

(1999) 04 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No. 17568 of 1991 and W.M.P. No. 26388 of 1991

Color Grove Printers and Designers (P) Ltd.

APPELLANT

Vs

E.S.I. Corporation and Another

RESPONDENT

Date of Decision : 30-04-1999

Acts Referred:

Employees State Insurance Act, 1948 — Section 93

Citation : (2000) 2 LLJ 1206

Hon'ble Judges : Y. Vekatachalam, J

Bench : Single Bench

Advocate : K.V. Subramanian, for the Appellant; Radha Srinivasan and R. Aruljothi, for the Respondent

Final Decision : Dismissed

Judgement

V. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition, seeking for

a writ of certiorari to call for the records of the first respondent in RN.INS/III 51-36259-34, dated November 28, 1991, and also the second

respondent's consequently proceedings No. FSS/MDS 455, 456, 457 of 1990, dated November 20, 1990, and quash the order of the

respondent

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein, they have narrated all the facts and circumstances that forced

them to file the present writ petition and requested this Court to allow the writ petition as prayed for, Per contra, on behalf of the respondents, a

counter affidavit has been filed rebutting all the material allegations levelled against them one after the other and ultimately they have requested this

Court to dismiss the writ petition for want of the merits.

3. Heard the arguments advanced by learned counsel appearing for the parties. I have gone through the contents of the affidavit and the counter-

affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into

consideration, the various points raised by learned counsel appearing for respective parties during the course of their arguments.

4. In the above facts and circumstances of the case, the only point that arises for consideration in this writ petition is, as to whether there are any

valid grounds to allow this writ petition or not.

5. The brief facts of the case of the petitioners, as seen from their affidavit are as follows. The petitioner-company is a private limited company and

since it is a manufacturing company, it comes under the Factories Act and it has obtained the Employees' State Insurance cover. The first

respondent also assigned a code number and has been accepting the statements and the contributions paid by the petitioner-company without any

demur. While so, on the instructions from the first respondent, the second respondent has taken the proceedings under the Revenue Recovery Act

and they have served the company a notice under the Revenue Recovery Act in his proceedings Nos. ESI MDS 455, 456 and 457 of 1990,

dated November 20, 1991, and threatened to restrain the movables and also attach the immovables and also arrest him and to bring down the

company's image and as well as the image before the public. The petitioner states that the first respondent is trying to take advantage of the

situation that in the very same premises, a partnership concern Color Grove was functioning and that the said partnership firm as well as the factory

was closed with effect from October 30, 1989 permanently and the employees' dues were fully settled and that those employees were now

employed elsewhere. The machinery of the partnership firm were also sold. The said partnership firm has also informed the same to the labour

authorities, including the first respondent herein. The said notices state that the claim in respect of 4/86 to 3/88, 3/82 to 3/86, and 86-88 omitted

wages, totalling in all to Rs. 45,113.87 is due. Though the said notice of the second respondent states that it was addressed to Color Grove, the

serving officer has written in hand Printers and Designers (Private) Ltd. also. It is stated by the petitioner that the company was not at all

functioning during which period, the Employees' State Insurance contributions were demanded and the employees of the petitioner-company were not working at that point of time. There is absolutely no right or reason for demanding the contribution by the first respondent for the period in which the petitioner-company was not even in existence and no employees were working and no business was carried on by the petitioner-company. In the circumstances, it is contended by the petitioner that the action of the first respondent in making the second respondent in his proceedings No. TN/INS/III/51-36259-34/ 1072/C19 of 1990, dated September 21, 1990, to demand the said amount is illegal. The petitioner is not at all liable to pay the said amount and the petitioner-company is not in continuation of the Color Grove partnership firm and it has not even taken over the business of the said partnership firm and the petitioner's business is totally new. Therefore, according to the petitioner, the action of the respondents is highly illegal, unjust and without jurisdiction. It is also contended by the petitioner-company that the first respondent has no jurisdiction to issue such a claim order against the petitioner-company, unless the procedure prescribed under the Employees' State Insurance Act, 1948, has been followed, natural justice has to be followed before adjudication proceedings are issued and amounts to determination, after giving an opportunity to the petitioner. Furthermore, if a proper order has been communicated making the demand, the petitioner has got a right u/s 75 of the Act, to the appellate authority, viz., the first Additional City Civil Court, Madras. Therefore, the first respondent without serving such a notice and even before issuing the notice dated November 28, 1991, to the petitioner, has moved the second respondent to initiate proceedings on November 20, 1991. The first respondent has not served them the claim dated September 2, 1990, as quoted in the Revenue Recovery Act by the second respondent. He states that when the amount is disputed, the second respondent cannot initiate proceedings under the Revenue Recovery Act as held by the Full Bench of this Court. Therefore, it is stated by the petitioner-company that as they have no other alternative remedy, than to approach this Court to quash the proceedings of the first respondent dated November 28, 1991, and consequently, the Revenue Recovery proceedings initiated by the second respondent under his proceedings ESI, Madras 455, 456, 457 of 1990, dated November 20, 1991,

by issuance of writ of certiorari.

6. Per contra, it is contended by the respondents that Color Grove is a factory covered under the Employees' State Insurance Act, 1948, with

Code No. 51-36259.84. Following the inspection of the factory by inspector of the respondent-Corporation, the employer was issued letter (in

Form No. C-18), dated December 20, 1988, proposing to determine and recover the contribution due for the period from 4/86 to 3/88 as

detailed in column 4 of the letter fixing the personal hearing on February 9, 1989, to enable the petitioner to make his submission with necessary

records. Moreover, the petitioner was asked to show cause for the proposal within 15 days thereof, and to file a statement of actual contribution

due as per records in his possession. Thereafter, the personal hearing was adjourned to April 21, 1989, as requested by the petitioner and on

April 21, 1989, representatives of the petitioner appeared and while disputing the claim through Form No. C-18 agreed to pay the contribution on

actual basis as per their records on or before May 15, 1989, and agreed to produce the challan. Both the above two persons had acknowledged

the fact on the note filed itself by their dated signatures. The plea of the petitioner to allow them to pay contribution on the actual basis instead of

the amount as proposed to be assessed in Form No. C-18, dated December 20, 1988, was acceded to. The petitioner was allowed to pay the

contributions as calculated by them on actual basis and to produce the challans to the respondents, to enable the Corporation to verify the

correctness of the payments. The petitioner agreed to make the payment on or before May 15, 1989, and produce the challans. But the petitioner

neither paid the contribution as agreed to by him nor submitted any further reply/return in this regard. Hence, the respondent issued final order u/s

45-A determining the contribution (as proposed in Form No. C-18, dated December 20, 1988, on June 2, 1989), for the amount of Rs.

18,317.20. The said order was duly served on the petitioner and the petitioner, vide letter dated August 9, 1989, paid Rs. 4,000 against the claim

and requested for one more opportunity to explain his case with necessary records. The petitioner was, by letter dated September 11, 1989,

advised to pay the balance of contribution as determined. This was followed by issue of the recovery certificate dated September 21, 1990, for

recovery of Rs. 16,384 with further interest under the Revenue Recovery Act. On November 28, 1991, the respondent issued a letter to the

Collector, Madras, stating that the factory has been temporarily closed with effect from October 31, 1989, and a new unit under the name and

style of Color Grove Printers and Designers Pvt. Ltd., with new Code No. 51-52193-83 is functioning in the address and requested the special

Tahsildar to expedite the recovery of the claim. Further, the partnership-firm was run under the name and style of Color Grove Printers and

Designers at No. 22, Jeypore Colony, Chennai-600 086. The employer in the letter dated October 31, 1989, informed that they have closed the

factory temporarily with effect from October 31, 1989. But in the same premises, a new company under the name and style of Color Grove

Printers and Designers Pvt. Ltd. was established with the petitioner as Managing Director who was a partner in the closed firm. It is contended by

the respondents that the factory Color Grove did not comply with the statutory liability of paying the contributions due to the respondent-

Corporation. All the partners of the erstwhile Color Grove are jointly and severally liable to pay the dues to the Corporation. It is stated by the

respondent that u/s 93(a) of the Employees' State Insurance Act, both the transferor and transferee of the property are jointly and severally liable

to pay the dues in respect of the period upto the date of such transfer. Further, the permanent closure of the factory has not been intimated to the

respondent-Corporation nor the dues paid. It is also the case of the respondent that Form No. C-18, dated September 17, 1990, (2 Nos.) and

the 45-A order dated November 28, 1990, were sent through registered post with acknowledgment due addressed to Color Grove and were

received by the Color Grove Printers and Designers Pvt. Ltd. Therefore, it is the categorical case of the respondents that the action of the

respondent-Corporation is legal and is as per the provisions of the Act. The respondent-Corporation has complied with procedural formalities and

observed the principles of natural justice before passing the 45-A order and the impugned proceedings are only consequential to determining of the

eligible statutory dues.

7. Having seen the entire material available on record and from the claims and counter-claims made by the parties and from the circumstances of

this case it is clear, originally there was a partnership firm Color Grove of which the Managing Director of the present petitioner herein was a partner. The said partnership was under the cover of the Act. There was a demand from the respondents to pay the contribution due for a particular period. Moreover, the petitioner was asked to show cause for the proposal within 15 days thereof, and to file a statement of actual contribution due as per records in their possession. But during the personal enquiry on April 21, 1989, on behalf of the firm it was agreed to pay the contribution on actual basis as per their records on or before May 15, 1989, and agreed to produce the challan. Their plea was accepted by the respondents. But the petitioner neither paid the contribution as agreed to by them nor submitted any further reply/return in this regard. Hence, the respondent issued final order u/s 45-A determining the contribution. Thereafter, as there was no action from the firm, the same was followed by issue of the recovery certificate dated September 21, 1990, for recovery. Thereafter, on November 28, 1991, the respondent issued a letter to the Collector to expedite the recovery of the claim. Further, it is significant to note that in the meantime they informed the respondents that the Color Grove Factory has been temporarily closed with effect from October 31, 1989. However, the permanent closure of the factory has not been intimated to the respondent-Corporation nor the dues paid. That apart, in the same premises a new company under the name and style of Color Grove Printers and Designers Pvt. Ltd. was established with the petitioner as the Managing Director, who was a partner in the closed firm. Therefore, it is a clear case where the erstwhile Colour Grove did not comply with the statutory liability of paying the contribution due to the respondent-Corporation as agreed to and accepted by them. Therefore, all the partners of the erstwhile Color Grove are jointly and severally liable to pay the dues to the Corporation. That apart Form No. C-18, dated September 17, 1990, and the 45-A order dated November 28, 1990, were sent through registered post with acknowledgment due addressed to Color Grove were received by the Color Grove Printers and Designers Private Limited. It is an admitted fact that the Managing Director of the petitioner was a partner of the erstwhile firm. That has not been challenged by him. That being so, all the partners of the erstwhile Color Grove are jointly and severally liable to pay the dues to the Corporation.

The petitioner by filing the present petition is evading his statutory liability of paying the Corporation its dues. Therefore, the action of the respondent is legal and is as per the provisions of the Act.

8. Therefore, for all the aforesaid reasons and in the facts and circumstances of the case and also in view of my above discussions with regard to

the various aspects of this case, I am of the clear view that the petitioner herein has failed to make out any case in their favour and that, therefore,

there is no need to interfere with the orders impugned in this writ petition. Thus, the writ petition fails and the same is liable to be dismissed.

9. In the result, the writ petition is dismissed. No costs. Consequently W. M. P. No. 26388 of 1991 is also dismissed. The order of stay already

granted is hereby vacated with immediate effect.