(2007) 03 JH CK 0043

In the Jharkhand High Court

Case No : Writ Petition (C) No. 351 of 2007

Bharat Caterers APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:
Employees State Insurance Act, 1948 — Section 39, 45, 45A, 45C, 45D

Citation : (2007) 2 BLJR 2343 : (2007) 115 FLR 827 : (2007) 4 JCR 344

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : M.K. Jha, for the Appellant; J.C. to G.P.I. and S.N. Das, for the Respondent

Judgement

Narendra Nath Tiwari, J.

A. No. 452 of 2007

1. In this interlocutory application, the petitioner has prayed or addition of prayer in the writ petition for quashing the order dated 2nd/7th February, 2007, containing a demand notice, issued u/s 45A of the E.S.I. Act, 1948 (contained in Annexure-14) during the pendency of the writ petition.

2. It has been stated that the petitioner has assailed the show cause notice against the said demand and, thereafter, the impugned order dated 2nd/7th February, 2007 has been passed during the pendency of the writ petition, which is based on the same facts and circumstances. Learned Counsel submitted that the amendment prayed for is intended to bring on record and add the subsequent event in the same matter and in order to avoid multiplicity of the proceeding.

3. Mr. S.N. Das, learned Counsel appearing for Respondent Nos. 2 to 4, does not dispute the said contention of the petitioner. In view thereof and also to prevent multiplicity of cases, the amendment, as prayed for, is allowed.

Accordingly, this interlocutory application is allowed.

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4. In this writ petition, the petitioner has prayed for quashing the order, as contained in Letter No. R-60-15572-112-Ins II/417 dated 12th/13th December, 2006 (Annexure-10), whereby the petitioner has been given notice to show cause as to why assessment should not be made against him for recovery of a sum of Rs. 6,08,847/-, which is the contribution of the employees of the petitioner, and is assessable u/s 45 of the Employees State Insurance Act (hereinafter to be referred to as ''the Act''). The petitioner, by way of amendment, has further prayed for quashing the order dated 2nd/7th February, 2007 (Annexure-14), whereby a sum of Rs. 6,08,847/- has been determined and the order has been issued to recover the said amount u/s 45A of the Act.

5. The ground of the petitioner is that he is a Contractor and is registered with Tata Motors Pvt. Ltd., Jamshedpur and has also got the firm registered under the Act. The petitioner, however, has filed an application praying for exemption from the purview of the provisions of the said Act, way back on 25th November, 2005. The said application is still pending and no final order has been passed either allowing or rejecting the same. In the meanwhile, the said impugned notice dated 12/13th December, 2006 (Annexure-10) has been issued to the petitioner under the purported provisions of the Act for recovery of the aforesaid amount.

6. The grievance of the petitioner is that since no final order has been passed on his petition requesting exemption, the respondents should not have issued the impugned notice to show cause (Annexure-10) and thereafter the assessment order, as contained in Annexure-14.

7. Learned Counsel for the petitioner referred to and relied upon a decision of this Court passed in W.P.(C) No. 6970 of 2006 (H.N. Pareek & Co., Jamshedpur v. The State of Jharkhand and Ors.). In the said decision, the concerned authority was directed to pass final order on the petitioner''s representation and in the meanwhile was restrained from taking coercive action against the petitioner. The said decision of this Court was rendered on almost similar facts.

8. Learned Counsel submitted that the petitioner is not denying his liability of payment, but since the petitioner''s application for exemption is still pending, the respondents should not have proceeded against the petitioner pending consideration and disposal of the said petition.

9. Mr. S.N. Das, learned Counsel appearing on behalf of Respondent Nos. 2 to 4, on the other hand, submitted that it would be evident from the impugned order that the petitioner has been registered with the department and that until any order of exemption is passed, the petitioner is liable to pay the contribution as per the provisions of the Act. Learned Counsel submitted that the department, accordingly, has proceeded to make assessment and the demand has been raised on the basis of the assessment by order dated 2/7th February, 2007

(Annexure-14), but there is no threat of coercive action against the petitioner.

10. After hearing the learned Counsel for the parties and considering the materials available on record, I find that admittedly the petitioners application for exemption is still pending and during the pendency of his application, show cause notice was issued against the petitioner u/s 39 of the Act, which was challenged by the petitioner in the instant writ petition. But during the pendency of this writ petition, Respondent No. 4 has passed the final order making demand of Rs. 6,08,847/- vide Annexure-14 with a threat that if the petitioner fails to pay the said amount within a fortnight, the said amount shall be recovered u/s 45-C to 45-I of the Act. Thus the final order dated 2/7th February, 2007 (Annexure-14) is a threat of taking coercive action against the petitioner in the event of non-payment of the amount assessed by the said order.

11. This case is squarely covered by the decision of this Court in H. N. Pareek & Co. (Supra), in view thereof, this writ petition is disposed of directing the Secretary, Department of Labour, Employment & Training, Government of Jharkhand, Respondent No. 1, to consider the petitioner''s application for exemption, pending before him, and pass speaking order in accordance with law within a period of six weeks from the date of receipt/production of a copy of this order. Till the petitioner''s application for exemption is disposed of, no coercive action shall be taken for realization of the amount, contained in the said order (Annexure-14).

