(2010) 08 RAJ CK 0034

In the Rajasthan High Court

Shivam Enterprises APPELLANT

Vs

Employees State Ins. Corp. and Another RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 75, 75(1), 77

Citation : (2011) 1 LLJ 165

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Matter has come up on 2nd stay application. At joint request, matter was finally heard and is being disposed of at admission stage.

2. Instant petition has been filed assailing notices dt. 17/09/2009 (Ann. 6 & 7) whereby petitioner-Firm has been directed to pay contribution in terms of the Employees State Insurance Act, 1948 ("ESI Act"). It appears from the record that petitioner-Firm is duly registered under Rajasthan Shop & Commercial Establishment Act, 1958. Officers of respondents-Corporation conducted survey of petitioner-Firm and taking note whereof, their records were examined and thereafter notices dt. 17/09/2009 (Ann. 6 & 7) were served and after taking note of objections made by petitioner Firm, respondents finally held that the Act is applicable and petitioner Firm is liable to pay contribution payable under ESI Act.

3. Counsel for petitioner submits that after notice was served on 14/12/2004, impugned notice was served after almost five years on 17/09/2009 and without having considered their objections raised it has been held that the that provisions of the ESI Act are applicable, and petitioner-Firm is under legal obligation to be pay the contribution. Counsel further submits that u/s 75 of ESI Act, cause of action for initiating proceedings in terms of Sub-section 1(b) of Section 77 commenced and accrued from the date of issuing notices and since in the instant case, claim qua petitioner-Firm for payment of contribution has been raised by

respondents only vide notices impugned dt. 16/09/2009, as such respondents cannot be held to be justified in directing for contribution prior thereto and such action of respondents is in clear violation of the Scheme of ESI Act.

4. Per contra, Counsel for respondents submits that after the matter having been decided by respondents under the ESI Act, petitioner Firm is under legal obligation to pay its contribution and if at all employer is aggrieved by decision of the Corporation, the statute, itself provides mechanism of filing appeal u/s 75 of ESI Act before Employee''s Insurance Court and the present dispute raised by petitioner-Firm is covered by Sub-section 1 of Section 75; in such circumstances in view of effective statutory remedy available to petitioner-Firm, this Court may not like to interfere at this stage.

5. Section 75 of ESI Act, 1948 takes note of matters for being decided by ESI Court and that apart, disputes provided u/s 75(1) covers all disputes between a principal employer and the Corporation or between an employee, as well. Taking note whereof, in the opinion of this Court, disputes having been raised herein is covered u/s 75 of ESI Act and it is always open for petitioner Firm to raise all such objections under law for espousing its grievance before ESI Court including applicability of the Act.

6. In view of statutory remedy available to petitioner-Firm u/s 75 of ESI Act, this Court is not inclined to entertain the petition at this stage in exercise of jurisdiction Under Article 226 of the Constitution.

7. Counsel for petitioner lastly submits that some time may be granted to avail of remedy u/s 75 of ESI Act because if respondents initiate proceedings for recovery, it would cause prejudice.

8. Consequently, writ petition fails and is hereby dismissed. However, petitioner will be at liberty to avail of remedy under the law within one month and in the meanwhile respondents are restrained from taking any further prejudicial action pursuant to order/ notices impugned for a period of one month and if petitioner Firm fails to file appeal as observed (supra), respondents will be at liberty to proceed further against petitioner in accordance with law. No costs.