

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos.8864, 8874, 8966 OF 2009
AND 16763 OF 2010

COMMON ORDER:

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Taking W.P.No.8864 of 2009 as lead petition, these batch of Writ Petitions are disposed of by this common order.

W.P.No.8864 of 2009 is filed seeking 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 was critical and sustained losses, it was finally referred to BIFR in the year 2001, as such, the petitioner company failed to pay the arrears due towards employer's 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's 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 issued notices during this default period and immediately the petitioner company submitted replies 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 time, 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, the present writ petition is filed.

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.G.Ravinder Reddy, 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, and as such it is not in a position to pay the arrears due to the respondent Corporation. But, no proceedings are placed before this Court showing that the petitioner company was referred to the BIFR. Further, the petitioner has not questioned the jurisdiction of the respondent Corporation in issuing the impugned proceedings nor it questioned on the 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 see no grounds to entertain the writ petitions by passing the alternative remedy available to the petitioner under Section 75 of the Act.

Accordingly, the Writ Petition is disposed of leaving it open to the petitioner to avail remedy available under law. No costs.

Consequently, the Miscellaneous Petitions, if any, pending in these Writ Petitions shall stand closed.

08.12.2015
vnb

JUSTICE C. PRAVEEN KUMAR