
(1998) 07 RAJ CK 0004
In the Rajasthan High Court
Case No : C.W.P. No. 2854 of 1987

Maheshwari F.L. and Another

APPELLANT

Vs

Employees' State Insurance Corporation and Another

RESPONDENT

Date of Decision : 29-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 75

Citation : (2000) 1 LLJ 385

Hon'ble Judges : Mohd. Yamin, J

Bench : Single Bench

Advocate : Jitendra Maheshwari, Power of Attorney Holder, for the Appellant;

Final Decision : Dismissed

Judgement

Mohd. Yamin, J.—In the instant writ petition under Article 226 of the Constitution it is alleged that the petitioner No. 1 is a partner in the firm Ergen Plastics Industries, Jodhpur (petitioner No. 2). The firm is a registered partnership firm under the Indian Partnership Act and came into existence on April 29, 1987 by taking over the assets and liabilities of another firm in the same name and style which dissolved owing to the death of one of the partners late Shri H.K. Maheshwari. The petitioner received a notice dated March 1, 1978 from the respondent No. 1 on implementation of the Employees' State Insurance Act, 1948. In the notice it was stated that the factory/establishment falls within the purview of Section 2(12)/1(5) of the Act. w.e.f. December 1, 1977. In case however, subsequent facts reveal that the, factory/ "establishment was coverable from a date prior to the date mentioned above and the petitioner will make himself liable to comply with the provisions of the Act from such earlier date. After that the Employees' State Insurance Inspector has been inspecting the firm and its records every year. Some time during the year 1984-85, the Deputy Director of Employees' State Insurance Company inspected the premises and made an inquiry. During inquiry certain queries were put to Shri Maheshwari

relating to earlier years and there was unhappy exchange of words between the two. On June 29, 1984 the respondent No. 1 wrote to the erstwhile Ergen Plastic Industries demanding production of record for deciding final date of coverage. The letter so written by the Corporation is Anx. 2. Its reply was sent which is Anx. 3 on record. On February 12, 1986 Anx. 4 was received by which it was intimated that the factory was covered finally w.e.f. January 1, 1975. It demanded the petitioner to make compliance w.e.f. November 1, 1975 to November 30, 1977. Thereafter the petitioner received a demand of Rs. 3,254.93 for November, 1975. This amount was not paid and then the petitioner received notice from the respondent No. 2 (Collector, PDR) on January 20, 1987 demanding Rs. 5,470.43 and interest at the rate of 85 paise per day. The petitioner disputed the amount before the respondent No. 2 but the dispute has not been decided. Again the petitioner received a notice Anx. 7 asking him to deposit Rs. 5,420.45 and interest at the rate of 85 paise per day. It is mentioned in para No. 15 of the writ petition that the demand of abovesaid amounts and the notice for taking steps are all illegal and against natural justice. Therefore, it has been prayed that the certificate issued by the respondent No. 1 and the recovery proceedings on its basis be quashed.

2. The respondent No. 1 raised preliminary objection in the reply stating that the petitioner has not availed the remedy available under the provisions of Employees' State Insurance Act, 1948. The petitioner has raised disputed questions of facts which cannot be made subject matter of inquiry in these proceedings. The Employees' State Insurance Act, 1948 provides an adequate machinery for adjudication of the matter. In case the petitioner is not satisfied with the action of the Corporation then he should have filed an application for redressal of his grievances u/s 75(g) of the said Act before the Employees' State Insurance Court which is the right forum under the Act. Then the allegations of the petitioner were refuted and it was prayed that the writ petition may be dismissed with costs.

3. When I heard the matter, nobody was present on behalf of the respondents but the counsel for the respondent No. 1 later on appeared and submitted his arguments in writing which may form part of the record of this file.

4. The first question before me is whether the alternative efficacious remedy is available to the petitioner? The case is at the admission stage and the question can very well be decided at this stage because in L. Hirday Narain Vs. Income Tax Officer, Bareilly, it has been held that after admission of a writ, it will not be rejected on the ground that alternative efficacious remedy under the statute was available to the petitioner Section 75 of the Employees' State Insurance Act, 1948 provides that

"(1) if any question or dispute arises as to-

(a) to (t) xxxxxxxx

(g) any other matter which is in dispute between a principal employer and the

Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation, or between an employee and a principal, or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute shall be decided by the Employees' Insurance Court in accordance with the provisions of the Act."

5. So when there is specific provision about redressal of the grievance of the petitioner u/s 75 (relevant provision of which is quoted above), the petitioner could have availed it. He has not done so. Consequently, when there is efficacious statutory remedy available to the petitioner, he should approach to that authority and the writ jurisdiction cannot be exercised in such a case.

6. Apart from it, notices were issued to the petitioner by the respondent No. 2 and it is settled law of the Apex Court that a writ jurisdiction cannot be exercised against issuance of notices. Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another,

7. In view of above discussion, the writ petition is hereby dismissed with costs which is quantified as Rs. 1,000/-.