

(1999) 08 MAD CK 0046

In the Madras High Court

Case No : Writ Petition No. 111 of 1992 and W.M.P. No. 147 of 1992

Jayram Electricals (P) Ltd.

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 19-08-1999

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(22), 2(9), 75(2B)

Citation : (2000) 2 LLJ 1082

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : S. Usha, for Ramasubramaniam Associates, for the Appellant; Radha Srinivasan and K. Elango, for the Respondent

Final Decision : Dismissed

Judgement

Y. 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 relating to the order dated December 16, 1991, made by the first respondent Presiding Officer,

Employees" Insurance Court (First Additional City Civil Court) in C.M.P. No. 184 of 1991 in EIOP No.... of 1991 (un-numbered) on the file of

the said Court and to quash the same.

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 same as prayed for. Per contra, on behalf of the respondents, the

"second respondent has filed a counter-affidavit 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 merits.

3. Heard the arguments advanced by learned counsel appearing for the parties. I have perused 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 the 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 petitioner, as seen from the affidavit are as follows: The petitioner-company has on its rolls permanent

employees numbering 55. All those employees who were eligible under the Employees' State Insurance Act are being covered and contributions

have been regularly remitted with the respondent authorities. The petitioner is a company registered under the Companies Act and is carrying on

business as engineers and electrical contractors. The petitioner in the course of its business as engineers and electrical contractors, have engaged

the services of various consultants in particular specialised areas of activity, as per the requirement of the contract entered into with its customers.

In this connection, experts were engaged and they were paid consultation fees by the petitioner-company for specific advise/consultations rendered

by them in the course of the execution of the electrical and engineering contract by the petitioner to its various customers. Since there was no

employment within the meaning of the Act and the amounts that were paid to them were only consultation fee for the expert advise/consultation and

professional services rendered by them, such payments made to them were not reckoned for the purpose of contribution under the Employees'

State Insurance Act. The payments made to such persons were accounted by the petitioner-company as ""professional charges"". The respondent

issued a notice dated November 22, 1990, calling upon the petitioner to furnish details regarding the payments made under heading ""professional

charges"" and as to why the same has not been taken into account for the purpose of calculation of contribution. The petitioner herein submitted a

reply dated January 4, 1991, pointing out that as per the specifications in the contracts entered into by it, the petitioner herein had to carry out

certain tests with the help of experts and the payments made to them were only ""professional charges"" for the expert opinion rendered by them and hence, need not be taken into account for the purpose of paying contribution under the Employees' State Insurance Act. The first respondent once again issued a notice dated January 11, 1991, referring to their earlier letter dated November 22, 1990; and alleging that return of contributions have not been submitted for the period 1988 to 1990, and that, a sum of Rs. 72,554.54 is payable towards contributions. The petitioner was also called upon to remit the contributions within 15 days, as otherwise, the respondent threatened to initiate revenue recovery proceedings u/s 45-B of the Employees' State Insurance Act. The notice dated January 11, 1991, did not refer to the earlier reply submitted by the petitioner on. January 4, 1991, explaining the payments charged under the head ""professional charges"". However, once again the petitioner, by letter dated January 23, 1991, explained to the respondent with reference to their earlier reply dated January 4, 1991. The second respondent issued a notice dated March 18, 1991, calling upon the petitioner to produce the details regarding payments made under the heading ""professional charges"", to enable them to take further action in the matter. Since the payments were made to large number of persons and spread over a period of two years, the petitioner by letter dated March 22, 1991, requested the second respondent to grant time till April 8, 1991, for furnishing the particulars called for by them in their letter dated March 21, 1991. Thereafter, also they requested further time of one month for submitting the particulars called for by them. The respondents called upon the petitioner to furnish details within 15 days of receipt of their letter in TN/INS/3/51-36610-101. The said undated letter was received by the petitioner on July 30, 1991, and immediately thereafter, the petitioner sent the particulars detailing the payments made to various persons and the nature of consultancy rendered by them. The particulars sent to the second respondent have been received by the respondents on August 19, 1991. However, the petitioner received a notice dated August 21, 1991, which was an application u/s 5 of the Revenue Recovery Act for the recovery of contributions u/s 45-B of the Employees' State Insurance Act and addressed to the Special Tahsildar, ESI Recoveries, the third respondent herein, requesting him to recover a sum of Rs. 78,431.67. It was also alleged by the second respondent in

the said notice that the amount of contribution payable has been determined after notice and reasonable enquiry and that the petitioner herein has failed to pay the contributions, in spite of repeated reminders. Immediately thereafter, the petitioner wrote a letter dated August 29, 1991, pointing out that the particulars called for by the respondent were received by the second respondent as early as on August 19, 1991, and requested them to advise the Special Tahsildar to refrain from taking any action on the basis of their letter dated August 21, 1991. However, they received a notice dated August 13, 1991, from the Special Tahsildar, ESI Recovery, initiating distraint proceedings for the recovery of a sum of Rs. 78,431.67 under the Revenue Recovery Act. Aggrieved by the proceedings initiated by the third respondent, the petitioner herein filed a petition u/s 75 of the Employees' State Insurance Act, to declare the claim made by the second respondent for a sum of Rs. 78,431.67 as illegal, unjust and arbitrary and unenforceable in law and the notice issued by the third respondent dated September 13, 1991, as illegal and unenforceable in law and to declare that the petitioner is not liable to pay contributions in regard to the payments made under the heading ""professional charges"". Along with the petition u/s 75, the petitioner herein also filed an application u/s 75(2-B) of the Employees' State Insurance Act to waive the pre-deposit of the amount demanded as contribution. The application was numbered as C. M. P. No. 184 of 1991 on the file of the first respondent. The petitioner pointed out that the entire claim made by the second and third respondents to be wholly invalid, as without passing an order u/s 45-B of the Employees' State Insurance Act, it would not be open to the respondents to straightaway invoke the distraint proceedings u/s 45-B of the Employees' State Insurance Act and since the second respondent without passing an order u/s 45-B, straightaway issued a certificate u/s 5 of the Revenue Recovery Act and initiated distraint proceedings for the recovery of the amounts against the petitioner, and the entire proceedings have to be set aside. The first respondent hereinafter hearing the arguments passed an order dated December 16, 1991, directing the petitioner to deposit a sum of Rs. 10,000. The first respondent without any discussion in his order was of the opinion that, even though there was no order u/s 45-A that the petitioner could not escape without paying even a single pie as contribution. Aggrieved by the said order, the present writ petition has been

filed.

6. The impugned order is challenged by the petitioner on the grounds that in the present case, the first respondent has failed to exercise jurisdiction

vested in him u/s 75(2-B), in that he failed to consider whether or not a prima facie case has been made out, that the first respondent ought to have

seen that this is a case where straightaway revenue recovery proceedings were initiated without any order being passed u/s 45-A of the Act

determining the contribution, if at all contribution was payable, and that in spite of the stand of the petitioner that no contribution was payable, no

hearing of any kind was afforded to the petitioner, before the authorities, proceeded on their own to determine that a sum of about 72,000 was

due as and by way of contribution. Therefore, it is the grievance of the petitioner that this aspect of the matter was not considered by the first

respondent, and in the process, miscarriage of justice has occurred, that too in a case where it was not denied that no order u/s 45-A of the Act

has been made by the Corporation. According to them, the payments made to professional experts could not be wages within the meaning of

Section 2(22) of the Act as there was no existence of master and servant relationship (sic) between the petitioner and such professional experts,

and, that therefore, thus, there has been a failure to carry out the functions vested in the first respondent. It is also the grievance of the petitioner

herein that now as a result of the order, the petitioner is precluded from contesting the main petition as the same will not be taken up on file unless

deposit of Rs. 10,000 is made. According to them, it is not like as if in each and every case waiver could not be done. It is also the grievance of

the petitioner that the first respondent failed to consider the aspect of whether or not payment of contributions would arise in a case of payment of

fees to experts in their own fields, that too, when payment to experts was never denied.

7. It is contended by the respondents that it is not correct to state that the petitioner establishment has been complying with the provisions of the

Employees' State Insurance Act in respect of all the covered employees. The professional staff engaged for carrying out the work of the factory

have not been enrolled as members for the ESI benefits, no contributions have been made for.

According to the respondents, the provisions of the Employees' State Insurance Act apply to all categories of employees including the consultants whose services are hired for the purpose of the establishment. Admittedly the petitioner has been engaging engineers and other consultants for carrying out the work of the factory. But the petitioner has failed to pay the Employees' State Insurance contributions. for such employees, on an erroneous assumption that they are not coverable under the Employees' State Insurance Act. The Employees' State Insurance Corporation by their letter dated November 22, 1990, called on the petitioner establishment to furnish certain details regarding the amounts paid by the petitioner to engineers and consultants and the petitioner sent a reply dated January 4, 1991. The respondent considered the reply dated January 4, 1991, sent by the petitioner. However, certain clarifications sent by the ESI Corporation was never made by the petitioner despite the ultimatum given by the Employees' State Insurance Corporation. The respondents also sent a notice dated January 11, 1991, to the petitioner informing the amount of contribution due as also the period of default. However, the petitioner did not make the payment and reiterated his contention that the consultants and engineers are not coverable under the provisions of the Employees' State Insurance Act. It is also the case of the respondents that the petitioner repeated his request for extension of time for furnishing the details asked for by this respondent. But the petitioner never furnished the details and hence the respondent finally sent a communication dated July 30, 1991, asking the petitioner to furnish the details within 15 days. It is significant to note that the petitioner did not send any reply within the stipulated time, consequently this respondent was constrained to send a requisition to the Collector asking him to recover the amount under the Revenue Recovery Act. Further, the petitioner failed and neglected to furnish the details called for by the respondents and under such circumstances, no determination was made u/s 45-A of the Employees' State Insurance Act. According to them, the respondents have done all such acts as was required under the Act, which culminated in determining the contribution payable to the Corporation, and, therefore, the impugned order is proper, legal and valid. Inter alia, it is also contended by them that the impugned order is proper and is passed in accordance with the provisions of law, that the Court below had passed the impugned order after

considering all the circumstances and facts of the case as also the legal provisions involved in the matter. It is also contended by them that it is

premature to approach this Court and it is only the Employees' Insurance Court, before which the trial is pending, is competent to go into the issue

involved in the matter. Hence, it is prayed that the writ petition may be dismissed as devoid of the merits.

8. Having seen the entire material available on records and from the facts and circumstances of the case and also from the claims and counter-

claims made by the rival parties, the following are the admitted facts. The petitioners have been engaging engineers and other consultants for

carrying out the work of the factory. They have failed to pay the Employees' State Insurance contributions for such employees. The Employees'

State Insurance Corporation by their letter dated November 22, 1990, called on the petitioner establishment to furnish certain details regarding the

amounts paid by the petitioner to engineers and consultants and the petitioner sent a reply on January 4, 1991. The respondent considered the

reply dated January 4, 1991, sent by the petitioner. However, certain clarifications sent by the ESI Corporation was never made by the petitioner

despite the ultimatum given by the ESI Corporation. Further, it is claimed by the petitioner that the payments made to the experts were accounted

by the petitioner-company as "professional charges" as the same were only consultation fee for expert advice/consultation and professional services

rendered by them," and that, therefore, such payments made to them were not reckoned for the purpose of contribution under the Employees'

State Insurance Act. Whereas it is the categorical case of the respondents that such professionals whose services are hired by the petitioner-

establishments are employees coming within the definition of Sections 2(9) and 2(22) of the Employees' State Insurance Act, and hence their

coverage is necessary. It is also significant to note that certain clarifications sent by the Employees' State Insurance Corporation was never made

by the petitioner, despite the ultimatum given by the Employees' State Insurance Corporation. Further, the respondent had informed the petitioner

about its liability to pay the Employees' State Insurance contribution towards its professional employees. The respondent also sent a notice dated

January 11, 1991, to the petitioner informing the amount of contribution due as also the period of default. However, the petitioner did not make the

payment and reiterated his contention that the consultants and engineers are not coverable under the provisions of the Employees' State Insurance

Act. But the petitioner never furnished the details. It is also significant to note that the respondents finally sent a communication dated July 30,

1991, asking the petitioner to furnish the details within 15 days of the receipt of the same communication failing which an ultimatum was given that

the contributions determined on the basis of the actuals pointed out in its communication dated January 11, 1991, will be recovered through

revenue recovery action. It is significant to note that the petitioner did not send any reply within the stipulated time. Therefore, it is contended by

the respondent that they were constrained to send a requisition to the Collector asking him to recover the amount under the Revenue Recovery

Act. In the facts and circumstances of this case, I see every force in the above contention of the respondents. Further, it is the case of the

respondents that the amount has been determined on the basis of the actuals and the petitioner failed and neglected to furnish the details called for

by this respondent, and, as such, the respondents were forced to determine the amount on the basis of the actuals. Further, in this case it is also

significant to note that even after the communication dated July 30, 1991, warning the petitioner about the consequences of failure to furnish details,

the petitioner ignored the same and did not pay any heed or attention to the matter. That apart, it is the categoric contention of the respondents that

the respondents have done all such acts as was required under the Act, which culminated in determining the contribution payable to the

Corporation, and that, therefore the impugned order is proper, legal and valid since the same has been passed in due compliance of the provisions

of the Act. It is also contended rightly that the Court below had passed the impugned order after considering all the circumstances and facts of the

case as also the legal provisions involved in the matter and as such it had exercised its jurisdiction scrupulously and arrived at a proper conclusion

by, applying its mind to all the aspects of the case. I see every force in the above contentions of the respondents.

9. 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 for any interference with the order impugned in this writ petition. Thus, the writ petition fails and the same is liable to be dismissed for want of the merits.

10. In the result the writ petition is dismissed. No costs. Consequently, W.M.P. No. 147 of 1992 also is dismissed.