HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.983 of 2011

Date :26.7.2016

Between :

M/s. Guntur District Milk Producers Mutually Aided Cooperative Union Ltd

Rep by its Labour Welfare Officer,
T Muralidhar R/o Vadlamudi, Guntur district

Petitioner

And

The Assistant Director,
Employees State Insurance Corporation,
Padmanabha Buildings, Gandhinagar
Vijayawada, Krishna District – 520003 and another

Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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ORAL ORDER:

Petitioner not only engages the regular employees but also resort to engagement of employees on casual basis and on contract basis. In terms of the Provisions of Employees State Insurance Corporation Act, 1948 (for short the Act) petitioner is liable to make contributions under the Act for the employees engaged by the petitioner regularly, contractual as well as daily wage. Petitioner was persuading the Government to grant exemption from making contributions under the Act. By orders in G.O. Rt No. 61 Labour, Employment Training and Factories (IMS) Department dated 7.1.2005, the Government initially granted exemption from making contributions under the Act towards regular employees of the petitioner institution for the period from 1.1.2001 to 31.12.2001, by further orders issued in G.O. Rt No. 588 dated 15.3.2008 exemption was extended to all employees from 1.1.2002 to 31.12.2007.

2. As noticed above, in terms of the exemptions granted by the Government, petitioner is not required to make contribution to regular employees for the period from 1.1.2001 to 31.12.2001 and for regular employees as well as other categories of employees from 1.1.2002 to 31.12.2007. Thus, petitioner still required to make contributions under the Act for the employees engaged on contractual as well as casual basis for the period from 1.1.2001 to 31.12.2001. Having failed to persuade Government to grant exemption to all employees, it appears petitioner paid the contributions for the above period on 29.9.2010. Alleging that there was inordinate delay in making the contributions and such delay attracts interest in accordance with provision contained in Sections 45-C to 45-I of the Act, demand notice was issued on 15.11.2010 directing the petitioner to pay an amount of Rs.1,11,054/- towards interest upto 30.9.2007 and Rs.46,340/- towards further interest from 1.10.2007 to 29.9.2010 together with Rs.5000/- towards cost of recovery.

Petitioner challenges this order in this writ petition.

Learned counsel for petitioner contends that as petitioner was seeking exemption from application of the provisions of the Act and was under a bonafide impression that such exemption would be granted by the

Government, it did not make the contributions. The action of the petitioner is not deliberate and willful. Only after Government has not accepted to grant exemption for the period 1.1.2001 to 31.12.2001 towards casual employees/contract employees, contribution was made, therefore, question of levying interest on the ground of delayed payment would not arise. There is no delay, inasmuch as the issue was pending consideration before the competent authority to grant exemption.

I cannot appreciate the said contention. The provisions of the Act are mandatory and employer has to comply with the provisions of the Act and make contributions within the time stipulated. Act is a social welfare legislation and contributions made under the Act go towards various welfare measures undertaken by the Government for welfare of low paid, casual, daily wage etc employees. Admittedly, petitioner took almost 10 years to make the contributions. Merely because petitioner was pursuing with the Government for exemption, is not a ground for not making the contributions within the time stipulated. Act mandates that whenever there is delay in making contributions, employer is required to pay interest for the delayed payment. The provisions of the Act are not under challenge and when the Act envisages the payment of interest, there is no escape from the fact that the petitioner has to pay interest. As noticed above, there was inordinate delay in making contributions. Therefore, respondent corporation is justified in directing the petitioner to pay the amount of interest due and payable. I therefore, see no merit in the writ petition. Writ Petition is accordingly dismissed.

Pursuant to the interim orders of this Court dated 25.1.2011, petitioner paid 50 % of the amount demanded in the impugned proceedings. Petitioner shall deposit the balance amount, as per the demand notice, within a period of six weeks from the date of receipt of copy of this order.

Subject to above directions, writ petition is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

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P NAVEEN RAO,J
DATE:26.7.2016
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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