

(2001) 01 MAD CK 0023
In the Madras High Court
Case No : C.M.A No. 1050 of 1992

Sree Sivakami Mills Ltd.

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 17-01-2001

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(22)

Citation : (2001) 1 LLJ 1512

Hon'ble Judges : A. Subbulakshmy, J

Bench : Single Bench

Advocate : S. Ravindran, for the Appellant; Radha Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

Ms. A. Subbulakshmi, J.—This appeal is filed against the order, dated April 22, 1992 passed by the Second Additional District Judge,

Madurai, in E.S.I.O.P No. 37 of 1988.

2. The petitioner/appellant filed a petition u/s 75 of the Employees' State Insurance Act for a declaration that the ex gratia payment made by the

petitioner were not wages and the order passed by the respondent, dated August 12, 1988, is null and void. The petitioner, employer is a

proprietor of a mill, carrying on Business in manufacturing cotton yarn. The mill is already covered under the provisions of the Employees' State

Insurance Act and they are paying the contributions regularly. They are maintaining relevant records as stipulated under the Act. The Corporation

issued show-cause notice calling upon the petitioner to pay contribution on certain alleged omitted wages for the period 1985 to 1987, a sum of Rs

3,49,078.21.

3. The respondent contended that only after due enquiry and considering the materials available and objections, an order was passed, determining the contribution. Against that order, the petitioner had filed OP No. 37 of 1988 in the District Court, Madurai, and the District Court, Madurai, passed an order allowing the petition in part and modified the order of the respondent-Corporation, holding that the petitioner is liable to pay the contribution of Rs. 1,40,594. Aggrieved by that order, the petitioner/appellant filed this appeal.

4. In the District Court, the appellant/petitioner succeeded only in respect of terms (3) and (4). Rest of the items are challenged in this appeal. Item (1) relates to the difference in wages. Learned counsel for the appellant states that he has not produced any materials in respect of this item and he is not challenging the order of the trial Court in respect of this item. So, in respect of this item, the order of the lower Court is confirmed.

5. In respect of item (2), which relates to interim relief paid to the workers amounting to Rs. 6,86,746.91. During 1985, there was dispute

between the management and the workers for enhancement of wages. The Government referred the dispute to the Special Industrial Tribunal and

the petitioner-mill is also a party in that. While so, the dispute is pending before the Tribunal, the Government of Tamil Nadu issued two G.Os., u/s

10(3) of the Industrial Disputes Act Exhibits P2 and P3, and the management was directed to pay a lump sum amount of Rs. 500 and Rs. 75

monthly to the permanent and badli workers and the management was also directed to pay a lump sum of Rs. 260 and 65 per month to other than

permanent and badli workers, i.e.. temporary workers. Accordingly, the petitioner-mill paid interim relief from July 1985 to June 1987. The lower

Court has found that it is seen from Exhibit P4 that a settlement has been entered into by the management as well as the representatives of the

union to treat the interim relief amount as ex gratia and they should be written off. Only in pursuance of the settlement, the Special Industrial

Tribunal gave their seal of approval and passed an award accordingly and the Court suo motu did not pass any award to treat the interim relief

amount as ex gratia one and so, the interim relief payments made to the workers are also wages as defined u/s 2(22) of the Employees' State

Insurance Act. Learned counsel for the appellant has submitted that the interim relief amount paid to the workers are not wages and it is only ex

gratia amount and so there is no need to pay the contribution. He relied on the decisions of this Court reported in Gnanambika Mills Ltd. Vs. The

Director General, Employees State Insurance Corporation and Another, and in Coimbatore Pioneer Mills Ltd., v. Regional Director (Tamil Nadu)

Employees" State Insurance Corporation, Madras 1999 III LLJ (Suppl) 1236 (Mad). In both decisions cited, this Court has held that the interim

relief paid to employees pursuant to Government order u/s 10(3) of Industrial Disputes Act, which under a settlement between the employees and

management it has been specifically agreed that the said interim payments made were to be treated ex gratia and they do not call for contribution

under the Employees" State Insurance Act. In the light of the decisions cited supra, I hold that the interim relief, paid to the workers under item (2)

are only ex gratia payment and they do not call for the contribution under the Employees" State Insurance Act and the order passed by the District

Court in respect of item (2) is liable to be set aside and the same is set aside.

6. Item (5) relates to the wages paid to the building workers. It is found that the omitted wages comes to Rs. 1,12,020.25 and so the appellant is

liable to pay contribution in respect of item (5). Learned counsel for the appellant has submitted that this amount of 1,12,020.25 is not the wages

exclusively paid to the workers and this amount also includes the cost of machinery, and other materials and so the entire amount of Rs.

1,12,020.25 does not come under the wages and the appellant is not liable to pay contribution for the entire amount. He also fairly conceded that

no material is available to substantiate his contention with regard to the cost of machinery and other materials and he further stated that in case of

non-submission of many particulars with regard to the purchase of materials and machineries, 75 per cent deduction can be given in respect of

those items and 25 per cent can be taken as wages in the light of the guidelines issued by the department. Learned counsel, for the respondent also

conceded that there is such guidelines issued by the department stating that if any breakup figures are not given for the materials and wages, 25 per

cent of the total amount can be treated as wages. In the light of submissions made by both parties, I hold that out of the amount of Rs. 1,12,020.25

only 25 per cent can be taken as wages and the appellant is liable to pay contribution for this 25 per cent of Rs. 1,12,020.25 in respect of item (5).

7. In respect of item (6) relates to the wages paid to the temporary workers and employees called apprentices. But the payments made to them were debited under repairs for the machinery. The District Court found that the admission of P.W. 1 establishes that temporary workers were taken by the Mill authorities in the name of apprentices and the amounts paid to them only represent wages and no separate registers were maintained by the mill in respect of the alleged apprentices and if really, there were apprentices and only stipends were paid to them naturally, the mill authorities would have maintained separate registers under the head stipend, but curiously, these amounts were shown as wages paid to the temporary workers and they were debited under repairs to the machinery and these things clearly indicates that only for the purpose of avoiding the Employees' State Insurance contribution, the mill authorities had described these amounts as paid to the apprentices. So the lower Court held that the amount paid to the apprentices are also wages paid to the temporary workers and liable to pay contribution, accordingly, the finding of the District Court is perfectly in order and it does not warrant any interference by this Court, and the same is confirmed.

8. Item (7) relates to the garden maintenance coolies, A sum of Rs. 28,339.40 has been paid as wages. The mill is having a garden and they are paying the charges for the purpose of maintenance of garden. The District Court has found that in the accounts, it is clearly written as garden maintenance coolie and hence naturally the gardeners should have been separately employed and the gardeners are also entitled to avail the benefit under the Employees' State Insurance Scheme and as such the petitioner is entitled to pay contribution in respect of the same. The binding of the District Court is sustainable and it does not warrant any interference by this Court and the same is confirmed.

9. In the result, the appeal is allowed in respect of item (2) and partly allowed in respect of item (5) to the extent stated above. In respect of other items, the appeal is dismissed. No costs.