

(1999) 04 MAD CK 0111

In the Madras High Court

Case No : Writ Petition No. 16333 of 1991 and W.M.P. No. 24585 of 1991

Shalimar Tanning Co.

APPELLANT

Vs

E.S.I. Corporation and Another

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9), 45A

Citation : (2000) 87 FLR 597 : (2000) 2 LLJ 937

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : G. Jawaharlal, for the Appellant; Radha Srinivasan and R. Aruljothi, 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 of the first respondent relating to the impugned order TN/ INS-1/ 51-10534-21, dated January 28, 1991, u/s 45-A of the Employees' State Insurance Act, 1948, seeking to recover the sum of Rs. 67,053 from the petitioner-firm, 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 writ petition as prayed for. Per contra, on behalf of the respondents a counter-affidavit has been filed 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 also 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 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 short facts of the case of the petitioner as seen from the affidavit are as follows: The petitioner is a tanning company and is a registered partnership and also an exporter of finished leathers. The firm has been carrying on business in a humble way with a moderate number of about 30 employees. The establishment is covered under the Employees' State Insurance Act. The firm had been paying contributions to the first respondent-Corporation in accordance with the Employees' State Insurance Act, Rules and Regulations framed thereunder. The firm is submitting returns for the contributions as prescribed by the Employees' State Insurance Regulations regularly. The petitioner-firm received a notice dated January 17, 1989, to the effect that an insurance Inspector of the first respondent visited the petitioner's head office on August 31, 1988, and on verifications of the ledgers for the period 1983-84 to 1986-87, he found that a sum of Rs. 79,601.70 was due as Employees' State Insurance contribution on omitted wages. The respondent-Corporation also asked the petitioner-firm to produce the vouchers relating to the amounts mentioned in the calculation memo for the purpose of arriving at the correct amount of contribution. The first respondent- Corporation issued a show-cause notice dated January 17, 1989, in Form No. C 18 (ad hoc basis) requiring the petitioner-firm to show cause, upon the determination of a sum of Rs. 79,601.70 for certain contributions said to be levied on omitted wages as mentioned in the enclosed memo of calculation. Against the show-cause notice the petitioner-firm made representations before the officers of the first respondent-Corporation and the petitioner- firm objected to the levy on the ground that the work during the said period was very irregular; the petitioner was employing very few workers on temporary basis depending on each day's work; that the Employees' State Insurance contributions were not deducted out of the wages for temporary, casual and irregular employees. The petitioner-firm further represented that only from regular employees contributions were collected and paid. They further represented that the Employees' State Insurance contributions pertained to the period when the management of the petitioner- firm was different, its financial conditions then was precarious. The firm has started in a humble manner and that the proposed levy would paralyse the business of the firm. The petitioner-firm also submitted explanations dated October 24, 1989, December 7, 1989, June 19, 1990, June 29, 1990 and July 10, 1990, in which the petitioner-firm categorically stated their explanation under the various heads. The petitioner-firm had paid the Employees' State Insurance contributions for all the heads under which they were statutorily liable. But in spite of written representations made by the petitioner-firm, the first respondent-Corporation, instead of waiving

the amount, made the calculations in an arbitrary manner and levied the contribution of Rs. 67,053. The first respondent in their impugned order dated January 28, 1991, have arrived at this figure of Rs. 67,053 as recoverable contribution for the period 1983-84 to 1986-87. The first respondent-Corporation has arrived at such calculations without taking into consideration the correct principles of law. The first respondent-Corporation accepted the explanation of the petitioner-firm, regarding the cartage, shipping charges and packing charges, labour in general, expenses and job work charges. On the heads repair and maintenance, the first respondent levied 25 per cent of the expenditure as one time measure. They did not accept the contentions of the petitioner upon the bonus also. They arrived at the contributions of Rs. 67,053 in an arbitrary manner. The petitioner-firm was not informed about the details as to how they arrived at the said contributions. The first respondent has also informed the second respondent by his letter dated March 14, 1991, claiming the amount of Rs. 67,053 to be recovered from the petitioner u/s 5 of the Revenue Recovery Act. On the basis of the recovery certificate, the second respondent is threatening to take coercive steps under the Revenue Recovery Act by distraint of movables belonging to the petitioner-firm. Therefore, it is contended by the petitioner that the impugned order dated January 28, 1991, is liable to be quashed because the same is against the law, violative of the principles of natural justice and against the fundamental rights of the partners of the petitioner-firm. Hence, these writ petitions.

6. The impugned order is challenged by the petitioner herein on the ground that the first respondent can invoke the jurisdiction to pass an order u/s 45-A of the Act only when the establishment has not submitted any return particulars, registers or records in accordance with the provisions of Section 44 or when any Inspector or the officials of the Corporation are prevented in any manner in exercising their functions u/s 45. But admittedly, the petitioner-firm had paid the contributions for all the years for which the contributions on omitted wages are levied. The contributions are paid in accordance with the returns filed under Regulation No. 26. Therefore, this is not a case of no return or that the Inspector was prevented in the exercise of the functions. Therefore, the pre-conditions mentioned in Section 45-A is not satisfied. Therefore, the Corporation does not have the jurisdiction to invoke Section 45-A for passing the impugned order. Therefore, the order of the first respondent u/s 45-A is without jurisdiction. Inter alia, it is also contended by the petitioner herein that in the year 1989, the first respondent cannot ask for the old records pertaining to the year 1983 to 1987, at a belated stage. The first respondent asking for accounts, vouchers supporting records after a long time to levy Employees' State Insurance contributions upon omitted wages is only a harassment. According to the petitioners, the maintenance and repairs were carried out only by self-employed persons and the petitioner-firm did not have administrative control over such persons. Therefore, the levy upon 25 per cent of the assumed wages for repairs and maintenance is unsustainable. It is also contended by the petitioner that the regional director

ought to have considered as to whether the persons who were engaged for the repairs and maintenance are employees of the establishment, that the Corporation was obliged to pass a speaking order, communicating as to how they had determined the amount. It is also stated by the petitioner that the determination of contribution u/s 45-A of the Act is a quasi-judicial act, that being so, the principles of natural justice have to be adhered to. Whereas, according to the petitioner, no oral enquiry was held and no opportunity was given to explain the circumstances as to how the petitioner was not liable to pay the contribution. That apart, the enquiry was only cursory and self-serving.

7. Per contra, it is contended by the respondents that only on the basis of the report submitted by the Inspector, the first respondent issued a letter dated January 17, 1989, informing that a further contribution of Rs. 79,601.70 was due from the petitioner-firm for the period from 1983-84 to 1986-87. The petitioner was given the opportunity of personal hearing on February 14, 1989, to represent his case with the necessary documents. Finally, taking into account the contents of the petitioner's letter dated October 24, 1989, and also the objection raised by the petitioner, the quantum of the contribution claim, vide Form No. C-18, dated January 17, 1989, was fixed at Rs. 67,053. This was followed by the notice, in Form C-19, dated March 5, 1991, addressed to the Collector, Vellore, N.A.A. District for recovery under the Revenue Recovery Act. According to the respondents, the contribution of Rs. 79,601.70 is claimed on various items of omitted wages as per the figures found in general ledgers for the period from 1983-84 to 1986-87. It is the categoric contention of the respondents that the term "employee" as defined in Section 2(9) of the Act, includes regular employee, temporary or casual employee, and employed through the immediate employer, etc., for the purpose of contribution as well as for the payment of various benefits under the Act, and, that, therefore, the contention of the petitioner that only from regular employee, contributions were collected and paid, is against the letter and spirit of the Act and is unsustainable under the statute. It is the case of the respondent that the contention of the petitioner that they had paid the Employees' State Insurance contribution under all the heads, for which they were statutorily liable, is not correct and contrary to facts. They themselves have accepted that they have paid contribution in respect of regular employees and not in respect of casual, temporary and other employees who are also classified as "employees" u/s 2(9) of the Act, by virtue of which contribution is payable in respect thereof. According to the respondents, the amount of contribution has been arrived at in a scientific manner in accordance with the provisions of the Act, which is as per the principles of law. It is the case of the respondents that the impugned order had reduced the amount of contribution from Rs. 79,601.70, as proposed in Form No. C-18, dated January 17, 1989, after considering the contention of the petitioner's letter dated October 24, 1989, and also, after verifying the bills and vouchers produced by the petitioner at the time of personal hearing on June 29, 1990, and July 10, 1990. Hence, there is no violation of the principles of natural justice. It is also contended by

the respondents, that the petitioner has not exhausted the remedy available u/s 75(2) of the Act, viz. approaching, the Employees' Insurance Court. Further, it is also contended by the respondents that the impugned order dated January 28, 1991, of the respondent-Corporation determining the amount of contribution as Rs. 67,053 is legal, valid and is as per the provisions of the Act, and that, therefore, there is no merit in the petition and hence is liable to be dismissed.

8. Having seen the entire material available on record and in the facts and circumstances of this case and also from the claim and counter-claim made by the parties herein, it is clear that the only grievance of the petitioner herein, is that the respondents have illegally made the impugned order dated January 28, 1991, u/s 45-A of the Employees' State Insurance Act, seeking to recover a sum of Rs. 67,053 from him. It is not in dispute that the respondents sought to levy the Employees' State Insurance contribution upon omitted wages in a sum of Rs. 79,601.70. Herein, it is significant to note that only on the basis of a report submitted by the Inspector, the first respondent issued a letter dated January 17, 1989, informing that a further contribution of Rs. 79,601.70 was due from the petitioner-firm for the period from 1983-84 to 1986-87. That apart, the petitioner was given opportunity of personal hearing on February 14, 1989, to represent his case with the necessary documents. Finally, taking into account the contents of the petitioner's letter dated October 24, 1989, and also the objection raised by the petitioner on June 29, 1990, and July 10, 1990, the quantum of contribution claim, vide Form No. C-18 dated January 17, 1989, was fixed at Rs. 67,053. It is also important to note that the quantum of contribution for the years 1983-84 to 1985-86 was revived on the basis of the entries in the general ledgers of the petitioner-firm. Further, another important aspect in this case is that the petitioner himself has accepted that they have paid contribution in respect of regular employees and not in respect of casual, temporary and other employees who are also classified as "employees" u/s 2(9) of the Act, by virtue of which, contribution is payable in respect of them. Therefore, it is contended by the respondents that the amount of contribution has been arrived at in a scientific manner in accordance with the provisions of the Act, which is as per the principles of law. In this regard, it is significant to note that only after examining the contention of the petitioner in their letter dated October 24, 1989, and after examining the bills/vouchers produced by the petitioner for verification during the personal hearing on June 29, 1990, and July 10, 1990, the respondent-Corporation reduced the amount of contribution payable on the omitted wages to Rs. 67,053 and passed order dated January 28, 1991, u/s 45-A of the Act, which was duly served on the petitioner-firm through registered post with acknowledgment due. The petitioner failed to comply with Section 45-A order, and hence, the respondent-Corporation issued order in Form No. C-19, dated March 14, 1991, addressed to the District Collector for recovery of the said amount under the Revenue Recovery Act. Therefore, in the above circumstances, I am of the clear view that there is every force in the above contentions of the respondents. Further, it is significant to note that the petitioner-firm has not sent

the returns in Form No. 6 in respect of the various categories of employees who are coverable under the Act. Further, the records go to show that the petitioner alone was reluctant to produce the records and deliberately avoided verification and consequent finding of omission, if any. Therefore, in such circumstances, it is rightly contended by the respondents that the contention of the petitioner herein that the first respondent cannot ask for the old records pertaining to the years 1983 to 1987 at a belated stage, is, far from truth and it clearly shows that dilatory tactics adopted by the petitioner. Therefore, I am of the view that the action of the respondent was not harassment, arbitrary and violative of the principles of natural justice, as alleged by the petitioner herein. Therefore, from all the above aspects, it is made clear that the impugned order is in accordance with the law and that the petitioner was given reasonable and sufficient opportunities. Further, the points raised in its letter dated December 7, 1989, was also duly considered and hence the impugned order was not arbitrary or in violation of the principles of natural justice, but at the same time, in compliance of the principles of natural justice and in due observance of the provisions of law and procedure, contemplated in the statute.

9. Therefore, for all the aforesaid reasons and in the facts and circumstances of this 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 his favour, and, that, therefore, there is no need to interfere with the order impugned in this writ petition. Thus, the writ petition fails and the same is liable to be dismissed for want of merits.

10. In the result, the writ petition is dismissed. No costs. Consequently, W.M.P. No. 24585 of 1991 also is dismissed.