
(2005) 10 RAJ CK 0033
In the Rajasthan High Court
Case No : C.W.P. 6195 of 2005

Chetak Stones Pvt. Ltd.

APPELLANT

Vs

Deputy Director and Others

RESPONDENT

Date of Decision : 24-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 75, 75(2)(B), 93A

Citation : (2006) 2 LLJ 1050 : (2006) 1 WLC 531

Hon'ble Judges : R.P. Vyas, J

Bench : Single Bench

Advocate : P.D. Bohra, for the Appellant;

Final Decision : Dismissed

Judgement

R.P. Vyas, J.—The present writ petition has been filed by the petitioner against the order dated February 23, 2005 (Annexure- 9).

2. Brief facts of the case are that the petitioner is a company registered under the Companies Act. The petitioner company purchased the assets of Alankrit Granite Pvt. Ltd. in an auction on March 5, 2001 conducted by RFC. On July 16, 2001, the petitioner company received a letter from Deputy Director, Employees State Insurance, Jaipur whereby the petitioner company was informed that there are certain dues to the ESI against Alankrit Granite Pvt. Ltd. for the period from April, 1996 to September, 1998 and Interest upto June 30, 1999, total amounting to Rs. 71,521.25. Therefore, the petitioner company is liable to pay the aforesaid amount u/s 93A of the ESI Act, failing which recovery proceeding shall be initiated.

3. The petitioner submitted reply denying its liabilities. However, the respondent corporation vide its letter dated June 17, 2002 directed the petitioner to pay the aforesaid dues.

4. It has also been averred in the writ petition that Alankrit Granite Pvt. Ltd. is

still in existence, therefore, the notice dated June 17, 2002 was addressed to Alankrit Granite Pvt. Ltd. also. The petitioner company also made a representation to the RFC to settle the dues on February 20, 2003.

5. Being aggrieved by the action of the respondents in raising the demand the petitioner submitted an application u/s 75 of the ESI Act stating that he is not liable to pay the alleged dues.

6. Alongwith the application, the petitioner also submitted an application u/s 75(2)(B) of the Act for waiver of the amount to be deposited for maintaining the application u/s 75 of the ESI Act.

7. The learned ESI Court, vide order dated February 23, 2005, rejected the said application u/s 75(2)(B) of the ESI Act and directed the petitioner to deposit 30% of the dues for entertaining the application.

8. Hence, this writ petition.

9. The main contention of the learned Counsel for the petitioner is that it is a fit case where requirement of depositing the dues should be waived for entertaining the application u/s 75 of the ESI Act because the assets of Alankrit Granite Pvt. Ltd. were not directly transferred to the petitioner by former director of Alankrit Granite Pvt. Ltd. but the petitioner purchased the assets of Alankrit Granite Pvt. Ltd. in a public auction from RFC. The petitioner company did not purchase the assets alongwith the liabilities of Alankrit Granite Pvt. Ltd. under the ESI Act. In these circumstances, the provisions of Section 93A of the ESI Act is not applicable because the transfer by sale, gift, lease or licence is always voluntary and this element is altogether missing in public auction.

10. Heard learned Counsel for the petitioner and examined the material available on record.

11. For the disposal of the writ petition, Section 75(2)(B) is relevant which is quoted hereunder:

75(2)(B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty percent of the amount due from him as claimed by the Corporation:

Provided that the Court may, for reasons to be recorded in writing waive or reduce the amount to be deposited under this Sub-section.

12. The ESI Court in its discretion vide order dated February 23, 2005 has disposed of the application reducing the amount to be deposited to 30%.

13. Admittedly, the provisions of Section 75(2)(B) of the ESI Act gives discretionary power to the ESI Court and the ESI Court in its discretion has reduced the amount to be deposited to 30% to entertain the application u/s 75.

14. Under Article 226 of the Constitution of India the High Court does not sit or act as an appellate authority over the actions of the subordinate authorities or Tribunals. The jurisdiction is supervisory in nature. It has to confine itself to correcting any error of jurisdiction by the authorities and cannot assume suo motu jurisdiction of the appellate Court and attempt to correct every mistake assumed to have been made by the Tribunal.

15. The order dated February 23, 2005 (Annexure-9) has been passed by the Court below in its discretionary power u/s 75(2)(B) of the ESI Act, considering the facts and circumstances of the case the order passed by the Court below cannot be said to be without jurisdiction or without any authority of law. Therefore, the same does not require any interference by this Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India.

16. It has also been argued by the learned Counsel for the petitioner that the petitioner company is not liable to pay dues of ESI against Alankrit Granite Pvt. Ltd. as the assets of Alankrit Granite Pvt. Ltd. were not directly transferred to the petitioner company purchased the assets of Alankrit Granite Pvt. Ltd. in public auction. In these circumstances, the provisions of Section 93A of the ESI Act is not applicable because the transfer by sale, gift, lease or licence is always voluntary and this element is altogether missing in public auction. This argument is not tenable at this stage as the present writ petition has been filed against the order dated February 23, 2005 passed by the Court below under the provisions of Section 75(2)(B) of the ESI Act. Whether the provisions of Section 93A of the ESI Act are applicable or not is to be decided by the ESI Court in the application u/s 75 of the ESI Act filed by the petitioner and pending before the ESI Court. This Court at this stage would not like to go to the merit of the case as the application is already pending before the ESI Court.

17. For the reasons mentioned above, the i present writ petition is dismissed. No order as to costs.