
(2011) 07 MP CK 0088

In the Madhya Pradesh High Court

Case No : M.A. No's. 1178 of 2007, 480 of 2009 and 211 of 2008

Employees State Insurance Corporation, Indore

APPELLANT

Vs

M/s. Vijay Textiles, Ujjain

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Citation : (2011) 131 FLR 752 : (2012) 2 LLJ 561 : (2012) LLR 73

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.—This order shall also govern the disposal of M.A. No. 480/2009 as in both the appeals the question involves is identical and the appellant is also one and the same. This appeal shall also govern the dispose of M.A. No. 211/2007 as the appellant is the same, however, impugned order is different but question involved is one and the same.

2. In M.A. No. 1178/2007, wherein the respondent is M/s. Vijay Textile, the order under challenge is dated 3.2.2007 passed by Employees State Insurance Labour Court, Indore, whereby the application filed by respondent u/s 75 of ESI Act, was allowed and it was declared that the provisions of ESI Act are not applicable on the respondent.

In M.A. No. 480/2009, the order under challenge is dated 3.12.2008 passed by ESI Labour Court, Indore in Case No. 188/2005 whereby the application filed by respondent M/s. Deoer Prisizan Engineering Company u/s 75 of ESI Act, was allowed holding that the recovery order issued by the appellant is illegal.

In M.A. No. 211/2008, the order under challenge is dated 15.11.2006 passed by E.S.I. Labour Court, Ratlam in Case No. 1/2005 wherein application filed by respondent M/s. Wood Craft, u/s 75 of the ESI Act was allowed holding that the recovery order dated 10.5.2005 for recovering of an amount of `78,997/- is illegal.

3. In all the appeals, learned Counsel for the appellant submits that the impugned order passed by the learned Court below is illegal, incorrect and deserves to be set aside

4. Learned Counsel placed reliance on a decision of the Hon''ble Apex Court in the matter of Employees State Insurance Corporation v. Bhakra Beas. Management Board and another, 2010 (2) SCC 1133 (SC) wherein while considering the provisions of the Act, the Hon''ble Apex Court has observed that whenever any petition is filed by an employer u/s 75 of the Act, the employer has not only to implead the E.S.I.C But has also to implead atleast some of the workers concerned (in a representative capacity if there are large number of workers) or the trade union representing the said workers. If that is not done, and a decision is given in favour of the employer, the same will be in violation of the rules of natural justice. After all, the real concerned parties in labour matters are the employer and the workers. The E.S.I. Corporation will not be in any way affected if the demand notice sent by it u/s 45A/45B is quashed.

5. On the strength of the aforesaid position of law learned Counsel for the appellant submits that since the necessary parties were not impleaded by the respondent, the appeal filed by the appellant deserves to be allowed and the impugned order passed by the ESC Labour Court deserves to be set aside.

6. Shri G. S. Patwardhan, learned Counsel for the respondent submits that the order passed by the Hon''ble Apex Court can be. applied prospectively and not retrospectively and in view of the aforesaid position of law, no illegality has been committed by the learned Court below in passing the order. It is submitted that the appeal be dismissed.

7. After taking into consideration all the facts and circumstances of the case and keeping in view the position of law and the fact that the necessary parties, were not impleaded, this Court is of the view that the impugned order cannot be allowed to be sustain. The appeal is allowed. The order passed by the learned Court below is set aside and the case is remanded back to the learned Court below with a liberty to the respondent to amend the application for impleading the workers or its representatives as parties. If such an application is filed then after securing the presence of newly added parties, learned Court below shall re-decide the case on merits.

With the aforesaid, appeal stands disposed of. No order as to costs.