
(2000) 11 MP CK 0035
In the Madhya Pradesh High Court
Case No : M.P. No. 935 of 1991

Jayant Vitamins Ltd.

APPELLANT

Vs

Employees' State Insurance Corporation and Another

RESPONDENT

Date of Decision : 16-11-2000

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 45B

Citation : (2001) 88 FLR 713 : (2001) 1 LLJ 1323

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : B. Chitale, for the Appellant; Vivek Saran and S. Mukati. G.A., for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—The challenge in this petition filed under Articles 226 and 227 of the Constitution of India by the petitioner is to a letter dated April 15, 1987 (Annexure A), notice dated September 13, 1989 (Annexure B), letter dated April 2, 1990 (Annexure C), demand dated April 5, 1991 (Annexure D) and R.R.C. dated December 11, 1990 (Annexures E and F). These demands are raised under the provisions of the Employees' State Insurance Act (1948). Facts in brief that led to riling of this writ need mention.

2. The petitioner a Limited Company has their one factory at Industrial Area in Ratlam as defined u/s 2(12) of the Employees' State Insurance Act (for short called ESI Act), whereas, the petitioner falls in the definition of Principal Employer as defined u/s 2(17) ibid. In other words, the petitioner is liable to comply with the provisions of the ESI Act for the employees working in their factory.

3. On April 15, 1987, by Annexure A, the respondent (ESI Authorities) sent a letter seeking certain information from the petitioner for the period 1974-75 with a view to verify as to whether proper compliance of the ESI Act has been made.

The letter also gave details of the amount which were not taken into consideration for payment of contribution. The petitioner was asked to submit the required information on July 19, 1989 (Annexure B), the respondent sent a letter intimating the petitioner that for the period October 1, 1986 to November 30, 1988, the respondent (ESI Authorities) on inspection of the petitioner's record, have been able to notice several irregularities. The details of these irregularities were specifically mentioned in the letter. Petitioner was asked to supply the details and the necessary information as to why these irregularities were committed. This was followed by yet another letter dated June 9, 1996 (Annexure C) by the respondent to the petitioner informing that since despite repeated reminders sent to petitioner, they have not responded to any of the queries made nor have they supplied the details sought by the respondent, the respondent will recover the amount worked out in the letters by way of Revenue Recovery (RRC) under the provisions of M.P. Land Revenue code. Since petitioner did not respond even to this letter, the respondent sent a demand u/s 45K (Annexure D) followed by RRC Certificate (Annexure E and F). It is these demands and RRC which are impugned by the petitioners in this petition.

4. Heard Shri B. Chitale, learned counsel for the petitioner, Shri Vivek Saran, learned counsel for respondent No. 1 and Shri S. Mukati, learned Government Advocate for respondent State.

5. While attacking the legality of these demands, learned counsel for the petitioner urged that firstly, these demands are barred by limitation if seen with reference to the provisions of Act and secondly, in the absence of any adjudication not being made and whatever has been made was with reference to capital and not wage, the impugned demand is bad in law.

6. In my opinion, both the submissions made by the learned counsel for the petitioner has no force and hence petition has to be dismissed. So far as the issue regarding limitation is concerned it has no basis in view of Section 45A of the Act. Section 45A in clear terms provide that where in respect of a factory or establishment, no return, particulars, registers, or records are submitted by the person responsible to pay the contribution under the Act then in that event, the Corporation may on the basis of information available to it by order determine the amount of contribution payable in respect of the employees of the factory. This section was added by way of amendment w.e.f. June 17, 1967 because great difficulty was being felt to recover the contribution if the employer withheld the register, books of accounts, or other documents or failed to tender when called upon to do so. It is to obviate these difficulties, Section 45A and Section 45B were enacted. The action taken by the Corporation u/s 45A is not subject to any limitation. The rigours of limitation law has its application only when the matter is taken to Courts. In other words, an action taken u/s 45A of the Act is not governed by the law of Limitation Act and hence such action cannot be struck down on the plea of limitation. This was the view taken by the Kerala High Court in a case reported in *ESIC v. Ramdas Reddiar* 1981 I LLJ 166 (Ker DB).

7. In the present case, the impugned action is taken only u/s 45A ibid and hence is immune from the attack of plea of limitation. It is, therefore, rejected.

8. The next submission of learned counsel for the petitioner was that determination of the dues was not done properly that no inquiry was held that no opportunity was given and hence the impugned demand is bad has also no substance. Persual of impugned letters clearly show that petitioner did not submit any return, nor it supplied any information needed by the respondent. Time and again, the respondent asked the petitioner to supply the details but all was in vain. Even in this petition, the petitioner has not filed any documents to show that whatever was demanded by the respondent in their letters was either wrong or was supplied but was not considered while issuing the demand. In my opinion, the petitioner was afforded adequate opportunity to contest the case and they did not avail of the opportunity extended to them. This is not a case where no opportunity was given to the petitioner. It is a clear case where opportunity was given to the petitioner but they failed to avail of it.

9. Yet another submission that basis for adjudication was not proper has no force. The letters sent by respondent nowhere says that capital of petitioner was taken to be the basis for determination of contribution. Calling for some details by itself does not mean that they alone were made basis for determination. Secondly, even in petition, the petitioner has not been able to show as to how much dues according to petitioner were payable. Thirdly, when the Corporation exercises the powers u/s 45A ibid and makes a demand, it becomes an order u/s 45A and it is not necessary to pass any separate order. Reference may be made to a decision reported in (1982) 60 FJR 13 (Delhi).

10. In view of aforesaid discussion, I do not find any merit in the petition. It is accordingly dismissed.

11. No costs. Security amount, if deposited by the petitioner, be refunded.