
(2012) 12 MAD CK 0114

In the Madras High Court

Case No : Writ Appeal No. 1228 of 2010 and M.P. No's. 1 and 2 of 2010

Madras Fertilizers Ltd.

APPELLANT

Vs

E.S.I. Corporation and Others

RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Employees State Insurance Act, 1948 — Section 1, 40, 41, 42, 43

Citation : (2013) 137 FLR 303 : (2013) 2 LLJ 365

Hon'ble Judges : Elipe Dharma Rao, J;Aruna Jagadeesan, J

Bench : Division Bench

Advocate : Rita Chandra Sekharan and Aiyar and Dolia, for the Appellant; G. Bharadwaj, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—Being dissatisfied with the order dated 29.3.2010 passed by the Learned Single Judge in W.P. No. 14642 of 2000, the Management of Madras Fertilizers Ltd. (for short, "Management") has projected the instant Appeal before this Court. In the order under appeal, the learned Judge dismissed the Writ Petition filed by the Management seeking to quash the order dated 4.8.2000 issued by the Regional Director, Employees' State Insurance Corporation (for short, "ESI") and the Notice dated 24.8.2000 issued by the Recovery Officer u/s 45-G of the Employees' State Insurance Act, 1948. The appellant, a Government of India Undertaking and Public Sector Company, was issued with a proceeding dated 4.8.2000 by the Regional Director, Employees' State Insurance Corporation (for short, "ESI") calling upon to remit a sum of Rs. 82,72,656/- towards contribution for its employees for the period from April 1992 to September, 1995 and from January, 1997 to July, 1999 along with returns within 15 days from the date of receipt of notice. It is the further case of the appellant that even before the expiry of the statutory period stipulated under the proceedings, the Recovery Officer, ESI Corporation, issued Notice dated 24.8.2000 u/s 45-G of the Act demanding payment of a sum of Rs.

1,21,28,368.80 with further interest at Rs. 3446.94 per day from 25.8.2000. Challenging the said proceedings, the Management filed the Writ Petition. A learned Single Judge of this Court, relying on the earlier decisions, dismissed the Writ Petition. Feeling aggrieved, the Management has come up with this Writ Appeal.

At the time of admitting the Writ Appeal, this Court, by order dated 29.6.2010, granted interim stay.

2. Heard the learned Counsel representing the appellant Management and the learned Counsel appearing for the respondents and perused the records.

3. Learned Counsel for the Appellant/Management submits that by virtue of the stay obtained in various connected writ petitions, the Management was not in a position to comply with the provisions of the ESI Act for the period between 4/1992 to 9/1995 and 1/1997 to 7/1999. Added further, the learned Counsel projects an argument that the order impugned in the Writ Petition was passed even while the orders of interim stay were in force. He further submits that by virtue of Notification issued by the Government raising the salary ceiling to Rs. 6500/-, the question of implementing the provisions of the ESI Act does not arise. Proceeding further, the learned Counsel for the Management takes a plea that the appellant Company is a sick company as such declared by the Board for Industrial and Financial Reconstruction. According to him, the learned Single Judge, without considering these aspects, has committed an error in dismissing the prayer of the Management and sought for the interference of this Court.

4. Learned Counsel representing the ESI Corporation submits that the Notification issued by the ESI has been upheld by the Division Bench. He would further submit that Government of India had not granted any exemption and hence, the question of the Management refusing to comply with the provisions of the Act does not arise. According to him, the order of the learned Single Judge does not call for any interference.

5. In order to appreciate the contentions raised by the learned Counsel for the appellant/Management, we have carefully gone through various provisions of the Employees' State Insurance Act. The Act was enacted to provide certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Act although extends to the whole of India but in terms of sub-section (3) of section 1 of the Act, it may come into force on such date or dates as the Central Government may, notifying in the official Gazette, appoint and different dates may be appointed for different provisions of the Act and for different States or for different parts thereof. However, sub-section (4) of section 1 states that the Act at the first instance, shall apply to all factories other than seasonal factories provided that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits

provided under this Act.

6. Section 40 of the Act enjoins a duty upon the principal employer to pay contribution at the first instance. Section 41 provides for recovery of contribution. Section 42 provides for general provisions as to payment of contributions whereas section 43 provides for method of payment of contribution. Sections 44 and 45, which are relevant for these matters, read as under:

44. Employers to furnish returns and maintain registers in certain cases.--

(1) Every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf.

(2) Where in respect of any factory or establishment the Corporation has reason to believe that a return should have been submitted under sub-section (1) but has not been so submitted, the Corporation may require any person in charge of the factory or establishment to furnish such particulars as it may consider necessary for the purpose of enabling the Corporation to decide whether the factory or establishment is a factory or establishment to which this Act applies.

(3) Every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf.

7. From the materials available on record, it transpires that the Management, at its instance, obtained permission from this Court to approach the Central Government for exemption. When the order of refusal for exemption was challenged Subsequently, there was no interim order in their favour except for a short period in which case, the Management ought to have complied with the provisions of the Act.

8. In *Transport Corporation of India Vs. Employees' State Insurance Corpn. and Another*, , on the point how a beneficial legislation has to be construed, the Supreme Court has held as under (para 27):

Before parting with the discussion on this point, it is necessary to keep in view the salient fact that the Act is a beneficial piece of legislation intended to provide benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. It is enacted with a view to ensuring social welfare and for providing safe insurance cover to employees who were likely to suffer from various physical illnesses during the course of their employment. Such a beneficial piece of legislation has to be construed in its correct perspective so as to fructify the legislative intention underlying its enactment....

9. It will not be out of place for this Court to cite the decision of this Court in The Kumbakonam Milk Supply Cooperative Society Vs. The Regional Director, Employees' State Insurance Corporation, , wherein, in paragraph 11, it has been observed as follows:

The Employees' State Insurance Act is a piece of social welfare legislation enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity and employment injury and also to make provisions for certain other matters incidental thereto. In an enactment of this nature, the endeavour of the Court should be to interpret the provisions liberally in favour of the persons for whose benefit the enactment has been made.

10. Even on the question of exemption from the ESI, the learned Single Judge relying on a decision of this Court in Madras Race Club Vs. The Secretary to Government, Labour and Employment Department, The Employees State Insurance Corporation, Madras Race Club Staff Union and Tamil Nadu Race Club General Employees' Union , rejected the plea of the appellant/Management.

11. As regards the argument of the learned Counsel for the appellant that the Management was not in a position to comply with the provisions of the ESI Act only because of the stay granted in various connected Writ Petitions, it is only to be rejected. The learned Judge has categorically held that the stay order was obtained by the appellant Management on its own volition, but it was a condition, which the appellant must abide by. Therefore, we see no reason to interfere with the said finding.

12. On going through the order passed by the learned Single Judge, it is quite evident that the learned Single Judge, on consideration of the facts and circumstances of the case and by placing reliance upon various decisions of the Hon"ble Supreme Court and the Calcutta High Court as well as this Court, dismissed the Writ Petition.

13. In view of the fact that the Employees' State Insurance Act, 1948 as well as Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are a Social Welfare beneficial legislation, we are of the considered view that the Writ Petition filed by the Appellant/Management is not maintainable in law. We are also of the opinion that the Appellant/Management has no legal or statutory right to thwart the impugned proceedings and as such, the decision of the learned Single Judge does not suffer from any serious material irregularity or patent illegality warranting interference of this Court. We also note that the Central Government Public Sector Undertaking, far from being a model employer, is agitating the matter for over twelve years without any legal basis and it is totally not expected of an institution wholly owned by the Central Government.

Under the above circumstances, we have no hesitation in rejecting the writ appeal and the same shall stand dismissed confirming the order passed by the Learned Single Judge. No costs. Consequently, connected Miscellaneous Petitions are closed.