

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10..08..2016

C O R A M

The Hon'ble Mr. SANJAY KISHAN KAUL, CHIEF JUSTICE
and

The Hon'ble Mrs. Justice R.MAHADEVAN

Writ Appeal No.892 of 2009

The Madras Race Club
represented by its Secretary
Mr.Dharmasena Ebinezer
Guindy, Chennai ... Appellant / Petitioner

Versus

1.The Secretary to Government
Labour and Employment Department,
Government of Tamil Nadu
Fort St.George,
Chennai 600 009.

2.Employees State Insurance Corporation
represented by its Regional Director,
No.143, Sterling Road,
Nungambakkam, Chennai 600 034.

3.The Madras Race Club Staff Union,
represented by its Secretary
No.170 A, SIDCO Nagar,
Villivakkam, Chennai 600 049.

4.Tamil Nadu Race Club General
Employees Union (Regn No.1650/MDS)
No.18, K.V.Koil Street,
Alandur, Chennai 600 016.
represented by its General Secretary
(R.3 an R.4 are impleaded as
per the order of Court dated 03.01.2000
in WMP.No.27232 of 1999) ... Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 26.11.2008 made in W.P.No.17364 of 1999.

Prayer in W.P.No.17364 of 99:

Petition filed under Article 226 of the Constitution of India Praying for the issuance of a Writ of Certiorarified Mandamus calling for the records comprised in Lr.No.MS.78, dated 11.6.99 of the first respondent and quash the same as illegal and consequently direct the first respondent to grant exemption under sections 87 and 90 of the Employees State Insurance Act, 1948.

For Appellants: Mr.Rahul Balaji

For Respondents: Mr.T.N.Rajagopalan

Special Government Pleader for R.1

Mr.S.Jayakumari for R.2

J U D G M E N T

(Judgment of the Court was delivered by the Honourable The Chief Justice)

We have heard the learned counsel for the parties.

2. Learned counsel for the appellants states that the matter is on a much narrower campus, as the appellant is paying ESI from 2005, a position not disputed by the learned counsel for the department. However, the issue remains of the ESI dues which may be payable for the period 1985 to 2005.

3. In the aforesaid context, learned counsel for the appellant states that if the authorities want to recover any amount of ESI for that period, a notice may be given to them so that they can reply to it factually. He submits that this is all the more relevant in view of the pronouncement of the Hon'ble Supreme Court of India in Employees' State Insurance Corporation and others vs. Jardine Henderson Staff Association and Others reported in (2006) 6 SCC 581, which laid down that where ESI facilities are not availed of, and alternative medical facilities are provided by the employer in lieu of non-deduction of ESI contributions, pending challenge to the ESI notification, payment of contribution for such past period may not be required, depending on the facts of each case.

4. In view of the aforesaid, the following directions are issued:

- (i) ESI Corporation to take a decision whether they want to claim any amount against the appellant

for the period 1985 to 2005, especially keeping in mind the observation made in Employees' State Insurance Corporation's and others stated supra.

(ii) The aforesaid decision be taken within a maximum period of two months from the date of receipt of a copy of this order and communicated to the appellant accordingly.

5. In case the ESI Corporation chooses to make recovery of any amount, notice may be given to the appellant with adequate opportunity to respond to the same.

6. The appeal accordingly stands disposed of in the aforesaid terms, leaving the parties to bear their own costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Labour and Employment Department,
Government of Tamil Nadu,
Fort St.George, Chennai 600 009.

2.Employees State Insurance Corporation
represented by its Regional Director,
No.143, Sterling Road, Nungambakkam,
Chennai 600 034.

+1cc to Mr.S.Jeyakumari, Advocate Sr.46014

+1cc to the Government Pleader Sr.46432

W.A. No.892 of 2009

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srg 31/08/2016