

(2014) 10 KL CK 0110
In the High Court Of Kerala
Case No : WP(C). No. 21515 of 2014 (L)

Messrs Scot-Free Steels Ltd.

APPELLANT

Vs

The Deputy Director Employees State Insurance Corporation

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

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

Citation : (2014) 10 KL CK 0110

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : C.M. Nazar and Mansoor B.H, Advocate for the Appellant; T.P.M. Ibrahim Khan, Sr. Standing Counsel and K.M. Abdul Majeed, Standing Counsel, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner is aggrieved by Exhibit P1 and P2 orders, both being dated 13.01.2014, passed under the Employees' State Insurance Act, 1948 [for brevity "ESI Act"]. The petitioner's contentions are two fold; one, that the petitioner was not granted an effective opportunity and the next, that, the quantum of minimum wages could not have been decided by the authorities under the ESI Act.

2. With respect to the 1st contention, it is to be noticed that the orders Exhibits P1 and P2 disclosed that the petitioner received the notices for personal hearing on 29.10.2013 and the authorized officer of the petitioner was heard. On request, adjournment was granted for submission of objections and further hearing, to 29.11.2013. On that day, neither the petitioner nor any representatives were present. The orders are seen passed on 13.01.2014, before which the petitioner obviously did not file any objection to the notice despite having first appeared before the authority. It was only in such circumstances the orders were passed at Exhibits P1 and P2. In such circumstance, the contention with respect to violation of principles of natural justice would fail.

3. As to the question regarding determination of minimum wages under the Minimum Wages Act, 1948 [for brevity "MW Act"], the authority having issued notice to the petitioner and the petitioner having not disclosed very low amounts as wages paid to the workmen and not having filed any objection as to the coverage under the ESI Act, the authority under the ESI Act could only rely on the inspection report and determine wages, which definitely has to be the minimum as provided under the MW Act. If the authority on inspection had found any material which would indicate payment over and above that provided under the MW Act, definitely that could have been taken. Only in such context the authority determined the contributions based on the wages under the MW Act. There could be no fault found in such assessment.

4. The contention that minimum wages would have to be determined only by the authority under the MW Act, cannot be a ground to challenge the instant assessment. A determination under the MW Act would necessarily entail recovery from the employer for the purpose of payment to the employees, as wages. Herein no such determination has been made nor any recovery effected to that end. The minimum wages applicable to the petitioner's industry as notified by the State Government, under the MW Act was adopted to determine the compensation payable under the ESI Act; which is perfectly in order.

5. One other aspect which was specifically pointed out by the learned Standing Counsel appearing for the respondent-Corporation was that, the petitioner had a valid alternate remedy under Section 45AA of the ESI Act. The ESI Act, by the aforesaid provision, specifically provides for sixty days, within which time the aggrieved party has to approach the Appellate Authority and does not confer any power on the Appellate Authority to condone any delay occasioned in approaching the Appellate Authority. The petitioner having not approached the Appellate Authority in time, the petitioner cannot be heard to challenge the said orders in a petition under Article 226 of the Constitution, especially since none of the grounds on which such petition could be entertained, come to fore in the above case. Apposite reference can be made to the Division Bench decisions of this Court in Assistant Commissioner of Central Excise Vs. Krishna Poduval, and Panopharam Vs. Union of India (UOI) and Others to decline jurisdiction under Article 226.

In the above circumstances, the writ petition would stand dismissed; however, leaving open any other remedy available to the petitioner, if permissible under the statute.