

(2000) 11 MAD CK 0114

In the Madras High Court

Case No : Writ Petition No's. 5724 of 1998 and others of 1998-1999 and connected W.M.Ps.

Ennore Foundries Ltd.

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 17-11-2000

Acts Referred:

Constitution of India, 1950 — Article 142, 226
Employees State Insurance Act, 1948 — Section 26, 87
Industrial Disputes Act, 1947 — Section 18(1)

Citation : (2001) 88 FLR 884 : (2000) 3 LLJ 185 : (2001) 1 MLJ 93

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Since issue raised in these writ petitions is one and the same, they are being disposed of by the following common order. For convenience, I shall refer the case of the petitioner in W.P.No. 5724 of 1998. According to them, the petitioner is a factory situated at Ennore wherein it is engaged in the production of ferrous and non-ferrous castings and employs about 2600 employees. It is covered by the E.S.I. Act in so far as eligible employees are concerned and has all along been making contributions under the Act.

2. The Clause 19 of settlement, dated January 5, 1994, under the provisions of the Industrial Disputes Act between the petitioner and the third respondent-union is to the effect that upon benefits being available under E.S.I. Act, the benefits flowing under the said settlement was stopped. The benefits under that settlement were to be given by the petitioner to its employees in respect of medical reimbursement. Since several of its employees were not covered by the E.S.I. Act consequent to the order of stay by this Court, the petitioner had taken out insurance policies, in respect of coverage for accidents arising out of and in the course of employment which would not have been necessary if the E.S.I. Act was applicable to those employees. With effect from January 1, 1997, the

coverage under the Employees' State Insurance Act (in short ESI Act) was increased from Rs. 3,000 monthly salary to Rs. 6,500. While the petitioner herein was ready and willing to comply with the Act, the third respondent-union filed Writ Petition No. 1886 of 1997 before this Court and obtained an interim order in W.M.P. No. 3149 of 1997. The petitioner was restrained from recovering ESI contributions with effect from January 1, 1997 onwards from the employees and staff of the respondent. As a result of these orders made by this Court, the petitioner herein could not recover any contribution from all the employees under the Act. Since the order related to an injunction restraining recovery of E.S.I. contributions for the period from January 1, 1997 onwards from the employees and staff of the petitioner, the management stopped all recoveries with effect from February 1, 1997 from all employees. Because (he ESI Act recoveries had been stayed by this Court, the management continued with its insurance policy premiums in respect of accident arising out of and in the course of employment which would not have been paid if the ESI Act was actually applicable. On this basis, the company had paid out about Rs. 4,16,500 per employee for about 1,700, employees.

3. Further, the orders of this Court were made applicable to all employees and staff including employees in the Executive Cadre, covered by the E.S.I. Act, the petitioner-management extended medical reimbursement facilities for the year 1997-98 totalling about Rs. 1,92,000. Ultimately the writ petition was dismissed by this Court on November 21, 1997. Upon the dismissal of that writ petition, the management put up notice, dated December 28, 1997, that it was going to give effect to the E.S.I. Act. Against the orders of dismissal of W.P. No. 1886 of 1997, the employees' union has preferred a writ appeal. In the meanwhile, the union has filed W.P.No. 4186 of 1998 before this Court wherein the prayer is for a writ of mandamus restraining the respondents one of whom the petitioner herein, from demand or deducting ESI contributions from employees and staff of the petitioner with effect from January 1, 1997 to December 31, 1997. Because of orders of this Court made ex parte that the petitioner herein be enjoined from recovering ESI contributions for the period from January 1, 1997 onwards from employees and staff of the petitioner. Now for the same period, if the management is to make payment of its share of the contributions then the management would be put into double jeopardy for no fault of the management. It is now well established in law that no person should be prejudiced by an order of Court and in the present case, now as a result of the dismissal of the writ appeal the petitioner herein if it is asked to pay up contributions under the Act for the period January 1, 1997 to November 30, 1997, it would mean that it has been carefully (sic) prejudiced for no fault of its making but only because the petitioner-union chose to approach this Court challenging extension of coverage under the ESI Act wherein it obtained interim orders restraining payment of contributions from all employees. Presently, the management is covering all its employees under the ESI Act with effect from December 1, 1997 from which period onwards contributions of management and employees have been paid. In

such circumstances, the petitioner has prayed for a writ of mandamus restraining the ESI Corporation from making any demands or claims for petitioner's contributions (as employer) under the provisions of the ESI Act in respect of employees covered by that Act for the period January 1, 1997 to November 30, 1997.

4. Similar averments have been made in the other writ petitions filed by other similarly placed employers. Likewise, employees union have also filed writ petitions seeking similar direction forbearing the E.S.I. Corporation from demanding and deducting E.S.I. contributions from the employees and staff by way of writ of mandamus.

5. Separate counter-affidavits have been filed on behalf of the Employees' State Insurance Corporation in all these cases. The stand taken by the Employees' State Insurance Corporation is -briefly stated hereunder The notification came into effect from January 1, 1997 and the petitioners-management have started to cover such employees from January 1997. The Court order of stay was an interim order pending disposal of the main writ petition. The interim order suspended the operation of the order under challenge only temporarily, namely, until final orders are passed in the main proceedings. However, the liability or the existence of the order under challenge is not wiped out. It is only temporarily suspended. The petitioner was well aware of the significance and nature of the interim order. The petitioners were well aware of the earlier order of the Supreme Court, upholding the earlier notification enhancing the salary limit from Rs. 1,600 to Rs. 3,000 per month. Nothing prevented the petitioners from their share of Employees' State Insurance contribution for the employees now covered under the impugned notification. There was no Court order restraining them from depositing the same. The question of double jeopardy does not arise. The petitioner/employer was well aware of the consequences of the impugned notification being upheld by the Courts. They were also aware of the effect of the interim orders. The interim orders are subject to the result of the main writ petition. The employers were also well aware that similar notification at an earlier instance when salary ceiling was raised the Supreme Court held the notification as valid. The petitioner cannot blame this Court for its own lapse. The Employees' State Insurance Corporation is under statutory obligation to collect the arrears of dues of Employees' State Insurance contribution. The interim orders as declared by the Apex Court do not wipe out existence of the order impugned. It only suspends temporarily its operation. The E.S.I. Corporation is in no way concerned with any amount spent by the petitioner in view of the internal arrangement between the petitioner and its employees. In so far as the contribution due is concerned it is statutory liability and the petitioner is bound to pay the contribution due both in respect of the petitioner and its employees right from January 1, 1997. With these averments, they prayed for dismissal of the writ petition.

6. In the light of the above pleadings, I have heard the learned counsel for the

petitioners as well as respondents.

7. There is no dispute that by notification, dated December 23, 1996, the Government of India has enhanced the ceiling limit of the salary from Rs. 3,000 to Rs. 6,500 per month with effect from January 1, 1997 for the purpose of contribution to Employees' State Insurance. The grievance of the employees, some of them are writ-petitioners in this batch is that their settlement u/s 18(1) of the Industrial Disputes Act with their respective management is more beneficial. It is their further case that the benefits enjoyed by them are far superior to the benefits conferred by the E.S.I. Act. It is also stated that it has become a part of their service condition. However, the management wanted to withdraw the existing medical benefits and extend the notification, dated December 23, 1996. In such circumstances, they made a representation to the State Government seeking for exemption in accordance with Section 87 of the E.S.I. Act. Since the Government of Tamil Nadu is yet to dispose of their application for exemption and in view of the action of the management implementing the notification, dated December 23, 1996, they approached this Court for issuance of mandamus directing the State Government to dispose of their application for exemption pending before it. During the pendency of the said writ petitions, at the instance of the employees/union this Court granted interim injunction restraining the management from recovering E.S.I. contribution with effect from January 1, 1997 onwards from the employees. In some cases this Court has granted stay of the implementation of the said notification. With this background, according to the learned counsel for the petitioners, in view of the injunction order from recovering E.S.I. contributions for the period from January 1, 1997 onwards from the employees and the staff they were prevented from recovering E.S.I. contributions from their employees and staff. It is also contended that in law no person should be prejudiced by an order of Court. To put it in a nutshell, according to them, by virtue of the interim order of this Court, the management did not deduct the E. S.I. contributions from the employees and the staff. No doubt, by order, dated November 2, 1997, this Court has dismissed all the writ petitions filed by the employees/union. By relying on the maxim *actus curiae neminem gravabit* (an act of the Court shall prejudice no man), learned counsel for the management would contend that because of the act of the Court they should not be penalised. They also contended that under Article 226 of the Constitution and in the interest of justice, equity and fair play, this Court can issue appropriate direction permitting the management to enforce the notification from the date of dismissal of the writ petitions, for which they very much relied on the observation of K. VENKATASWAMY, J. (as he then was) in W.P.No. 585 of 1985, etc., batch, dated March 8, 1994.

8. Now I shall consider the various decisions referred to by the learned counsel for the petitioners. The first decision referred to by Sri Sanjay Mohan is in the case of West Bengal Essential Commodities Supply Corporation Vs. Swadesh Agro Farming and Storage Pvt. Ltd. and Another, . In that decision, after

referring the maxim *actus curiae neminem gravabit* (an act of the Court shall prejudice no man), their Lordships have held that it would apply to relieve a party of the hardship or prejudice caused due to the act of the Court. He also very much relied on the further observation, namely:

"But to invoke this maxim it is not enough to show that there is delay in drawing up of the decree, it must also be shown that the appellant has suffered some hardship or prejudice due to the delay of the Court. In other words, there must be a nexus between the act of the Court complained of and the hardship or prejudice suffered by the party..."

9. Sri Sanjay Mohan by pointing out Paras 13 and 14 of another decision in *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, , would contend that based on the said maxim and in view of the orders of this Court at the instance of the employees/union in the interests of justice, this Court can pass any order and also to take note of the equities arising in favour of the management.

10. The other decision relied on by the learned counsel for the petitioners is *Raj Kumar Dey and Others Vs. Tarapada Dey and Others*, . The following conclusion is very much pressed into service:

"6. We have to bear in mind two maxims of equity which are well-settled, namely, *actus curiae neminem gravabit*.- An act of the Court shall prejudice no man. In *BROOM'S LEGAL MAXIMS*, 10th Edn., 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense and afforded a safe and certain guide for the administration of the law..."

11. The other decision relied on by the learned counsel for the petitioners is in the case of *Vineet Kumar Vs. Mangal Sain Wadhera*, , and the following ruling is pressed into service:

"Should the plaintiff here have suffered merely because the Courts could not dispose of his case filed in 1977 by 1981. *bROOM* elaborates the maxim *actus curiae neminem gravabit* an act of Court shall prejudice no man, thus:

"where a case stands over for argument on account of the multiplicity of business in the Court.....the party ought not to be prejudiced by that, but should be allowed to enter up his judgment retrospectively to meet the justice of the case."

(*BROOM'S LEGAL MAXIMS*, 10 Edn., page 73)

12. In *Hanuman Vitamin Foods Pvt. Ltd. Vs. Collector of Customs, Bombay*, , their Lordships have held as follows:

"What is apparent from what has been stated is that the appeal was not decided on merits as according to the appellate Collector and the Tribunal, the Assistant Collector having rejected the claim of refund earlier, the order passed in 1979 was without jurisdiction. To that extent, the order appears to be correct. At the same time, the earlier order having not been communicated to the appellant, the

appellant was prevented from getting an adjudication on merits from the higher authority. The Assistant Collector having passed another order subsequently, the appellant was well within its right to assume that its claim for refund had been rejected in 1979 only. The result is that the appellant was prevented from challenging the first order before the higher authorities because the Assistant Collector passed another order in 1979 and the correctness of the second order was not decided by the higher authorities as an earlier order had been passed dismissing the claim of the appellant. No one should suffer for the mistake committed by the Court. The appellant, in our opinion, was prevented from seeking its remedy before higher authority due to mistake committed at the instance of the Assistant Collector."

13. In *Mohammed Gasi v. State of Madhya Pradesh and Ors.* 2000 (4) SCC 342, their Lordships have held as follows:

"In the facts and circumstances of the case, the maxim of equity, namely, *actus curiae neminem gravabit* an act of the Court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of Law."

It is clear from the above decision that an order or act of the Court shall prejudice no man. No doubt, as stated earlier, at the instance of the employees/union, this Court in certain cases has granted injunction till the consideration of their application for exemption before the State Government. In some cases this Court has stayed the notification of the Government of India enhancing the salary limit from Rs. 3,000 to Rs. 6,500. However, the fact remains that all the writ petitions have been dismissed by this Court on November 21, 1997. Admittedly, no direction or observation for payment of Employees' State Insurance contributions have been made from the date of the dismissal of the writ petitions. In other words, all the writ petitions filed by the employees/union were dismissed as devoid of merits. Accordingly, though the management were prevented from making contributions to the Employees' State Insurance, the fact remains that all those writ petitions were dismissed. It is also brought to my notice that even on earlier occasions when the ceiling limit was increased by way of notification by the Government of India, writ petitions challenging the same were dismissed and the management as well as the employees were aware of the same. In view of the fact that after the dismissal of the writ petitions, no one has challenged the notification increasing the salary limit from Rs. 3,000 to Rs. 6,500. I am of the view that the management have to implement the notification from the date on which it came into force and not from the date of dismissal of the writ petitions.

14. Now I shall consider the judicial decisions relied on by the learned counsel appearing for the E.S.I. Corporation. In *Employees' State Insurance Corporation v. Madras Auto Service* 1997 I LW 524, RAJU, J. (as his Lordship then was), while considering Section 40 of the Employees' State Insurance Act, 1948, has held that the obligation to make contribution does not depend upon whether the

particular employee or employees cease to be employee/employees after the contribution period and the benefit period expire.

15. In *Workmen of Bharath Electronics Ltd. Vs. Employees State Insurance Corporation*, , a Division Bench of Karnataka High Court with regard to stay orders in the writ petitions and subsequent dismissal of the main writ petitions have held as follows, in Para 18, at page 346 of LLJ:

"18. The stay orders issued pending disposal ,of the writ petitions had no effect on the obligation of the principal employer to pay contributions as required by Section 40. If any hardship is caused to the employers by their understanding of the implications of the stay orders, it is open to them to make representations to the appropriate Government and seek exemptions under the provisions contained in Chap. VIII of the Act."

The same view has t4en reiterated by a single Judge of the Karnataka High Court in *H.M.T. Limited, Watch Factory IV Vs. Employees" State Insurance Corporation and Another*, .

16. In *Employees State Insurance Corporation Vs. M/s. Hotel Kalpaka International*, their Lordships while considering the object of the Act and the responsibility of the employer, have held at p. 942 of LLJ:

"21. From the above statutory provisions, it would be clear that from out of the common fund maintained u/s 26, the employees derive various benefits like sickness, maternity, disablement, injury, medical treatment for and attendance on insured persons. Therefore, it is a beneficial piece of social security legislation. As a matter of fact, this Court had occasion to consider the same in *R.M. Lakshmanamurthy*"s case, wherein it was held at p. 942 of LLJ:

"The Act is thus a beneficial piece of social security legislation in the interest of labour in factories at the first instance and with power to extend to other establishments. Provisions of the Act will have to be construed with that end in view to promote the scheme and avoid the mischief."

"26. xxx" :

"23. The Insurance Court as well as the High Court have correctly upheld the demand for contribution. But it is rather strange to conclude that the demand could not be. enforced against a closed business. If this finding were to be accepted it would not promote the scheme and avoid the mischief. On the contrary, it would perpetrate the mischief. Any employer can easily avoid his statutory liability and deny the beneficial piece of social security legislation to the employees, by closing down the business before recovery. That certainly is not the intendment of the Act. To hold, as the High Court has done, would set at naught all these beneficial provisions."

17. AIR 1997 993 (SC) their Lordships have held that it is inadvisable to make interim orders which have the effect of depriving the State (the people of the

State) of the revenues legitimately due to it. Their Lordships have further held that the Court should not take upon itself the responsibility of staying the recovery of amounts due to the State unless a clear case of illegality is made out and the balance of convenience is duly considered. They further observed that otherwise, the odium of unlawfully depriving the State/the people of the monies lawfully due to it/them would lie upon the Court.

18. The observation expressed by their Lordships in *Union of India (UOI) and Another Vs. Murugan Talkies*, is an answer to the contentions raised by the learned counsel for the petitioners. Almost in similar circumstances in that case, where the theatre owners/licensees have approached the High Court and obtained an order of stay and subsequently the writ petitions were dismissed, their Lordships have held thus, in Paras 4 and 5, at page 1155 of LLJ:

"4. We find that the High Court was wholly unjustified in granting the same relief to these owners/licensees. After their writ petitions were dismissed, they were to bear the liability from the date of the enforcement of the notification as held by this Court. It is, therefore, necessary that from the date on which the respective owners of the theatres or the licensees, who had filed the writ petition in the High Court, are made liable to deposit their share of contribution towards provident fund account under the scheme.

5. We are issuing the order under Article 142 of the Constitution. The order of the High Court to that extent is set aside. The respondent and all the theatre owners are directed to deposit their share of contribution to the provident fund account from the respective dates on which they filed the writ petitions in the High Court. The appellant should intimate all of them the date on which they had filed the writ petitions and call upon them their share of contribution."

19. In *Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others*, , with regard to the effect of stay after the disposal of the main writ petition. Their Lordships have held thus:

"..... .It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the Court in such a case to put the parties in the same position they would have been but for the interim orders of the Court. Any other view would result in the act or order of the Court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ-petitioner in spite of his failure....."

20. All the above decisions clearly say that after the dismissal of the writ petition, the stay or any other interim order granted comes to an end. In other words, after the dismissal of the substantive proceedings, it is the duty of the Court to put the parties in the same position they would have been but for the interim orders of the Court.

21. Though the learned counsel for the petitioners very much relied on the

observation and direction given by VENKATASWAMY, J. (as he then was) in Writ Petition No. 585 of 1985, etc., batch, dated March 8, 1994, United National Textile Corporation Staff Union (represented by its General Secretary, and Ors. v. Government of India represented by Secretary, and Ors. in the light of the law laid down by the Supreme Court, similar observation/direction cannot be granted in these cases. In the said batch, while dismissing all the writ petitions, the learned Judge has observed thus:

"However, the contributions payable will be demanded only prospectively from this date, namely, the disposal of these writ petitions."

Though such observation/direction has not been made while dismissing the earlier writ petitions filed by the employees/union, learned counsel appearing for the petitioners would contend that in the interest of justice and equity while exercising power under Article 226 of the Constitution, this Court can grant such relief permitting the petitioners ,to pay contributions from the date of dismissal of the earlier writ petitions. This cannot be granted. In this regard, it is relevant to refer a decision of the Supreme Court in the case of Employees" State Insurance Corpn. Vs. Kerala State Handloom Development Corpn. Employees Union (CITU), Kannur, Dist. Kannur, Kerala and Others, wherein the Supreme Court has set aside the judgment of the Kerala High Court in postponing the date of operation of the notification issued under the Employees" State Insurance (Central) Rules, 1950. Their Lordships have held, in Para. 3, at p. 17 of LLJ:

"3. We have heard learned counsel for the parties. We are of the view that the High Court fell into patent error in postponing the date of the operation of the notification. The notification, amending the rules, was a legislative act. The amendment of the rules being a delegated legislation, the High Court could not have interfered with the date of operation of the notification."

In the light of the above categorical pronouncement by the Supreme Court, the request of the petitioners cannot be countenanced.

22. In the light of what is stated above, though the managements, were prevented by an interim order of Court at the instance of the employees/union, after the dismissal of the main proceedings, the stay and other interim order granted therein comes to an end and it is the duty of the Court to put the parties in the same position they would have been but for the interim orders of this Court. It is settled law that when once the main case has been disposed of, the parties are relegated with the original position and the management is liable to pay the contributions of the employer and the employees. Further, the Employees" State Insurance Act is a beneficial piece of social security legislation. Provisions of the Act will have to be construed with that end in view to promote the scheme and avoid the mischief. Further, because of the orders of the Court at the instance of the employees/union if any hardship was caused to the management, it is always open to them to make a representation to the appropriate Government for their redressal.

23. In the light of what is stated above, I do not find any merit in all these writ petitions; consequently all the writ petitions are dismissed. No costs. All the writ miscellaneous petitions are closed.