

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR. JUSTICE RMT. TEEKA RAMAN

Writ Appeal No. 2481 of 2010

Tamil Nadu Asbestos (Pipes)
(A Unit of Tamil Nadu Cement Corporation Ltd)
Mayanur 639 108
Kulithalai Taluk, Karur District
rep. By its Manager (Tech) ... Appellant

Versus

1. The Regional Director
(Tamil Nadu)
Employees State Insurance Corporation
No.143, Sterling Road
Chennai - 600 034
2. The Deputy Regional Director
Employees State Insurance Corporation
No.143, Sterling Road
Chennai - 600 034 ... Respondents

Appeal filed under Clause 15 of Letters Patent against the Order dated 13.07.2010 passed in WP No. 5007 of 2002.

WP.NO.5007/2002: Petition filed under Article 226 of the Constitution Of India praying this Hon'ble court to issue a Writ of Certiorari calling for the records of the 2nd respondent in respect of notification in Ref No.51/N/15/13/6/6/91-BF-II dated 21.12.1995 and quash the said notification.

For Appellant : Mr. A. Sivaji
For Respondents : Mrs. Jayakumari

JUDGMENT

(Judgment of the Court was delivered by Huluvadi G. Ramesh, J.)
The appellant - Tamil Nadu Asbestos (Pipes) Cement Corporation Limited has filed WP No. 5007 of 2002 before this Court challenging the order dated 21.12.1995 passed by the

second respondent-ESI Corporation. In and by the order dated 21.12.1995, the second respondent called upon the appellant to take necessary steps for completion of initial registration work to avail the benefits of medical assistance to the employees working in their factory through the ESI dispensary in case the workers or their family members suffers from any ailment. By order dated 13.07.2010, the learned single Judge dismissed WP No. 5007 of 2002, against which the present writ appeal is filed.

2. The necessary facts are that the Central Government issued a notification under Section 1 (3) of the Employees State Insurance Corporation Act (in short 'The Act') whereby Mayanur Village, where the factory of the appellant is situate, was ordered to be brought under the purview of the Act with effect from 01.01.1996. In this context, the second respondent has issued a communication dated 21.12.1995, calling upon the appellant to register themselves with the Corporation so as to ensure that the benefits of the medical assistance under the Act are extended to the employees employed in their factory at Mayanur and also to the family members of the employees. Challenging the communication dated 21.12.1995 of the second respondent, the writ petition was filed before this Court in WP No. 5007 of 2002.

3. Before the Writ Court, the appellant has challenged the order dated 21.12.1995 of the second respondent mainly on two grounds and they are (i) as per the guidelines issued by the ESI Corporation in the communication dated 04.05.2001, there should be a minimum insurable population of 1000 in the Village which was brought within the purview of the Act, but in Mayanur Village, there was no such insurable population besides there is no statistical data available to show the insurable population and (ii) there should be an ESI dispensary within a radius of 8 kilometers, whereas, there is an ESI dispensary functioning at Puliur Village, which is 10 kilometers away from Mayanur Village and thereby the object and purpose of the Act is defeated. The writ petition was dismissed by this Court by holding that the appellant has not challenged the notification issued by the Central Government but only challenged the consequential order dated 21.12.1995 issued by the Second respondent. As regards the insurable population required to be shown in a Village, the learned single Judge held that it is only a guideline and it is not mandatory to be followed. It was further concluded that merely because a dispensary is situate in 10 kilometre radius, it will not cause any prejudice for the employees of the appellant Corporation especially when it is not disputed that there are bus facilities available from Mayanur to Puliur Village where the dispensary is functioning.

4. The learned counsel for the appellant would contend that the Act can be enforced in a particular Village only if the

insurable population is more than 1000 and in the present case, there is no statistics or data available to show that the insurable Population in Mayanur Village is more than 1000 warranting the extension of the provisions of the Act to the employees employed in the appellant Corporation. It is further contended that the learned Single Judge erred in holding that even in the absence of any infrastructure facility available in the dispensary, the employees of the appellant corporation can still avail whatever medical facilities available. In essence, it is the contention of the counsel for the appellant that the provisions of the Act are sought to be implemented in Mayanur Village, where the appellant factory is situate, even without providing adequate infrastructural amenities. Above all, the learned counsel for the appellant submits that the appellant factory itself has been closed on 22.01.2008 and even in the order, which is impugned in this writ appeal, concession was shown to the appellant from payment of contributions from 01.02.2002 till July 2010, but this fact was not brought to the notice of the learned single Judge at the time of hearing of the writ petition.

5. The learned standing counsel for the respondents corporation, while justifying the order dated 13.07.2010 passed in WP No. 5007 of 2002, did not dispute the fact that the appellant's establishment itself is closed on and from 22.01.2008.

6. We have considered the rival submissions and perused the materials placed on record.

7. By the order dated 13.07.2010 passed in WP No. 5007 of 2002, which is challenged in this writ appeal, the learned Single Judge, while dismissing the writ petition filed by the appellant has stated that the appellant need not pay the contributions from February 2002 till July 2010.

8. Pending writ appeal, the appellant has filed MP No. 1 of 2010 in W.A. No. 2481 of 2010 on 30.09.2010 praying for granting an interim injunction restraining the respondents from enforcing the provisions of the Act by claiming contribution from the petitioner's establishment from 21.12.1995 to 31.01.2002. In Para No.13 of the affidavit filed in support of MP No. 1 of 2010, it was stated that as follows:-

"13. It is submitted that during the pendency of the Writ Petition, the petitioner had the benefit of the interim injunction restraining the respondents from implementing the provisions of the Act to petitioner's establishment. The petitioner's establishment was not functioning and it had been closed on 22.01.2008. It is therefore just and necessary that during the pendency of the writ appeal

also the respondents are to be restrained from implementing the provisions of the Act to the petitioner's establishment for the period from 21.12.1995 to 31.01.2002 as the learned Judge has held that the period from 01.02.2002, the petitioner is liable pay contributions."

9. Admittedly, at the time of hearing of the writ petition, it was not brought to the notice of this Court regarding the closure of the petitioner's establishment on 22.01.2008. Even in the grounds of Writ Appeal, it was not stated so by the appellant. However, the fact remains that the appellant's establishment itself has been closed from 22.01.2008. Therefore, having regard to the said position, by recording the statement made in Para No.13 of the affidavit filed in support of MP No. 1 of 2010 in W.A. No. 2481 of 2010 on 30.09.2010 on 30.09.2010, we set aside the order passed by the learned single Judge. The writ appeal is disposed of. No costs. Connected MP No. 1 of 2010 is closed.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To

1. The Regional Director
(Tamil Nadu)
Employees State Insurance Corporation
No.143, Sterling Road
Chennai - 600 034

2. The Deputy Regional Director
Employees State Insurance Corporation
No.143, Sterling Road
Chennai - 600 034

+ 1 cc to M/s.A.Sivaji, Advocate,SR.76569

+ 1 cc to M/s.Jayakumari Advocate,SR.76889

WA No. 2481 of 2010

NR 19/12/2017