



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.(MD)No.7897 of 2011

and

M.P.(MD)No.1 of 2011

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M/s.Shri Mookambiga Spinning Mills - Unit II
Trichy Road,
Vadamadurai,
Dindigul District.
Rep. by its General Manager

... Petitioner

versus

1. ESI Corporation (SRO),
4th Main Road, K.K.Nagar,
Madurai - 625 020.
Rep. by its Assistant Director.
2. Shri Mookambiga Spinning Mills
Thozilalar Sangam,
Shri Mookambiga Spinning Mills
Complex,
Vadamadurai, Vendasur Taluk,
Dindigul District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent culminating in order in No.57-00-047379-000-0101/INS.I/SRO/MDU, dated 10.06.2011 and quash the same and direct the 1st respondent not to collect any contribution towards Employees State Insurance for the past period till the date of disposal of writ petition in W.P.No.36297 of 2003, i.e. 03.02.2011.

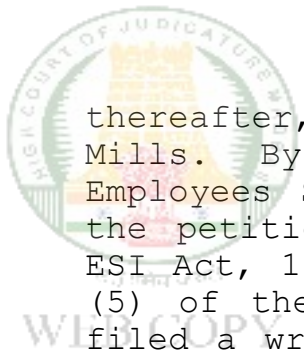
For Petitioner : Mr.T.Ravichandran

For Respondents : Mr.N.Dilipkumar
Standing Counsel for R1
No appearance for R2

ORDER

The writ petition has been filed for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order of the 1st respondent, dated 10.06.2011 and quash the same and direct the 1st respondent not to collect any contribution towards Employees State Insurance for the past period till the date of disposal of writ petition in W.P.No.36297 of 2003, i.e. 03.02.2011.

2. The petitioner Mill is a private limited company, incorporated under the Companies Act 1956. Earlier, the petitioner Mill was running in the name and style of M/s.Cauvery Textiles and



thereafter, it was taken over by M/s.Shri Mookambiga Spinning Mills. By the notice dated 19.07.2001, the Deputy Director of the Employees State Insurance Corporation informed the petitioner that the petitioner's establishment is covered under the provisions of ESI Act, 1948 with effect from 01.08.2001 under Section 1(3) and 1(5) of the said Act. Challenging the same, the petitioner Mill filed a writ petition in W.P.No.36297 of 2003. This Court, while entertaining the writ petition, granted an order of interim stay vide order dated 11.12.2003. Thereafter, on the vacate stay petition, this Court, vide order dated 08.07.2008, modified the interim order and directed the petitioner to pay contribution towards ESI from 03.10.2007 onwards. After hearing both parties, this Court, vide order 03.02.2011, direct the Management to give a representation to the 4th respondent therein, within a period of four weeks from the date of receipt of a copy of the order and on receipt of such representation, the 4th respondent therein directed to consider and dispose of the same on merits and in accordance with law, within a period of three months thereafter. In compliance with the said order, the present impugned order was passed by the first respondent, vide his order dated 10.06.2011, directing the petitioner to remit the contribution payable to the ESI Corporation for the period from 01.08.2001 up to the current period and also register all the employees immediately, failing which, appropriate action will be initiated. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the petitioner Mill earlier filed the writ petition, seeking a direction to restrain the respondents from implementing the ESI scheme in respect of the petitioner Mill on various grounds. Thereafter, as per the direction of this Court, the petitioner Mill was paying the contribution from the year 2007 onwards. However, the impugned order was passed by the first respondent, directing the petitioner to pay contribution from the year 2001, which is unsustainable in law.

4. It is further submitted by the learned counsel for the petitioner that when the employees of the petitioner have not availed any benefit from ESI Corporation, it is not correct on the part of the 1st respondent to demand contributions for the past period, which is non-est in law. Further, the Hon'ble Apex Court held that the employer should not bear with the liability for the past, when the employees have not availed any medical facilities from ESI Corporation. Therefore, he prayed for allowing the writ petition.

5. Heard the learned Standing Counsel appearing for the first respondent.

6. Admittedly, the facts in the present case are not in dispute. The petitioner Mill earlier filed W.P.No.36297 of 2003 seeking a direction to restrain the respondents from implementing the ESI Scheme. This Court, while entertaining the writ petition, granted an order of interim stay and subsequently, modified the same, directing the petitioner to pay contribution from the year 2007



onwards. As per the direction of this Court, the petitioner was also paying contribution from the year 2007 onwards. However, the impugned order was passed by the first respondent, directing the petitioner Mill to pay the contribution from the year 2001 onwards.

7. It is the case of the petitioner that since the employees of the petitioner Mill have not availed any medical facilities from the ESI Corporation for the period from 2001 to 2007, they are not liable to pay the contribution for that period.

8. Now, the issue to be decided is as to whether the petitioner Mill is liable to pay contribution for the past, i.e. from year 2001 onwards or not?

9. The similar issue came up for consideration before the Hon'ble Apex Court (***reported in (2006) 6 Supreme Court Cases 581***), wherein, the Hon'ble Apex Court held as follows:

"57. In our opinion, the High Court was fully justified in passing the judicious order after considering the equities by directing the employer and the employee to make ESIC contribution for the future and should not bear with the liability for the past inasmuch as the employees of the respondents have not availed any medical facilities from ESIC and at the same time the employer was providing the medical facilities due to interim orders of the High Court. The order passed by the High Court, in our considered view, meets the ends of justice and does not require interference by this Court under Article 136 of the Constitution of India."

10. Following the ratio laid down, this Court is of the view that since the petitioner Mill's employees have not availed any medical facilities from the ESI Corporation for the period from 2001 to 2007, the impugned order of the first respondent, directing the petitioner Mill to pay the contribution from the year 2001 onwards, is unsustainable in law. Therefore, the first respondent is directed not to collect any contribution from the petitioner for the period from the year 2001 to 2007.

11. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)

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To

<https://hcservices.ecourts.gov.in/hcservices/>



1. The Assistant Director,
ESI Corporation (SRO),
4th Main Road, K.K.Nagar,
Madurai - 625 020.

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+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-14458[F] dated 30/03/2021)

W.P. (MD)No.7897 of 2011

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