

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10455 of 2017

The State of Tamil Nadu

Rep.by the Additional Director of Handlooms & Textiles

Chennai-600 108.

...Petitioner

vs.

1. The Employees State Insurance Corporation
Rep.by its Regional Director,
No.143, Sterling Road,
Nungambakkam,
Chennai-600 034.
2. The Recovery Officer,
Office of the Recovery Officer,
The Employees State Insurance Corporation
No.143, Sterling Road,
Nungambakkam,
Chennai-600 034.
3. The Liquidator
MH 210, Krishnapuram Powerloom Weavers
Society (Liquidation), MDCC Bank Building,
Madurai-600 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records in proceedings No.TN/RECY/45 (G)/57/10281 IN.CCR.No.370/371/30/416/676/1028 dated 14.03.2011 on the file of the second respondent and quash the same and consequently, directing the first and second respondents to refund the amount of Rs.20,60,509/- which was withdrawn from the petitioner's bank A/c.No.18797 (cash operation in New Account No.201043560) in TNCSC Bank Ltd., Chennai together with interest at the rate of 24% per annum.

For Petitioner: Mr.L.P.Shanmugasundaram
Special Government Pleader (Co-op)

For Respondents: Mr.S.P.Srinivasan
for RR1 & 2
Mr.S.Stalin Muthu
for R3.

O R D E R

The recovery order issued by the second respondent in proceeding dated 14.03.2011 is under challenge in the present writ petition.

2. The petitioner is the State of Tamil Nadu represented by the Additional Director of Handlooms & Textiles. The petitioner states that it is a State Government Department which is under the control of Ministry of Textiles and Handlooms and further stated that 1156 Primary Handloom Weavers Co-operative Societies and 211 Power Loom Weavers Co-operative Societies are available in the State of Tamil Nadu. The Weavers Co-operative Societies are registered under the Tamil Nadu Co-operative Societies Act and they are separate legal entities having perpetual succession and a common seal with power to hold property, enter into contracts, to institute and defend suits and other legal proceedings and do all things necessary for the purpose for which they are constituted. The Primary Co-operative Societies are headed and administered by the elected board or the Special Officer appointed under Section 89 of the Tamil Nadu Co-operative Societies Act, 1983. Thus the petitioner herein being Government is not a Principal or immediate employer for any one.

3. It is stated that MH 210 Krishnapuram Powerloom Weavers Co-operative Production & Sales Society Ltd, is one such society registered on 23.09.1988. Since the elected board was not there, the Special Officer was appointed under Section 89 of the Tamil Nadu Co-operative Societies Act, 1983. So the Special Officer appointed was the Principal and immediate employer of the said Primary Society. The petitioner is in no way connected with the principal or immediate employer or holding money due the Society. It is further stated that due to heavy accumulated loss, it was liquidated under Section 137 of the Tamil Nadu Co-operative Societies Act, 1983 by the proceedings of the Assistant Director of Handlooms & Textiles vide Na.Ka.8156/2000 dated 24.04.2000.

4. Under these circumstances, the second respondent has issued recovery order in proceedings No.TN/RECY/45(G)/57/10281, IN.CCR.No.370/371/30/416/676/1028 dated 14.03.2011 for a sum of Rs.20,60,509/- without giving any prior notice. Based on the recovery order, the respondents had snatched away the amount lying in the account of the petitioner in the Tamil Nadu State Apex Co-operatives Bank Limited. After withdrawal of the amount, the officials of the petitioner enquired into the matter and learnt that the Society which is under liquidation and the third respondent is liable to pay the above said amount. It is contended that the petitioner is in no way connected with the affairs of the society which is under liquidation and the petitioner is not a Principal or immediate employer. In this regard, it is meaningful to refer the provisions under Section 45G of the Employee's State Insurance Act, which reads as follows:

" 45-G. Other modes of recovery. - (1) Notwithstanding the issue of a certificate to the Recovery Officer under section 45-C, the Director-General or any other officer authorised by the Corporation may recover the amount by any one or more of the modes provided in this section. (2) If any amount is due from any person to any factory or establishment or, as the case may be, the principal or immediate employer who is in arrears, the Director-General or any other officer authorised by the Corporation in this behalf may require such person to deduct from the said amount the arrears due from such factory or establishment or, as the case may be, the principal or immediate employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Corporation : Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908). (3) (i) The Director-General or any other officer authorised by the Corporation in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the factory or establishment or, as the case may be, the principal or immediate employer or any person who holds or may subsequently hold money for or on account of the factory or establishment or as the case may be, the principal or immediate employer, to pay to the Director-General either forthwith upon the money becoming due or being held or at

or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the factory or establishment or, as the case may be, the principal or immediate employer in respect of arrears or the whole of the money when it is equal to or less than that amount. (ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the principal or immediate employer jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved to be equal. (iii) A copy of the notice shall be forwarded to the principal or immediate employer at his last address known to the Director-General or, as the case may be, the officer so authorised and in the case of a joint account to all the joint-holders at their last addresses known to the Director-General or the officer so authorised. (iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary. (v) Any claim respecting any property in relation to which a notice under this subsection has been issued arising after the date of the notice shall be void as against any demand contained in the notice. 20 (vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the principal or immediate employer or that he does not hold any money for or on account of the principal or immediate employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particulars, such person shall be personally liable to the Director-General or the officer so authorised to the extent of his own liability to the principal or immediate employer on the date of the notice, or to the extent of the principal or immediate employer's liability for any sum due under this Act, whichever is less. (vii) The Director-General or the officer so authorised may, at any time or from time to time, amend or revoke any notice issued under this sub-

section or extend the time for making any payment in pursuance of such notice. (viii) The Director-General or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section and the person so paying shall be fully discharged from his liability to the principal or immediate employer to the extent of the amount so paid. (ix) Any person discharging any liability to the principal or immediate employer after the receipt of a notice under this sub-section shall be personally liable to the Director-General or the officer so authorised to the extent of his own liability to the principal or immediate employer so discharged or to the extent of the principal or immediate employer's liability for any sum due under this Act, whichever is less. (x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Director-General or the officer so authorised, he shall be deemed to be a principal or immediate employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him, in the manner provided in sections 45-C to 45-F and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 45-C. (4) The Director-General or the officer authorised by the Corporation in this behalf may apply to the court in whose custody there is money belonging to the principal or immediate employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due. (5) The Director-General or any officer of the Corporation may, if so authorised by the Central Government by general or special order, recover any arrears of amount due from a factory or an establishment or, as the case may be, from the principal or immediate employer by distraint and sale of its or his movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961 (43 of 1961)."

5. The learned counsel for the petitioner states that the petitioner is not liable to pay any amount to the respondents on behalf of the MH210, Krishnapuram Powerloom Weaves Co-operative Production and Sales Society Limited, the 3rd respondent herein.

6. This Court is of the considered opinion that the Co-operative Society registered under the Tamil Nadu Co-operative

Societies Act, is not funded by the State or any Government Department. If any Co-operative Society is funded by the Government, then alone, the Government can be considered as a principal or immediate employer and not otherwise. In respect of other Co-operative Societies, which are all funded by its members and there is no contribution from the Government or its department, then the said society cannot be construed as a "State" within the meaning of Article 12 of the Constitution of India. Thus, a Co-operative Society funded by its members and administered by the elected board is a separate legal entity and therefore, the Competent Authority under the Co-operative Societies Act cannot be construed as a Principal or immediate employer, so as to effect the recovery of the said amount under the Provisions of the Employee's State Insurance Act [hereinafter referred to as "ESI Act"]. When the Government department is in no way connected with the administration of the Co-operative Society and there is no funding by the Government, then the decision taken by the second respondent that it is empowered to recover the said amount from the Government is in violation of the ESI Act. In the present case, it cannot be construed as a Principal or immediate employer or otherwise, for the purpose of fixing the liability under the provisions of the Employee's State Insurance Act, 1948.

7. In this context, it is relevant to consider the recovery order passed against the writ petitioner, which is the Government Department. If the Government Department is Principal or immediate employer, only then appropriate orders can be passed under the Act.

8. As far as the writ petitioner is concerned, they are not falling within the purview of the Act itself. As far as the employees of the Government Department are concerned, they are providing separate medical facilities under various schemes and those employees are not falling within the purview of the Tamil Nadu Employee's State Insurance Act.

9. Under these circumstances, this Court is of the considered opinion that the second respondent is empowered to collect the said amount only from the Co-operative Society concerned and not from the Government Department. It is brought to the notice of this Court that the Society is already under liquidation and if so, the second respondent is empowered to file their claim before the liquidator for the purpose of appropriating the amount due to the ESI Corporation. Contrarily, they cannot attach the bank accounts of the Government Department which is impermissible and in violation of the scheme of the Act itself.

10. In the present case, the writ petitioner is able to establish that they are in no way connected with the administration of the third respondent Society and administration of the third respondent society is connected with the elected board of Directors or the special Officers. Therefore, they are not liable for any dues to the second respondent Corporation.

11. Under these circumstances, the second respondent is at liberty to recover the same from the third respondent Society itself by following the procedure contemplated. This being the factum, the impugned order passed by the Second respondent in proceedings No.TN/RECY/45 (G)/57/10281 IN.CCR.No.370/371/30/416/676/1028 dated 14.03.2011 is quashed.

It is brought to the notice of this Court that the amount has already been recovered from the writ petitioner, if so, the recovered amount is directed to be reimbursed to the writ petitioner within a period of eight weeks from the date of receipt of a copy of this Order.

12. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Employees State Insurance Corporation
Rep.by its Regional Director,
No.143, Sterling Road,
Nungambakkam,
Chennai-600 034.
2. The Recovery Officer,
Office of the Recovery Officer,
The Employees State Insurance Corporation
No.143, Sterling Road,
Nungambakkam,
Chennai-600 034.

3. The Liquidator

MH 210, Krishnapuram Powerloom Weavers
Society (Liquidation), MDCC Bank Building,
Madurai-600 001.

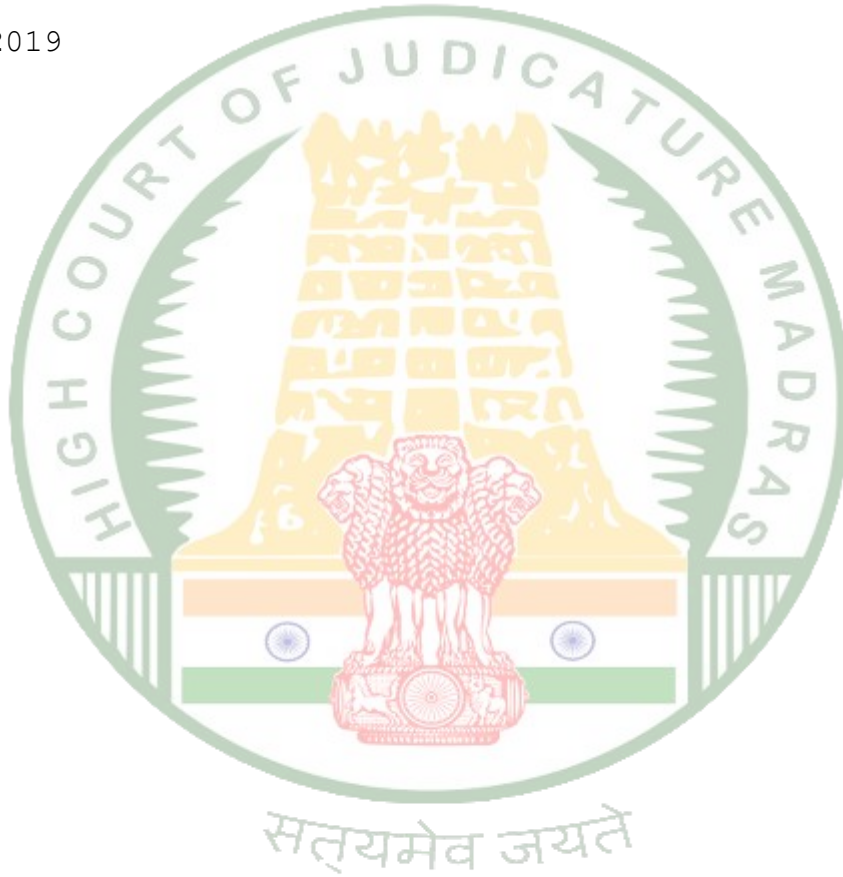
+1cc to Mr.L.P.Shanmugasundaram, Advocate sr.79978

+1cc to Government Pleader SR.NO. 80772

+1cc to Mr.Srinivasan, Advocate sr.80600

W.P.No.10455 of 2017

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