
(2016) 01 JH CK 0074
In the Jharkhand High Court
Case No : W.P. (C) No. 6862 of 2013

Hindustan Petroleum Corporation Ltd.	APPELLANT
Vs	
Employees' State Insurance Corporation and Others	RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 23, Section 24, Section 45-AA

Citation : (2016) 1 CLR 521 : (2016) 149 FLR 184 : (2016) 2 JCR 254 : (2016) 1 JCR 586 : (2017) 1 JLJR 552 : (2016) LabLR 637

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Delip Jerath and Rajesh Kumar, for the Appellant; Ashutosh Anand, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—1. Seeking quashing of series of letters issued under the Employees' State Insurance Act, 1948 directing the petitioner to deposit Rs. 7,90,924/-, the present writ petition has been filed.

At the outset, the learned Counsel for the respondent-Employee's State Insurance Corporation raises a preliminary objection to the maintainability of the writ petition on the ground of availability of alternative remedy of appeal under section 45-AA of the Employees' State Insurance Act, 1948.

The petitioner-Hindustan Petroleum Corporation Ltd. (HPCL) is a Government of India Enterprise which claims exemption from the provisions of the Employees' State Insurance Act by virtue of notifications issued by the Ministry of Labour and Employment. A notice directing the petitioner to deposit contribution under the Act for the period between February, 2006 to January, 2011 for Rs. 5,26,250/- was issued on 25.4.2011. Thereafter, other notices and reminders were issued to the petitioner. The petitioner submitted its reply dated 24.11.2012 stating that remittances have already been paid through contractors under their own ESI

Code. It was asserted that in so far as permanent employees of the Corporation are concerned, they are exempted vide notifications issued by the Ministry of Labour and Employment however, the petitioner-Corporation received notice dated 9.9.2013 which was addressed to the Recovery Officer for recovery of an amount of Rs. 7,86,625/-. The officials of the petitioner thus, approached the Recovery Officer. The Recovery Officer however, issued letter dated 4.10.2013 to the respondent-Bank of India to pay a sum of Rs. 7,90,924/- from the petitioner's account. Aggrieved, the petitioner has filed the present writ petition.

2. Mr. Delip Jerath, the learned Counsel for the petitioner submits that a perusal of notice dated 25.4.2011 would disclose that a demand was made for contribution on "assumed wages" which is not permissible in law. It is further contended that the reply filed by the petitioner was not considered by the Authorised Officer and thus, the impugned notices are liable to be quashed.

3. It is well settled that, normally the Writ Court would not interfere with the demand notice if the assessee has adequate remedy under the statute. It is also a well recognised practice that once a proceeding under the Recovery Act is initiated, the Courts would not interfere with the demand notices. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433, the Hon'ble Supreme Court has held as under:

"11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under sub-section (1) of section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of."

4. A perusal of notice dated 25.4.2011 whereby a demand of Rs. 5,36,250/- was calculated for the period between February, 2006 and January, 2011, discloses that the said notice was issued to afford opportunity to show-cause against the determination and recovery. It is an admitted fact that the petitioner did not respond to the said notice and, in the meantime, other notices were issued to the petitioner. Only, vide letter dated 24.11.2012 the petitioner responded to the notice dated 25.4.2011 however, the liability to pay has not been denied. The plea taken by the petitioner is that contributions under the ESI Act have been paid through the contractors engaged by it. Now, in view of the aforesaid stand taken by the petitioner, the question arises for consideration is whether such questions of fact should be adjudicated in the present proceeding. In my opinion,

in view of an efficacious remedy of appeal under section 45-AA of the Employees' State Insurance Act, 1948, the petitioner must first avail the alternative remedy of appeal. The petitioner could have filed objection before the Recovery Officer also which the Recovery Officer is under a statutory duty to decide before finally determining the liability of the petitioner. Considering the aforesaid facts, I am not inclined to interfere in the matter and accordingly, the writ petition is dismissed.