

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.2711 of 2020
and W.M.P.Nos.3143 & 3146 of 2020

M/s.Mitulal Lalah and Sons
No.6, Mullipuram Road,
Kaspa Palayakottai
Kuttupalam P.O., Nathakadaiyur
Erode - 638 108
Rep. by its Partner

... Petitioner

vs.

1.The Deputy Director
Employees' State Insurance Corporation
1897, Tiruchy Road,
Panchdeep Bhavan
Ramanathapuram, Coimbatore - 641 045.

2.The Recovery Officer
Employees' State Insurance Corporation
1897, Tiruchy Road,
Panchdeep Bhavan
Ramanathapuram, Coimbatore - 641 045.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, directing the Principal Labour Court, Coimbatore to entertain the ESIOP SR.No.8154 filed on 03.12.2019 by the petitioner.

For Petitioner : Mr.Haroon,
for M/s.T.S.Gopalan and Co.,
For Respondents : Mr.G.Barathwaj,
standing counsel

ORDER

Mr.G.Barathwaj, learned standing counsel takes notice for the respondents. By consent of both parties, the main writ petition is taken up for final disposal at the admission stage itself, since the issue involved in this case lies in a narrow compass.

2. Heard both sides.

3. This writ petition is filed seeking for mandamus directing the Presiding Officer, Principal Labour Court, Coimbatore, to entertain ESIOP SR.No.8154, filed on 03.12.2019.

4. The petitioner suffered an order dated 19.09.2019 passed by the first respondent under Section 45-A of the Employees' State Insurance Act, 1948, determining a sum of Rs.6,56,370/- for the period from 01.09.2014 to 31.08.2016 towards ESI contribution payable by the petitioner. Challenging the said order, the petitioner preferred a petition in ESIOP. SR.No.8154/2019 under Section 75 of the ESI Act, 1948 before the Principal Labour Court, Coimbatore on 03.12.2019. There is no dispute to the fact that the said petition was filed within the limitation time prescribed under the ESI Act, 1948. The Presiding Officer, Principal Labour Court, Coimbatore, returned the petition on 09.12.2019 for presenting the same before proper forum, since the address of the petitioner for service is stated as Erode District.

5. It is contended by the learned counsel for the petitioner that though at the time of passing the order under Section 45-A of the ESI Act, 1948, the petitioners' business place was located at Erode District, subsequent to bifurcation, the said place is now, vested under Tiruppur District and therefore, they filed the petition under Section 75 of the ESI Act, 1948 before the Labour Court, Coimbatore, by showing their place of business as Tiruppur District. Therefore, it is contended by the learned counsel for the petitioner that the Labour Court is not justified in returning the petition. Even otherwise, he further contended that the order dated 19.09.2019 was passed by the first respondent, whose office is located at Coimbatore, and therefore, part of the cause of action has arisen within the jurisdiction of the Labour Court, Coimbatore.

6. In support of the above contention, the learned counsel relied on a decision of the Division Bench of this Court reported in 2005 (3) CTC 722, Modern Radio Service, Rep. by its Partner, G.Venkatesan Chettiar, Kumbakonam, Vs. The Regional Director, ESI Corporation, Madras, wherein it is observed as follows:

"In other words, it is clear to us that a reading of Section 76 of the Act and Rule 16 of the Rules and striking a balance, we are of the opinion that the normal Rule is to institute a proceeding before the Court appointed for the local area in which the insured person was working at the relevant time and the exception is Rule 16. Under Rule 16, the place of suing may be in the place

where the cause of action, wholly or in part, arose. In this case, the order impugned was passed by the respondent within the jurisdiction of the Insurance Court at Chennai. Therefore, it is clear that definitely a part of the cause of action has arisen here and as such the Insurance Court at Chennai would have territorial jurisdiction."

7. The learned standing counsel for the respondents fairly submitted that the Labour Court, Coimbatore, can entertain the petition and decide the same on merits and in accordance with law, in view of the above stated facts and circumstances.

8. Further grievance of the petitioner is that, when the petition filed before the Labour Court, Coimbatore was returned, the bank account of the petitioner is attached for non-payment of the amount determined, which causes hardship and inconvenience to the petitioner, since they are not in a position to pay the salary to their employees. The learned counsel for the petitioner further submitted that since the petitioner is entitled to seek for interim protection pending disposal of ESIOP before the Labour Court, the bank attachment made by the second respondent in the meantime is to be lifted.

9. To the above said request, the learned standing counsel for the respondents contended that once the petitioner represents the petition in ESIOP SR.No.8154/2019 before the Labour Court, Coimbatore, they can file interim application and seek for interim protection and therefore, at this stage, this Court need not interfere with the bank attachment.

10. Upon hearing the learned counsels appearing on either side and perusing the materials placed before this Court as well as the decision of the Division Bench of this Court reported in 2005 (3) CTC 722, Modern Radio Service, Rep. by its Partner, G.Venkatesan Chettiar, Kumbakonam, Vs. The Regional Director, ESI Corporation, Madras, as extracted supra, it is evident that the petition filed by the petitioner before the Labour Court, Coimbatore, is maintainable and therefore, it ought not to have been returned. Consequently, the petitioner is entitled to represent the petition before the Labour Court, Coimbatore for entertaining and deciding the same on merits and in accordance with law.

11. The above conclusion is arrived by this Court by taking note of the following facts.

(a) The business place of the petitioner has not been changed. However, after bifurcation of the Revenue Districts

only the District in which, the business of the petitioner is carried on got changed. Admittedly, the said business place lies within the Tiruppur District and such District falls within the jurisdiction of the Labour Court, Coimbatore.

(b) Even otherwise, as rightly pointed out by the learned counsel for the petitioner, part of cause of action for filing the petition before the Labour Court, certainly, arises within the jurisdiction of the Labour Court, Coimbatore, since the order under challenge was passed by the first respondent, whose office is situated at Coimbatore. This view is supported by the Division Bench decision of this Court reported in 2005 (3) CTC 722, as extracted supra.

12. Therefore, I hold that the Labour Court, Coimbatore, is having jurisdiction to entertain the petition filed by the petitioner and consequently, the petitioner is entitled to represent the petition to pursue the same before the Labour Court, Coimbatore.

13. Insofar as the other relief sought for in respect of the attachment of bank account is concerned, it is admitted by both parties that during pendency of the petition in ESIOP SR.No.8154/2019 before the Labour Court, it is open to the petitioner to seek for interim relief of stay of the impugned proceedings or waiver of deposit.

14. Considering the fact that the petitioners' bank account has already been attached viz., Bank account maintained with the City Union Bank, Mandavali Branch, Chennai-600 028, vide Account No.036109000103727, this Court is of the view that interest of justice would be met, if the petitioner is directed to deposit a sum equivalent to 50% of the amount determined by the first respondent during pendency of the petition before the Labour Court, Coimbatore.

15. Accordingly, this Writ Petition is disposed of as follows:

(a) The petitioner is permitted to represent ESIOP SR.No.8154/2019 before the Presiding Officer, Principal Labour Court, Coimbatore, who in turn shall entertain the said petition and decide the same on merits and in accordance with law, after giving due opportunity of hearing to the parties.

(b) The petitioner shall deposit a sum of Rs.3,25,000/- to the credit of the first respondent within 7 days from the date of receipt of a copy of this order and keep such deposit

till the disposal of ESIOP SR.No.8154/2019 before the Labour Court, Coimbatore.

(c) In view of the above conditional order passed by this Court for making such deposit, the respondents shall defreeze the bank account maintained by the petitioner with the City Union Bank, Mandavali Branch, Chennai-600 028, vide Account No.036109000103727 forthwith.

(d) In the event of failure on the part of the petitioner to deposit such amount as directed supra, it is open to the respondents to proceed to recover the amount so determined in accordance with law, without reference to the pendency of ESIOP SR.No.8154/2019.

(e) In view of the above order passed in this writ petition directing the petitioner to deposit the sum of Rs.3,25,000/- to the credit of the first respondent, during pendency of ESIOP SR.No.8154/2019, the Labour Court, Coimbatore, while entertaining the petition shall not insist upon any further deposits.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Deputy Director, Employees' State Insurance Corporation
1897, Tiruchy Road, Panchdeep Bhavan
Ramanathapuram, Coimbatore - 641 045.

2.The Recovery Officer, Employees' State Insurance Corporation
1897, Tiruchy Road, Panchdeep Bhavan
Ramanathapuram, Coimbatore - 641 045.

+1 cc to M/s.T.S.Gopalan & Co., Advocate Sr.No. 8902

+1 cc to M/s.G.Bharadwaj, Advocate Sr.No. 9416

AKM/06.02.2020/5P- 5C /

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