

The Management Vs. The Joint Commissioner of Labour

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Court : Chennai

Decided On : Dec-11-2014

Judge : D.Hariparanthaman

Appellant : The Management

Respondent : The Joint Commissioner of Labour

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

14. 08.2009 CORAM: THE HONOURABLE MR. JUSTICE T. RAJA WP.NO.19342 Of 2004 Magnum Polymers (India) Ltd., Rep. by its Managing Partner, S.Bhavani Dass, F-38, Sipcot Industrial Complex, Gumudipoondi, Tamil Nadu-601 201. .. Petitioner Vs. 1.The Regional Director, Regional office (Tamil Nadu), Employee State Insurance Corporation, 143, Sterling Road, Chennai 600 034. 2.The Recovery Officer, Employee State Insurance Corporation, 143, Sterling Road, Chennai 600 034 3.The Inspector, Employees State Insurance, Corporation, Red Hills Division, Chennai 600 052. .. Respondents Prayer : Writ Petition is filed under article 226 of the Constitution of India praying to issuance of Writ of Mandamus directing the respondents from collecting payment towards Employees State Insurance Corporation from the petitioner till the proceedings before the B.I.f.R. New Delhi are disposed off. For Petitioner : M/s.B.S.Sundaramoorthi. For Respondent : M/s.K.C.Ramalingam for R1 to R3. ORDER The writ petition is filed under article 226 of the Constitution of India seeking a prayer for issuance of Writ

of Mandamus directing the respondents to make payment towards employees State Insurance Corporation from the petitioner till the petition renewed or disposed of.

2. The petitioner Magnum Polymers (India) Ltd., representing by its Managing Director is carrying on the business in manufacturing of Plastic woven sacks and the registered office comes under the provision of employees state Insurance Corporation.

3. It is further stated that the petitioner has been regularly paying Employee State Insurance's contribution to its workers working in the said company from June 1997, in view of the global recession, the petitioner became a sick unit and the company under lockout, therefore, the petitioner was unable to run the company. Subsequently, the petitioner's company has also made reference to the Board of Industrial and Financial Reconstruction for revival of the company in the reference made by the petitioner in case number 344/2003 and same is pending for consideration before the B.I.F.R.

4. During the pendency of the matter before the B.I.F.R. Proceedings, the second respondents herein/the recovery officer Employee State Insurance Corporation, has been sending notices dated 16.04.2004, 19.04.2004, 14.05.2004, 20.05.2004, and 16.06.2004 calling upon the petitioner company to pay the sum of money, stated in the notices, towards Employee State Insurance contribution, failing which the notices informed; 'an attachment proceedings would be initiated against the petitioner'. Thought the petitioner company already became sick unit and it is waiting for revival scheme from the B.I.F.R. Wherein the petitioners case is also pending for consideration, notices issued by the second respondent claiming of E.S.I. contribution to its employees are contended as arbitrary. Therefore, afraid of further coercive action at the hands of the second respondent, the petitioner is constrained to file the present writ petition under Article 226 of the Constitution of India seeking an order of interim injunction from the restraining the respondents from collecting the payments towards E.S.I.contribution from the petitioner till the disposal of the matter by the B.I.F.R.

5. On the other hand learned counsel appearing for the petitioner submitted that it is the settled law that the payment of E.S.I. contribution to the employees working in the petitioners company are mandatory since these dues are all compulsorily payable, whether or not the company is a sick unit, because the E.S.I. contribution constituted an intrinsic part of the employees' right to live, under Article 21 of the Constitution of India.

6. In respect of his submissions, learned counsel relied upon the judgment of Bombay High Court reported in 2001 LAB I.C. 280 [Ralliwolf Ltd., V. The Regional Provident Fund Commissioner, Thane and others], wherein it is held the Provident Fund and other dues under the statutory entitlements, are part of legitimate statutory employment of the workers. Employer is obligated to pay the contribution of the employees as well as his own contribution to the fund which is set up under the Act. The contribution of the employees is in fact, a deduction from the wages which are due and payable to the employees. The deduction which is made from the wages is required to be deposited into the fund by the employer. These contribution belong to the employees and the employees are entitled to those contribution they can draw upon even while they are in service for meeting the unforeseen eventualities and exigencies that may arise in the life of a employee. These contributions slowly would constitute an important measure of social security to the employee and his family in times of crises. The circumstances in which withdrawals and even advances can be given to an employee in service are specified in the scheme. No industrial undertaking can work or operate without the work which is rendered by the employees. No work can be demanded save and except for payment of wages and other statutory benefit. The payment of Provident Fund dues to the fund, therefore, stands on the same footing as the payment of wages which is due to employees. That is an entitlement to which the employees are entitled by dint of the work which they have put in.

7. Another full bench judgment of this court reported in 2006 (4) LLN441[Gowri Spinning Mills (Private), Ltd., (rep by its Managing Director) Dharmapuri V. Assistant Provident Fund Commissioner, Salem and another]. has held that the employer is obligated to pay the contribution of the employees as well as his contribution to the fund, which is set up under the Act, and the scheme framed

thereunder. The employees' contribution is required to be paid into the fund by the employer within the stipulated period. These amounts whether by way of contribution of the employee, or the contribution of the employer are moneys which belong to the employee. An account which is required to be maintained in the name of each member of the provident fund, contains contribution of the employee, the employer as well as the interest which has been credited.

8. In view of the above settled legal position this court is of the considered view, that the present writ petition does not deserve acceptance. Accordingly the same is dismissed. No costs. tsh To 1.The Regional Director, Regional office (Tamil Nadu), Employee State Insurance Corporation, 143, Sterling Road, Chennai 600 034. 2.The Recovery Officer, Employee State Insurance Corporation, 143, Sterling Road, Chennai 600 034 3.The Inspector, Employees State Insurance, Corporation, Red Hills Division, Chennai 600 052

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