(2011) 02 MAD CK 0101

In the Madras High Court

Case No : Writ Petition No. 45431 of 2006

Ponni Sugars (Erode) Ltd. APPELLANT

Vs

The Joint Director, Sub Regional Office (Salem) RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:
Employees State Insurance Act, 1948 — Section 1(3), 1(4), 2(19A)

Citation : (2011) 02 MAD CK 0101

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Perumal, for the Appellant; S. Jayakumari, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner has filed the writ petition seeking to challenge the notice issued by the Respondent ESI dated 09.11.2006.

By the impugned notice, the Petitioner was informed that their factory/establishment was inspected by the Inspector of the ESI and it was found

that it comes within the coverage provided u/s 1(3) and 1(4) of the Act with effect from 01.11.2006. If later it is found, there will be a direction to

pay contribution even for the prior period.

Therefore, the Petitioner was directed to file appropriate declaration to the branch office at Pallipalayam. The Petitioner was also allotted a code

number to facilitate the payment of dues to the ESI Corporation.

2. Notice of motion was ordered in the writ petition on 23.11.2006 and an interim stay was granted for a limited period, which was extended from

time to time. Subsequently, on 06.03.2007, the writ petition was admitted and the interim stay granted already was made absolute. On notice from this Court, the Respondents have filed a counter affidavit dated 03.01.2011.

3. It was the case of the Petitioner that they are having their registered office at Chennai. They own and operate a sugar mill near Erode situated in

the Revenue Village of Odapalli, coming under the Tiruchengode Taluk, Namakkal District. They are having about 357 employees in their sugar

factory. They are manufacturing sugar and it is a seasonal industry. Season for sugar crushing takes place from October of a particular year ending

with September of subsequent year. The number of days the factory operates depends upon the availability of sugarcane in the area, which is

based upon agro climatic conditions. Their factory was established in the year 1984. The company has been advised by the Statutory Auditors that

they were not covered by the provisions of the ESI Act. Out of the total number of 357 workers, 20 persons were drawing salary above Rs.

10,000/- per month and 337 employees are drawing below Rs. 10,000/-. During the financial year 2004-2005, the factory had worked only for

232 days (apprx 8 months) and during the financial year 2005-2006, it worked for 301 days (apprx.10 months). u/s 1(4) of the ESI Act, seasonal

factories are excluded from the coverage. Notwithstanding the same, the Respondent is attempting to cover the factory under the provisions of the

ESI Act and also thrust upon them a code number.

4. The term ''seasonal factory'' is defined u/s 2(19A) of the Act and the same was introduced by Central Act 29 of 1989 with effect from

20.10.1989. Section 2(19A) of the Act reads as follows:

Seasonal factory"", means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning,

cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing

process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding

seven months in a year-

(a) in any process of blending, packing or repacking of tea or coffee; or

(b)in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify;

5. Therefore, in the light of the definition found in the Section, wherein the sugar factories including gur factory were exempted. It was further

argued that in respect of sugar factories, the number of days a factory works is irrelevant and the definition that includes a factory which is engaged

for a period not exceeding seven months in a year will not apply to the sugar factory. In view of the clear expanded definition of the term ''seasonal

factory'' u/s 2(19A) r/w Section 1(4), the Petitioner''s factory at Erode are not covered by the provisions of the Act. Since they are not covered by

the provisions of the Act, the question of raising a dispute before the appropriate ESI Court may not arise.

6. In the counter affidavit, it was contended that the factory had also set up a distillery cum ethanol facility. It also supplies bagasse to private paper

mill. It has got 135 seasonal workers and 238 regular workers. The non-seasonal workers are not engaged in the manufacture of sugar exclusively.

The factory also has a residential colony for 145 workers and even for maintaining the colony, they require workers. They have engaged more than

373 workers not only for manufacturing process but also for other processing work. Since it is registered as a Factory, they are covered by the

provisions of the Act.

7. But however, the Respondents have not disputed about the sugar factory being declared as seasonal factory, thereby automatically excluded

from the provisions of Section 1(4) of the ESI Act. In essence, the contentions raised by the Respondent ESI was that in the light of the expanded

definition of the term seasonal factory found u/s 2(19A) that all factories which are working beyond seven months are covered by the provisions of

the Act. It is an admitted case that sugar factories are seasonal factories and the sugar factories also have other activities like distilleries or

manufacture of ethanol or supply of bagasse. But the essential character of a sugar factory is not lost because ultimately, it is the cane juice

extracted which gives rise to other products either as an additional benefit or by the supply of wastage to other industries.

8. If a sugar factory, only because it works beyond seven months, whether it will be covered by the provisions of the Act is the only question to be

decided. The question raised herein is no longer res integra. The Supreme Court had an occasion to consider the said definition in respect of a

coffee manufactory in Regional Director, Employees'' State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons and Another, . With reference to amendment made by Central Act 44 of 1966, in paragraphs 4 to 7, it was observed as follows:

4. By Amending Act 44 of 1966 which came into force with effect from January 28, 1968, the definition of ''seasonal factory'' has been amended.

The definition as amended reads:

2. (12) * * *

Seasonal factory'' means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning,

cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing

process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding

seven months in a year-

(a) in any process of blending, packing or re-packing of tea or coffee; or

(b) in such other manufacturing process as the Central Government may, by notification in the official Gazette, specify;

The expressions ''manufacturing process'' and ''power'' shall have the meaning respectively assigned to them in the Factories Act, 1948;

5. After the said amendment, the Employees'' State Insurance Corporation called upon the Respondents to pay the contributions payable under the

Act and threatened to take coercive steps to recover the arrears under the Revenue Recovery Act and prosecute them. Challenging the validity of

the demand made, the Respondents approached the Employees'' Insurance Court, inter alia, contending that the amendment to the definition of the

expression ""seasonal factory"" brought out by the Amending Act 44 of 1966 has 8 not altered the position of the seasonal factory as obtained prior

to the amendment and Section 1(4) of the Act would still continue to exclude such factory from the operation of the Act. The Employees''

Insurance Court accepted the Respondent''s plea. The Karnataka High Court has also agreed with the view taken by the Employees'' Insurance

Court. The Corporation has now appealed to this Court.

6. The sole question for consideration is whether the Respondents'' factories in view of the amendment to the definition of ''seasonal factory'' have

lost the benefit of exclusion from the Act. The High Court on this aspect has observed that the purpose of the amendment was to enlarge and not to restrict the statutory concept of ""seasonal factory"" and the position of Respondent''s establishments as seasonal factories under and for the

purpose of the Act remained unaltered even after the amendment.

7. The view taken by the High Court seems to be justified. The Statement of Objects and Reasons of the Bill which later became the Act 44 of

1966 indicates that the proposed amendment was to bring within the scope of the definition of ""seasonal factory"", a factory which works for a

period of not exceeding seven months in a year ""(a) in any process of blending, packing or re-packing of tea or coffee; or (b) in such other

manufacturing process as the Central Government may, by notification in the official Gazette, specify. The amendment therefore, was clearly in

favour of widening the definition of ""seasonal factory"". The amendment is in the nature of expansion of the original definition as it is clear from the

use of the words ""include a factory"". The amendment does not restrict the original definition of ""seasonal factory"" but makes addition thereto by

inclusion. The word ""include"" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of

extension, and not with restriction. The word ''include'' is very generally used in interpretation clauses in order to enlarge the meaning of words or

phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such

things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. [See (i)

Stroud''s Judicial Dictionary, 5th edn. Vol. 3, p. 1263 and (ii) C.I.T. v. Taj Mahal Hotel, (iii) State of Bombay v. Hospital Mazdoor Sabha .

9. These amendment has now further undergone change by the introduction of new definition u/s 2(19A) of the Act as extracted above. The

decision of the Supreme Court in Highland Coffee Works''s case (cited supra) will squarely apply to the case on hand.

10. In the light of the above, the impugned demand notice dated 09.11.2006 is clearly erroneous and the same stands set aside. The writ petition

stands allowed. No costs.

