IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 22479 of 2012

The West Bengal Power Development Corporation Limited
Vs
Union of India & Ors.

For the Petitioner	:	Mr. Ranjay De, Sr. Adv. Mr. B. Banerjee, Mr. A.A. Bose.
For the P.F. Authority	:	Mr. Shiv Chandra Prasad.
For the WBSEDCL	:	Mr. Sujit Sankar Koley.
Hearing concluded on	:	29.07.2025
Judgment on	:	08.08.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging the order dated 09.08.2012 passed by the Regional Provident Fund Commissioner - II.

2. It appears that the said order has been passed under Section 7A, 7B, and 14B of the EPF Act. It appears that though the said order is an appealable order, the writ application was admitted for hearing.

3. Being a writ application of the year 2012 redirecting the petitioner to the Tribunal to prefer an appeal is not a feasible alternative remedy

and, as such, the writ application has been taken up for hearing on merit.

4. The petitioner's case is that Messrs. Development Building Construction was awarded job contract with regard to the breaking of over-sized coal and associate cleaning job **on rate contract basis for a period of one year at Saltaldih Thermal Power Station** vide Memo. No. STPS/Pur/CMP(M)/Job contract/1266/1416 dated 24.11.1992 by the then General Manager, Santaldih Power Station, West Bengal State Electricity Board.

5. That Clause "O" of the other terms of the order states that this is purely a job contract between M/s. Development Building Construction and West Bengal State Electricity Board.

6. **That vide Memo. No. 558/Power/IV/dated 28th June, 2001, Government of West Bengal, Department of Power issued a Notification wherein it was recommended and decided that the Thermal Power Station under the control of West Bengal State Electricity Board is placed under one umbrella and all power generation station, viz. BTPS and STPS will come under the generating company, namely, West Bengal Power Development Corporation Ltd., with effect from 1st April, 2001.**

7. **By virtue of the said notification the Santaldih Thermal Power Station was taken over by the petitioner company in terms of Clause 4(a) of the said Notification. It has been mentioned that with effect from the appointed day all contracts relating to construction, extension and repairs, renovation and modernization**

work shall be deemed to have entered into by West Bengal Power Development Corporation Ltd. and **all rights and obligations arising out of such contract shall devolve upon the petitioner company.** Clause 4(b) of the said Notification provides that all suits, cases or arbitration proceedings **pending** in any Court or any Arbitration relating to BTPS and STPS against the West Bengal State Electricity Board shall with effect from the date of this Notification, be deemed to have been instituted against the petitioner company shall be substituted in place of West Bengal State Electricity Board.

8. The order issued to M/s. Development Building Construction in the year 1992 was extended from time to time by West Bengal State Electricity Board and the said agency continued with the said job even after taking over of Santaldih Thermal Power Station by the management of the petitioner company.

9. The order under challenge dated 09.08.2012 decided the case against the petitioner herein and directed payment under the relevant provisions of law in respect of the 66 employees of the contractor for the assessment period.

10. The petitioner's contention is that having taken over the establishment of WBSEDCL with the notification dated 28th June, 2001, and as such the petitioner submits that the petitioner company is only liable for the period from 28th June, 2001 to 08/2001.

11. It appears that the period of default in the present case is from 03/1991 to 08/2001. It is thus stated by the petitioner that the period

from 03/1991 to 28th June, 2001, the erstwhile WBSEDCL is the establishment which is responsible for the dues.

12. The petitioner further submits that he cannot be held liable for the period when he was not in charge of the said establishment and thus not in existence when the said alleged default had taken place and, as such has prayed for setting aside and quashing of the order wherein the respondent no. 2 has held that the liability lies with the petitioner herein for the entire period that is from 03/1991 to 08/2001 in respect of the petitioner's liability.

13. The respondent no. 2 vide the order under challenge has observed as follows:-

> *".....I have adequately judged the issues relating to submissions of the establishment pertaining to this 7A proceeding like the work order was issued by the erstwhile WBSEB in favour of the contractor establishment and therefore the present establishment WBPDCL cannot take the burden of liability under the EPF & MP Act.' 52 while it was not created is a misconceived conjecture on the part of the WBPDCL as more fully defined in the foregoing paragraphs. While dealing with this case, I have consulted the meaning of Jointly & Severally with the Legal Dictionary vis a vis with the pragmatic force of Section 17-B of the EPF & MP Act, 52. Therefore, I record it as following:-*
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> *Jointly and severally is a legal phrase that means two or more persons are fully responsible equally for the liability.*
>
> *.....*
>
> *The others in the consortium have no LIABILITY. When the EPF & MP Act, 52 postulates under Section-17B that the*

> *responsibility is "JOINTLY AND SEVERALLY" liable a claim may be made to any party in the agreement similar to joint liability. It is up to the parties to sort out their share of the liability.* ***Therefore, WBPDC cannot deny and defray the logic and cannot remain blind to the glasses of the law maker and hence liable to observe statutory compliance under the EPF & MP Act, 52."***

14. Learned counsel for the petitioner has relied upon the following judgments:-

(i) West Bengal Power Development Corporation Limited vs. Union of India & Ors., 2012 LLR 835;

(ii) Four Star International vs. Employees' Provident Fund Commissioner & Ors., 2024 LLR 223, para 21 and 22;

(iii) M/s. Marwar Tent Factory vs. Union of India & Ors., (1990) 1 SCC 71;

(iv) Mangal Keshav Securities Ltd. vs. Assistant Provident Fund Commissioner, 2019 SCC OnLine Bom 13404.

(v) Central Tool Room & Training Centre vs. Employees' Provident Fund Organisation & Ors., 2022 SCC OnLine Cal 605, para 19-22;

15. The respondent have also filed their written notes and they have relied upon Section 17B of the EPF and M.P. Act 1958 which states about the **liability in case of transfer of establishment.**

16. Section 17B of the said Act reads as follows:-

> ***"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, gift, lease or licence 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."

17. Section 17B contemplates a transfer by an employer. 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.

18. The notification dated 28th June, 2001, has the following terms & conditions:-

1) That **with effect from the 1st day of April, 2001** (hereinafter referred to as the appointed day) **the assets solely and wholly** relating to the generating stations **with all its liabilities, rights and obligations** appertaining thereto, **excluding** installation of transmission and distribution, **stand vested** in the Generating Company (WBPDCL).

2) That the Board and the Generating Company shall arrange to have the assets and liabilities, rights and obligations appertaining to the Generating Stations (BTPS & STPS) verified and certified by a firm of Chartered Accountants for the purpose of accounting within a period not exceeding 31st October, 2001.

19. Learned senior counsel for the petitioner Mr. De has stressed upon Para 4 clause (a) and (b), which is as follows:-

> ***"Clause 4. a)*** *That with effect from the appointed day all contracts relating to construction, extension and repairs, Renovation & Modernisation work etc. of the Generating stations (BTPS & STPS) shall be deemed to have entered into by the Generating Company (WBPDCL) and all rights and obligations arising out of such contracts shall devolve upon the Generating Company (WBPDCL).*
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> ***Clause 4. b)*** *All suits, cases, or arbitration* ***proceedings pending*** *in any Court and any Arbitrator relating to the Generating Stations (BTPS & STPS) against the Board shall with effect from the date of this notification, be deemed to have been instituted against the generating company (WBPDCL) and the Generating Company (WBPDCL) shall be substituted in place of the Board."*

20. It is submitted that the said clause relates to 'PENDNG' case, where as the order in this case was passed on 09.08.2012 and as such was a disposed of case, and thus the order under challenge is not applicable to the petitioner, as the notification dated 28.06.2001 was given effect to on and from 1st day of April, 2001.

21. Though Para 4(b) of the notification dated 28.06.2001 talks of pending litigations, **Para 1** of the same, lays down that *"the assets solely and* ***wholly*** *relating to the generating stations* ***with all its liabilities****, rights and obligations appertaining thereto, excluding installation of*

transmission and distribution, ***stand vested in the Generating Company (WBPDCL)".***

22. Thus Para 1 clearly states about, **all liabilities** etc. stands vested in the petitioner company on and from 1st April, 2001.

23. Accordingly, the order under challenge as a whole, dated 09.08.2012 becomes applicable to the petitioner company even for the period prior to when the petitioner company took over the erstwhile company, being the WBSEDCL on and from 1st April, 2001, as per the notification dated 28.06.2001.

24. Thus, the order passed by the authority concerned is well justified and in accordance with the provisions of the said Act and the scheme framed thereunder. The petitioner is liable to pay the said dues.

25. WPA 22479 of 2012 stands dismissed.

26. There will be no order as to costs.

27. All connected applications, if any, stand disposed of.

28. Interim order, if any, stands vacated.

29. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)