No. 1 to pass a reasoned and speaking order after hearing the Petitioner and considering the objection of the Petitioner within a period of six weeks from the date of presentation of the copy of this order before Respondent No. 1.

10. The Petitioner shall appear before Respondent No. 1 on or before 30.12.2010. Till fresh order is passed, the impugned order shall be kept in abeyance. Deposit, if any made shall be subject to the final order passed by the Respondent No. 1.

