

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.6733 OF 2007

ORDER:

This Writ Petition is filed seeking to declare the action of the respondents in taking coercive proceedings against the petitioners for recovery of dues under Certificate Nos.53Q/11252-46/06 as violative of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'SICA').

2. The admitted facts are as follows:

The first petitioner-M/s.South India Cements Ltd. is a Company registered under the Companies Act, 1956. Initially it is a Private Limited Company and subsequently became a Public Limited Company. The 1st petitioner became a sick Company within the meaning of SICA and a scheme of rehabilitation was sanctioned by the Board For Industrial and Financial Reconstruction (for short 'BIFR') under Section 18 (4) of the SICA. Despite the best efforts of the new promoters, the Company could not be revived and the factory was closed from 01.10.2005 onwards. The BIFR passed orders directing winding up of the Company and a reference was made to concerned jurisdictional High Court for passing necessary winding up orders. As against the orders passed by the BIFR for winding up of the Company, the Company preferred an appeal before the Appellate Authority for Industrial and Financial Reconstruction, New Delhi, (for short 'AAIFR') vide appeal No.293 of 2006. The said appeal was admitted and interim orders were passed staying the winding up proceedings. Further, the Company committed default in payment of contributions under the ESI Act, pursuant to which recovery certificates were issued by the Authorized Officer. Recovery

certificate was issued to the Recovery Officer, ESI Corporation, SRO/Hubli, Karnataka, for to Rs.10,93,443/-. On 28.03.2000, said certificate was forwarded under Section 45-D of the Act to the respondent-Recovery Officer, ESI, Hyderabad, for recovery of the amounts. The respondent vide letter dated 14.03.2007 informed the same to the Company calling to pay the amount forthwith. In response thereto, the Company by letter dated 15.03.2007 informed the respondent to keep the proceedings pending in view of pendency of proceedings before BIFR and AAIFR. However, the respondent issued a show cause notice vide letter dated 28.03.2007 to the 2nd petitioner calling for explanation by 30.03.2007 as to why the recovery certificate could not be executed by arrest and imprisonment of the 2nd petitioner. A reply was given to the said show cause notice by the 1st petitioner raising the ground of protection by virtue Section 22 of the SICA. However, the respondent issued a communication dated 30.03.2007 stating that protection under Section 22 of the SICA is not available to the petitioners as the recovery sought for is a statutory recovery. Aggrieved by the said recovery certificate, the present writ petition is filed.

3. The further case of the petitioner Company is that on 30.03.2007, the Officers of the respondent visited the petitioner Company and threatened to cause arrest of the second petitioner, due to which the 2nd petitioner was forced to issue two post-dated cheques for Rs.1 lakh each.

4. The sole respondent filed a detailed counter affidavit stating that the petitioner Company is having a unit at Malkhed Village, Gulbarga District, Karnataka State, which comes under

the jurisdiction of SRO Hubli. As the said Unit has failed to pay the ESI dues for various periods, C-19 and D-19 notices were issued. In view of BIFR scheme, the Unit was allowed to clear the outstanding ESI dues in 24 equal monthly instalments commencing from April, 2001. However, the Unit has paid only 7 instalments and committed default in payment of remaining instalments. Further, the cheques issued by the 2nd petitioner were dishonoured due to insufficient funds. It is further stated that though the Unit is situated within the limits of SRO, Hubli, the administrative office is located at Durganagar Colony, Panjagutta, Hyderabad. As such, the recovery certificates were transferred to the respondent under Section 45 (D)(2)(b) of the ESI Act, 1948, for recovery of dues. The second petitioner, being one of the Director of Administrative Office, is also responsible for payment of ESI dues. As such, initiation of recovery proceedings against the 2nd petitioner is just and legal. It is further stated that protection under Section 22 of the SICA is not available to the petitioners against recovery of statutory dues. Further, the allegation of taking two post-dated cheques by putting the 2nd petitioner under threat was denied by the respondent.

5. This Court on 03.04.2007 while admitting the writ petition, directed the respondent not to take any coercive steps of committing the petitioners to civil prison.

6. Learned counsel appearing for the petitioners would contend that the action of the respondent in transferring the recovery certificate issued by the authorized officer to Hyderabad office despite the fact that the first petitioner-Company do not have any assets in Hyderabad is illegal and the same is contrary to

Section 45D of the ESI Act. He further contended that when the Company is under scheme of rehabilitation under BIFR under the provisions of SICA, initiation of proceedings for recovery of ESI dues is contrary to the protection available under Section 22 of the SICA. He would further contend that the 2nd petitioner is not a Principal Officer of the 1st petitioner-Company and is only a paid officer of the Company and treating him as employer and initiation of proceedings for his arrest and detention is totally without jurisdiction. In support of his contentions, learned counsel relied on ***Tata Davy Ltd. Vs. State of Orissa and others***¹, ***Jay Engineering Works Ltd., vs. Industry Facilitation Council and another***² and ***Gram Panchaayat and another vs. Sree Vallabh Glass Works Limited and others***³ to contend that the petitioner Company is having statutory protection under Section 22 (1) of the SICA, which is a Special Enactment and without obtaining any prior permission from the Court, the respondent is not entitled to resort to any coercive steps for recovery of dues.

7. Sri B.G.Ravinder Reddy, learned counsel appearing for the sole respondent, would contend that the petitioners have not challenged the original orders passed demanding the amounts due under the ESI Act and instead questioned only the recovery certificate. He further contended that though the petitioners were allowed to pay the dues in 24 monthly instalments, under BIFR scheme, the petitioners failed to pay the ESI dues and have paid only 7 instalments. Hence, there is no irregularity or illegality in issuing the impugned notices. Petitioners filed the present writ petition without availing the effective alternative remedy under

¹ (1997) 6 SCC 669

² (2006) 8 SCC 677

³ (1990) 2 SCC 440

Section 75 of the ESI Act before the ESI Court constituted under Section 74 of the ESI Act. In support of his submissions, learned counsel relied on ***Sarvaraya Textiles Limited vs. Commissioner, Employees' Provident Fund and others***⁴ to contend that Section 22 (1) of the SICA has no application to the ESI Act and the ESI Act would not fall within the purview of Section 22 (1) of the SICA.

8. Having heard the rival contentions and perused the material on record, this Court is of the considered view that the petitioners instead of challenging the original proceedings initiated under the provisions of the ESI Act, have challenged the subsequent recovery notices dated 14.03.2007 and 30.03.2007 for recovery of Rs.10,93,443/-. It is pertinent to mention here that the petitioners failed to pay the dues even as per BIFR scheme. As seen from ***Sarvaraya Textiles Limited (referred supra)***, it has been clearly held that contributions of employees towards P.F. in particular would not come within the purview of Section 22 (1) of the SICA. In the instant case also the dues sought to be recovered under impugned recovery certificates pertain to employees' contributions towards ESI. Hence, in view of the ratio laid down in ***Sarvaraya Textiles Limited (referred supra)***, the contention of the petitioners that the respondent is not entitled to recover the dues in view of protection available under Section 22 of the SICA has no force and the contention that when the proceedings before BIFR and AAIFR are pending, the respondent had no authority to recover the dues without prior permission of the BIFR Court, is untenable.

⁴ 2002-I-LLJ

9. Therefore, the writ petition is dismissed.

10. Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

19th February, 2018
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