



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2021

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) Nos. 20958 and 20959 of 2013
and
M.P(MD) Nos.1 and 1 of 2013

M/s.Harshavardhan Cotton & Synthetics Pvt. Ltd.,
Rep. by its Managing Director V.G.Manisekaran,
No.693-1 A, RPGE Complex,
Dharapuram Road,
Tiruppur.

... Petitioner

Vs.

The Deputy Director,
Employees State Insurance Corporation,
Sub-Regional Office,
2nd West Street,
K.K.Nagar,
Madurai - 600 030.

...Respondent

COMMON PRAYER: Petitions filed under Article 226 of the constitution of India, to issue a writs of Certiorari calling for the records relating to the proceedings of the respondent in proceedings No.57-00-047753.000.0101/INS.I/SRO/MDU/435/13 and proceedings No. 57-00-047753. 000.0101 /INS.I/SRO/MDU/436/13 dated 05.12.2013, quash the same.

For Petitioner : Ms. Akshaya
for Mr. A.Saravanakumar
For Respondent : Mr. P.Ganapathysamy

COMMON ORDER

(through video conference)

Heard Ms. Akshaya for Mr. A.Saravanakumar, Learned Counsel for the Petitioner and Mr. P.Ganapathysamy, Learned Counsel for the Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent by orders in No. 57-00-047753.000.0101/INS.I/SRO/MDU/435/13 dated 05.12.2013 and 57-00-047753. 000.0101/ INS.I/SRO /MDU/436/13 dated 05.12.2013 had determined the contribution payable by the Petitioner under the Employees' State

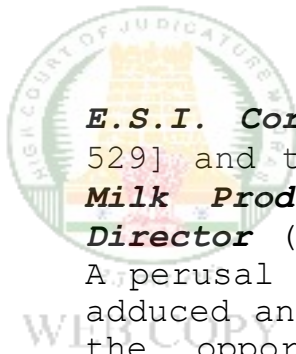


Insurance Act, 1948 (hereinafter referred to as 'ESI Act' for short). It has been stated in the said orders that the Petitioner may prefer appeal to the Appellate Authority as provided in the Regulations within 60 days of the date of that order after depositing 25% of the contribution so assessed or the contribution as per his own calculation whichever is higher. That apart, Section 75 of the ESI Act entitles an aggrieved person to commence any proceedings to decide any question or dispute relating to the specified determination of liability under ESI Act before the Employees Insurance Court, which obviously includes the assessment of liability that has been made by the Respondent in the impugned orders. However, the Petitioner has not preferred any such appeal or application but has instead filed these Writ Petitions challenging those orders passed by the Respondent.

3. There is no acceptable explanation from the Petitioner either in the affidavits filed in support of the Writ Petitions or during the course of arguments by the Learned Counsel for the Petitioner for not having resorted to those alternative remedies provided in the statute. In this context, it may be recapitulated here that the Hon'ble Supreme Court of India in **Assistant Collector of Central Excise -vs- Dunlop India Limited** [(1985) 1 SCC 260] has explained the legal position relating to the exercise of discretionary powers under writ jurisdiction as follows:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

The grievance ventilated by the Petitioner in the Writ Petitions is that the determination of liability towards contribution under ESI Act for employees claimed to have been engaged by the Petitioner is without jurisdiction as according to the Petitioner, those persons had been actually engaged by third parties. Reliance in this regard which placed on the decision of the Full Bench of this Court in



E.S.I. Corporation -vs- Bethall Engineering Company [2007 (4) CTC 529] and the Hon'ble Supreme Court of India in **Hassan Co-operative Milk Producer's Society Union Limited -vs- Assistant Regional Director** (Order dated 26.04.2010 in Civil Appeal No.3817 of 2010). A perusal of the impugned orders reveal that the Petitioner had not adduced any evidence in support of its claim in that regard despite the opportunity provided, meaning thereby that the disputed questions of fact now raised cannot be effectually adjudicated following summary procedure under Article 226 of the Constitution of India. As such, it is not possible to entertain these Writ Petitions challenging the impugned orders. Though obvious, it is clarified that no view has been expressed by this Court on the correctness or otherwise on the merits of the contentions raised by the Petitioner in these Writ Petitions.

In the result, the Writ Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

PM/SRM

To
The Deputy Director,
Employees State Insurance Corporation,
Sub-Regional Office,
2nd West Street,
K.K.Nagar,
Madurai - 600 030.

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