(2012) 04 CAL CK 0063

In the Calcutta High Court

Case No : C.W.J.A.S.W.P. No. 3032 (W) of 2008

West Bengal Power Development Corporation Ltd. — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7B

Citation : (2012) 134 FLR 739

Hon'ble Judges : J.K. Biswas, J

Bench : Single Bench

Advocate : D.K. Ghosh, G.L. Ghosh and R. De, for the Appellant;S.C. Prasad for the EPFO, for the Respondent

Final Decision : Allowed

Judgement

Jayanta K. Biswas, J.—The petitioner in this writ petition under Article 226 dated January 31,2008 is questioning two orders of the Assistant Provident Fund Commissioner, Sub-Regional Office, Durgapur dated April 20/23, 2007 (WP p.51) and November 30/December 3, 2007 (WP p.89). The order dated April 20/23, 2007 was passed u/s 7-A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) and the order dated November 30/December 3,2007 was passed u/s 7-B of the Act.

One M/s. Development Building Construction (in short DBC), an establishment to which the provisions of the Act and the schemes framed thereunder were applicable, was engaged by the petitioner as contractor while executing its project: Santhaldih Thermal Plant in Purulia. By a summons dated March 29, 2006 the Assistant Provident Fund Commissioner (in short APFC) initiated proceedings against DBC u/s 7-A of the Act.

The allegation was that DBC did not pay contributions for some of its employees for the period from March, 1991 to August, 2001. On the basis of information that the employees were engaged for execution of the petitioner''s project, the

APFC issued a summons dated March 23, 2007 against the petitioner. The petitioner participated in the section 7-A proceedings and contended that it "could not trace the records of employees engaged" by DBC while executing of its project.

2. After giving the petitioner''s authorized representatives opportunity of hearing, but without examining any witness or admitting any document in evidence, the APFC passed the order dated April 20/23, 2007 saying "it is observed from the file that the Enforcement Officers vide their report dated 16.12.2005 has submitted the dues statement for the period from 3/1991 to 8/2001."

3. There is nothing to show that the report dated December 16, 2005 was disclosed, or that a copy thereof was supplied to the petitioner''s authorized representatives. Solely on the basis of the report the APFC held that the petitioner was liable to pay Rs. 22,95,910 for the employees engaged during the period by DBC while executing its project in question.

4. After receiving a copy of the section 7-A order, the petitioner submitted a review application dated May 8, 2007 (WP p.55) u/s 7-B of the Act. Paragraph 15 of the section 7-B application is quoted below :

15. Your petitioner states and submits that the impugned Order dated 20/23.4.2007 is bad in law since the order has been passed on the basis of an alleged Report dated 16.12.2005 of Enforcement Officer and no copy of the said Report has been handed over to the petitioner company and, is such, the impugned Order is violative of the principles of natural justice

5. By the order dated November 30/December 3, 2007 the APFC rejected the section 7-B review application saying that the report of the Enforcement Officers dated December 16, 2005 " was brought to the notice of representative of the employer," and that the "Enforcement Officers had prepared the wage statement based on the information submitted by the Santaldih Thikadar Shramik Union." The APFC gave new reasons to support his original section 7-A order.

6. Though the petitioner had a statutory remedy of appeal against the section 7-A order of the APFC, it approached this Court under Article 226 straight contending that the order had been passed in gross violation of the principles of natural justice. By an order dated February 21,2008 the writ petition was admitted. The respondents have filed an opposition dated April 12, 2010. The petitioner has filed a reply dated June 7, 2011. The respondents have not disputed the petitioner''s case that copy of the report of the Enforcement Officers was not supplied to it.

7.. Mr. Ghosh appearing for the petitioner has argued that the APFC''s failure to supply a copy of the report of the Enforcement Officers has vitiated the impugned section 7-A order by gross violation of the principles of natural justice. Mr. Prasad appearing for the respondents has argued that since the report was shown to the petitioner''s authorized representatives who appeared before the

APFC, it is wrong to say that the order was passed without giving the petitioner reasonable opportunity of defending itself.

8. The proceedings initiated by the APFC u/s 7-A of the Act were quasi- judicial in nature. The APFC was to determine liability, if any, of DBC against which the proceedings were initiated. In the process he could determine liability, if any, of the petitioner, since information was laid before him that the employees concerned had been engaged by DBC, as a contractor, while executing a project of the petitioner.

9. The Enforcement Officers submitted the report dated December 16, 2005 calculating DBC''s liability under the Act and the schemes framed thereunder for the employees whose particulars were, presumably, mentioned in the report. The APFC deciding to accept the report was under an unqualified obligation to disclose it, give inspection thereof and supply an authenticated copy thereof to the petitioner.

10. Discharge of the APFC''s obligation to disclose the report, give inspection thereof and supply an authenticated copy thereof was not dependent on specific requests for all these by the petitioner. In the absence of a procedure statutorily prescribed for adjudication of the proceedings, he was required to follow the procedure that would have provided the petitioner a fair and reasonable opportunity of defending itself.

11. The APFC was under an obligation to ask the departmental representative presenting the case of the organisation to examine witness to prove the report and the contents of the report. The petitioner was entitled to cross-examine such witness and give evidence in proof its case and also to disprove the case of the organisation.

12. Instead of following a fair procedure such as the one mentioned in the preceding paragraphs, the APFC, as is evident from his section 7-A order, disposed of the proceedings without admitting the report of the Enforcement Officers in evidence, but referring to and relying on the report that he kept in the records of the proceedings, evidently, for using it against the petitioner. The only fundament of his section 7-A order is the report.

13. In my opinion, the APFC has saddled the petitioner with a huge statutory liability coupled with its inevitable other statutory consequences, including penal action, in a most casual manner and in breach of the principles of natural justice. The report not proved by anyone was made the sole basis of the section 7-A order. This is an arbitrary way of deciding a quasi-judicial proceeding.

14. In the section 7-B proceedings the APFC was required to examine whether any ground taken by the petitioner could be a warrant for reviewing the section 7-A order. He did not dispute that copy of the report of the Enforcement Officers had not been supplied to the petitioner. He proceeded on the basis that the report had been brought to the notice of the representatives of the petitioner.

15. Instead of stopping there he proceeded to give new reasons to support his section 7-A order. For the first time he disclosed that the report of the Enforcement Officers was based on certain wage statement prepared on the basis of information submitted by a union. The wage statement concerned was not proved by anyone; nor was it ever disclosed to the petitioner. It is, therefore, evident that the APFC passing the two orders acted casually and was totally forgetful of the requirement of taking down evidence in proof of the claim.

16. The persons had been engaged during the period from March, 1991 to August, 2001 and summons of the proceedings served on the petitioner was dated March 23, 2007. No importance was given to the petitioner''s case that it could not retrieve any record related to engagement of the persons by DBC in connection with the execution of its project in question. In my opinion, the APFC denied the petitioner reasonable opportunity of defending itself. His two orders are liable to be set aside. For these reasons, I set aside both the impugned orders, allow the writ petition to this extent and direct that the section 7-A proceedings shall be decided afresh giving all concerned reasonable opportunity of presenting their respective cases and defending themselves. Amount recovered by the respondents on the strength of the impugned orders shall be dealt with pursuant to the fresh section 7-A order that shall be passed within ten weeks from the date this order is served on the respondents. No costs. Certified xerox.