

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.8821 OF 2009

ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the 2nd respondent in issuing the impugned attachment order No.52.Q/1124-56, dated 18.03.2009, attaching the bank accounts of the petitioner company lying with the 3rd respondent, as illegal and arbitrary.

The case of the petitioner is that since the financial position of the petitioner company is critical and it went into losses, it was finally referred to BIFR in the year 2001, as such, the petitioner company was failed to pay the arrears due towards employer contribution to the ESI Corporation. It is also stated that the petitioner company paid its contribution to the ESI Corporation upto January 2006 and since then it is not in a position to pay the employer contribution for want of funds. However, the employees contribution is being regularly paid, as and when the salaries are paid to the employees. It is also stated that even the salaries of the regular staff are being released once in a year by the Government of India as non-plan loan and the employees are last paid with their salaries in the month of May 2008 and till date no salaries are paid to any employee in the company. It is further submitted that the arrears in question are only in respect of casual employees engaged in the petitioner company, that too it is the employer contribution which is due. While so, the 1st respondent has issued notices during this default period and immediately the petitioner company submitted reply on 17.03.2009, 18.09.2008, 25.06.2008 and 01.08.2008 stating that the petitioner company's production activities have been suspended since long due to lack of working capital and requested not to take any coercive steps for recovery of the arrears. In spite of the same, the 2nd respondent issued the impugned attachment order No.52.Q/1124-56, dated 18.03.2009 attaching the bank accounts of the petitioner company which are in operation with the 3rd respondent bank. Aggrieved by the same present writ

petition is filed.

Since this Court on 29.04.2009 granted interim suspension of the impugned order, the respondent Corporation filed vacate petition along with the counter stating that since an amount of Rs.21,40,967/- was due from the petitioner company towards contribution and interest, recovery proceedings were issued and the amount was recovered by the respondent Corporation and as such the matter has become infructuous. It is also stated that the dues payable under the ESI Act are statutory and the Act imposes an obligation on the employer to pay the said dues within the time fixed under the Act.

Learned counsel for the petitioner submits that the respondent Corporation has recovered more amount than the actual due amount which is payable by the petitioner company. He further submits that when the petitioner company is already referred to BIFR and when the rehabilitation scheme is under preparation, the respondents should not have recovered the amount and issued the impugned proceedings.

On the other hand Sri B.J.Ravinder, learned counsel appearing for the respondent Corporation submits that against the impugned proceedings dated 18.03.2009, the petitioner has alternative remedy of appeal under Section 75 of the Employees' State Insurance Act, 1948 (*for short 'the Act'*). In spite of the same, petitioner straight away approached this Court and on that ground itself the writ petition cannot be entertained.

The aspect that the petitioner has alternative remedy against the impugned proceedings is not disputed by the learned counsel for the petitioner. The ground on which the writ petition has been filed is that since the petitioner company became sick it was referred to BIFR, as such it is not in a position to pay the arrears due to the respondent Corporation. But, no proceedings were placed before this Court showing that the petitioner company is referred to the BIFR. Further, the petitioner has not questioned the jurisdiction of the respondent Corporation in issuing the impugned proceedings nor it is

questioned on ground of violation of principles of natural justice. The petitioner also admitted the fact that due to lack of funds it could not pay the contributions to the Corporation. In view of the above I do not see any ground to entertain the writ petition bypassing the alternative remedy available to the petitioner under Section 75 of the Act and the same liable to be dismissed.

Accordingly, the writ petition is dismissed. Since the petitioner is under the impression that the respondent Corporation recovered more amount than what is exactly payable by the petitioner Company, it is open for the petitioner to make an application before the Corporation and on such application being filed, the Corporation may consider the same and pass appropriate orders thereon. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the contempt case, shall stand closed.

A.RAJASHEKER REDDY, J

09.06.2015

t k