

(2014) 08 CAL CK 0093

Calcutta High Court

Case No: A.S.T. 365 of 2014 (ASTA 265 of 2014) with W.P. No. 22389 (W) of 2014

Hindustan Steelworks
Construction Limited

APPELLANT

Vs

Regional Provident Fund
Commissioner (I)

RESPONDENT

Date of Decision: Aug. 13, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 16 Rule 10, Order 16 Rule 7
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 7A, 7A(2)

Citation: (2015) 2 CHN 78 : (2015) 144 FLR 100 : (2014) 4 LLJ 480 : (2014) LLR 1070

Hon'ble Judges: Tapash Mookherjee, J; J. Bhattacharya, J

Bench: Division Bench

Advocate: Arijit Chowdhury, Arunava Ghosh, Ashoke Dhar, Soumya Majumdar, Sarmistha Dhar and Somnath Roy, Advocate for the Appellant; Shiv Chandra Prasad, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Jyotirmay Bhattacharya, J.

This mandamus appeal is directed against an order passed by a Learned Single Judge of this Court on 7th August, 2014 in W.P. No. 22389(W) of 2014 by which the interim relief which was prayed for by the writ petitioner was refused by the Learned Single Judge. Direction was given to the parties for filing affidavits. The writ petition was directed to be listed for final disposal after exchange of affidavits between the parties.

2. The legality and/or propriety of the said order of the Learned Single Judge of this Court has been challenged by the writ petitioner/appellant. In case the question which is raised in this appeal is decided by this Court, then there will be nothing left

to be considered by the Writ Court in the pending writ petition. As such, we are requested by the learned counsel appearing for the parties to decide the appeal as well as the writ petition itself. Accordingly, we have considered the instant appeal as well as the writ petition.

3. Heard the learned counsel of the parties. Considered the materials on record.

4. A question was raised in connection with a proceeding u/s 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 as to whether service of summons to the witnesses can be effected by the Regional Provident Fund Commissioner ?

5. It is alleged by the appellant that the Regional Provident Fund Commissioner, instead of discharging his responsibility of effecting service of summons upon the witnesses for procuring their attendance before him for giving evidence in connection with the said proceeding, directed the writ petitioner to effect service of summons upon the witnesses for ensuring their attendance before the Regional Provident Fund Commissioner for giving evidence and/or for production of documents in the said proceeding. This part of the order passed by the Regional Provident Fund Commissioner (I) on 7th July, 2014 appearing at page 78 of the Stay application is under challenge in the writ petition.

6. We are informed by Mr. Chowdhury, learned senior counsel appearing for the appellant that the names of the witnesses whom his client wants to examine in connection with the said proceeding have already been disclosed before the Regional Provident Fund Commissioner (I).

7. By relying upon a decision of the Hon'ble Supreme Court in the case of [Food Corporation of India Vs. Provident Fund Commissioner and Others](#), Mr. Chowdhury submits that it is the responsibility of the Commissioner to summon the named witnesses of the petitioner for giving evidence and/or for production of documents in connection with the said proceedings. He thus invited us to interfere with the impugned order passed by the Commissioner.

8. In this context, we have considered the said decision of the Hon'ble Supreme Court wherein it was held as follows:-

"9. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from

a particular person."

9. After considering the said decision, we have no hesitation to hold that the service of summons upon the witnesses for ensuring their presence before the Regional Provident Fund Commissioner (I) either for recording their evidence or for production of documents by them, is the duty of the Commissioner.

10. Now a question has cropped up as to how such duty is to be discharged by the Commissioner ?

11. Such duty, in our considered view, should be discharged in the light of the provision contained in Section 7A(2) of the said Act which provides that the provisions contained in the CPC relating to enforcing the attendance of any person or examining him on oath will apply for procuring the attendance of the witness in connection with such proceeding u/s 7A of the said Act. In this connection, let us now consider the relevant provisions of the Civil Procedure Code.

12. Service of summons upon the witnesses for procuring their presence for giving evidence and/or for production of documents is dealt with under Order XVI Rule 7-Rule 10 of the Civil Procedure Code. It is provided therein that the Court may, on the application of any party for the issue of summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service and in case the service of such summons upon the witnesses cannot be effected by the party for any reason whatsoever then the Court may also on the application of the party, re-issue such summons to be served by the Court in the same manner as service of summons is effected upon the defendant.

13. In our view when the writ petitioner/appellant itself has come forward to shorten the procedural delay which may be caused in the process of effecting service of summons upon the witnesses in case service is sought to be effected by the appellant itself and invites the Regional Provident Fund Commissioner (I) for effecting such service of summons upon the named witnesses of the writ petitioner, we feel that the proceeding can be expedited if service of summons is effected upon those witnesses by the Commissioner. Though we do not find any apparent illegality in this part of the impugned order, but we feel that the process can be expedited if we accept the suggestion of Mr. Chowdhury regarding service of summons upon the witnesses by Court.

14. As such, we dispose of this appeal and the writ petition by directing the writ petitioner/appellant to furnish the names and other particulars including the complete postal addresses of the witnesses whom it wants to examine in connection with the said proceedings to the Regional Provident Fund Commissioner (I) positively within a period of two weeks from date and in the event such full particulars of the witnesses are furnished by the writ petitioner/appellant with the Regional Provident Fund Commissioner (I) within the period as fixed above, the

Regional Provident Fund Commissioner (I) will take all necessary steps for effecting service of summons upon those named witnesses of the writ petitioner and in case the witnesses do not appear in spite of such service, then the Commissioner will also take all necessary steps for procuring their presence before him by following the provision contained in Order XVI Rule 10 of the CPC with this rider that in the event the writ petitioner/appellant fails to furnish all those required particulars of their witnesses with the Regional Provident Fund Commissioner (I) within the time as fixed above, the Regional Provident Fund Commissioner (I) will refuse to issue any summons for procuring the attendance of the witnesses in connection with the said proceeding and under such circumstances the only option which will be left open to the writ petitioner/appellant for procuring their presence, is by following the provision contained in Order XVI Rule 7 of the Civil Procedure Code.

15. The order of the Regional Provident Fund Commissioner (I) dated 7th July, 2014 appearing at page 78 of the Stay application stands modified to the above extent. As a result, the penal provision for non-compliance of the Commissioner's direction regarding service of summons upon the witnesses as provided in this part of the impugned order will remain ineffective subject to compliance of our direction given above with regard to service by the appellant.

16. The appeal and the writ petition being W.P. No. 22389(W) of 2014 thus stand disposed of with the above observations.

Re: ASTA 265 of 2014 (Stay)

17. In view of disposal of the appeal in the manner as aforesaid, no further order need be passed on the stay application. The stay application being ASTA 265 of 2014 is thus deemed to be disposed of.

18. Urgent photostat certified copy of this order, if applied for, be furnished to the applicant as early as possible.

Tapash Mookherjee, J.

19. I agree.