SUPREME COURT OF INDIA

E. S. I. Corporation

Vs.

Distilleries and Chemical Mazdoor Union

C.A.No.1727 of 2005

(Dr. A. R. Lakshmanan and Lokeshwar Singh Panta, JJ.)

17.07.2006

JUDGEMENT

Dr. AR. LAKSHMANAN, J.:-

1. This appeal was filed by the Employees State Insurance Corporation (in short the "ESIC") against the final judgment and order dated 11.05.2004 passed by the High Court of Judicature at Allahabad in C.M.W.P No. 6920 of 1986. The High Court disposed off the writ petition with certain directions which are in challenge in this appeal by the ESIC.

C.A. No. /2006 @ SLP (C) NO. 18215 OF 2004

2. Leave granted.

3. This appeal was filed by the ESIC against the final judgment and order dated 11.05.2004 passed by the said Court in C.M.W.P No. 27607 of 1998 which was disposed off by the High Court with certain directions which are in challenge in this appeal.

C.A. No. /2006 @ SLP (C) NO. 4202 OF 2005

4. Leave granted.

5. This appeal was filed by the ESIC against the final judgment and order dated 16.09.2004 passed by the said Court in C.M.W.P No. 32843 of 1997 which was disposed off by the High Court with certain directions as covered by the earlier decision in C.M.W.P. No. 6920 of 1986.

6. Since parties to the above three appeals and the question of law to be decided are the same, by consent of parties, all the three matters were taken up together for final disposal. Respective employer, the Trade Union and the State of U.P. have been impleaded as party respondents in these appeals.

7. We shall now take up the facts mentioned in civil appeal No. 1727 of 2005 for reference. Since the facts are identical in other matters we are not stating them in the other cases.

8. A writ petition No. 6920 of 1986 was filed by the Distilleries and Chemical Mazdoor Union, Meerut against the State of U.P., the ESIC and the Company, namely, Central Distilleries and Breweries Limited (CSBL) merged with Shaw Wallace Distilleries Limited (SWDL) for seeking direction in the nature of mandamus not to realise any contribution from the workmen of respondent No.2-herein.

9. The writ petition was admitted and an interim order was passed stating that, meanwhile no deduction shall be made towards the contribution of ESIC from the members of the petitioners-Union under the ESI Act.

10. An application was filed on behalf of respondent No.2 herein for vacation/suitable modification of the order, in order to safeguard the interest of the Company keeping in view all the provisions of the Act. On 17.07.1987, the Court, after hearing all the parties on the application of the company, confirmed the previous order dated 19.05.1986 with the modification that "no deduction shall be

made from the employer or the employees towards the contribution under the ESI Act provided the respondent-employers shall pay the medical allowance to its workmen."

11. An application for modification of the order dated 17.07.1987 was filed by respondent No.2 herein to substitute the words "provide" and "facility" instead of "pay" and "allowance". The Court modified the above order dated 17.07.1987 as sought for.

12. The writ petition remained pending and no contribution was either deducted or deposited. Management continued to provide the medical facility to its workmen as directed by the Court, which fact has not been disputed either by the ESIC or by the workmen. The ESIC did not file any counter affidavit/opposition to the writ petition. The writ petition was finally heard and disposed off along with another writ petition No. 27607 of 1998 which had been filed by another employees Union.

13. Another Union - Distilleries and Breweries Shramik Sangh, Meerut filed writ petition No. 27607 of 1998 against the State Government of U.P., ESIC and CDBL on the ground that no medical facility has been provided by the ESIC Authority in the area and the exemption application filed before the Secretary of Labour Department has not been decided and sought direction from the Court not to realise any contribution from the workers of the Union under the ESI Act and also sought exemption from applicability of the Act for the employees of CDBL.

14. An interim order was passed in the writ petition to the extent.....

"No recovery should be made under the ESI Scheme from the salary of the workmen. Mr. Burman submits on instruction that all the members of the Union are agreed and have given undertaking through him that in case the petition fails in the event amount recoverable for the period during the interim order remain operative shall be recovered from their salary in a suitable monthly instalment."

15. No counter was filed by the State and the ESIC and the interim order was confirmed in the said writ petition. An application for amendment of the writ petition was filed by the Union in the said writ petition for extending the coverage to the daily/contractor workers since they are also the members of their Union. The aforesaid amendment application was allowed. The CDBL filed an application for stay. Final arguments were heard by the High Court and a detailed judgment was passed in the writ petition No. 6920 of 1986 and by the same order writ petition No. 27607 of 1998 was also disposed off. The Court has ordered:

"Under these circumstances, we direct that no contribution shall be realized from the employer or employees till today towards E.S.I contribution, but from today onwards they will start paying E.S.I contribution and employee may avail benefit of the E.S.I Scheme"

Civil Appeal No. /2006 @ SLP NO. 4202 OF 2005

This appeal filed against the final judgment and order dated 16.09.2004 in C.M.W.P. No. 32843 of 1997 was disposed off by a learned Single Judge of the High Court. The said writ petition was disposed off on the ground that the controversy in this writ petition is covered by the decision of the said Court rendered in writ petition No. 6920 of 1986. Considering the aforesaid submission, learned Single Judge disposed off the writ petition with a direction that no contribution shall be realised from the employer or employees till today i.e. 16.09.2004, but from 16.09.2004 onwards they will start paying ESI contribution and the employee may avail benefit of the ESI scheme. With the aforesaid observations, the writ petition was disposed off finally.

16. We heard Mr. C.S. Rajan, learned senior counsel ably assisted by Mr. V.J. Francis for the appellant-Corporation and Mr. Anil Divan, learned senior counsel for the employers and also heard learned counsel appearing for the respective employees Union. Mr. C.S. Rajan, learned senior counsel made the following submissions:

a) that the impugned order of stay granted earlier, and later became part of the final order, does not amount to postponing the enforcement of notification and, therefore, is in clear violation of the principles laid down by this Court in various decisions.

b) that the impugned direction is not in contravention of the principles laid down by this Court in Kanoria Chemicals and Industries Ltd. And Others vs. U.P. State Electricity Board and Others reported in (1997) 5 SCC 772.

c) that the directions given by the High Court not to deduct contributions are not contrary to the law laid down by this Court in Gasket Radiators Pvt. Ltd. Vs. Employees' State Insurance Corporation and Another reported in (1985) 2 SCC 68. AIR 1985 SC 790

d) that the High Court has failed to appreciate that after the dismissal of the main proceedings, the stay and other interim orders granted therein comes to an end and it is the duty of the Court to put parties in the same position they would have been but for the interim orders of this Court.

e) that when once the main case has been disposed off the parties are relegated to the original position and the management is liable to pay the contributions of the employer and the employees. Further, the ESI Act is a beneficial piece of social security legislation, provisions of the Act will have to be construed with that end in view to promote the scheme and avoid any mischief.

f) that the impugned order of stay granted earlier and later became part of the final order, amounted to postponing the enforcement of the notification and, therefore, it is in clear violation of the principles laid down by this Court in Employees' State Insurance Corpn. Vs. Kerala State Handloom Development Corpn. Employees Union (CITU), Kannur, Dist. Kannur, Kerala and Others, (1994) 1 SCC 268. The learned senior counsel has also relied on certain other judgments of this Court.

g) that the impugned direction of the High Court will have far-reaching implications on the enforcement of the provisions of the Act and will also give benefit to those employers by themselves or through employees to obtain stay orders from the High Court under Article 226 of the Constitution of India and thereby assisting them indirectly and, therefore, this is a fit case for interference by this Court under Article 136 of the Constitution of India.

17. Counter affidavit has been filed by respondent No.1 Mazdoor Union and the respondent No.2-employer.

18. Mr. Anil Divan, learned senior counsel invited our attention to the various orders passed by the High Court in the writ petition on 19.05.1986, 17.07.1987, 09.03.1988 and the final order passed by the High Court in the impugned judgment. Our attention was also drawn to the petition to vacate the ex-parte order dated 19.05.1986 passed by the High Court with a prayer to suitably modify to safeguard the interest of the management with regard to the anomalies mentioned in the counter affidavit. It is stated in the counter affidavit that the workmen got the facilities contemplated under the ESI Act and that the workmen did not get the medical allowance but the management pays more in the form of its ESI contribution than what it would pay in the form of medical allowance to the workmen. It is also stated that the distance of the dispensary from the factory is nearly 8 kms. which is highly inconvenient for the workmen to really avail of the facility intended to be provided to them. In view of the ex-parte order, the ESI deductions of the members of the Union have been stopped and in compliance with the Court's Order the management was not deducting the ESI contributions of its workmen. However, the aforesaid order, according to the learned senior counsel for the management, though has been complied with is creating, inter alia, many anomalies.

a) The Court has not made it clear as to what shall be the effect of the stoppage of the deductions on the statutory liability of the answering respondent contemplated under sections 40 and 41 of the ESI Act.

b) It has also not been made clear as to what shall be the consequences if a workman dies or sustains injury during the substance of the interim order as it is very likely that the Corporation in such an event may take a stand of not compensating the workmen for the injury sustained as their contribution is not being paid to the Corporation.

c) That the answering respondent is nevertheless depositing 5 per cent contribution without any benefit to its workmen and it is just and proper that so long as the deductions are not being made the answering respondent should also not be obliged to pay its E.S.I contribution with regard to its workmen.

19. With the above averments, the management employer filed the petition to vacate the ex-parte order granted by the High Court on 19.05.1986 or to suitably modify the same to safeguard the interest of the management in regard to the anomalies mentioned in the paragraphs (supra). However, the High Court, by its order dated 17.07.1987 instead of vacating the interim stay confirmed the same with certain modifications that no deduction shall be made either from the employer or from the employees towards the contribution under the ESI Act. The said order was again modified on 09.03.1988 to the effect that the words "payments" and "allowances" occurring in order dated 17.07.1987 shall be substituted by the words "provide" and "facility".

20. That the appellant has not referred to or mentioned about the two important orders that has been passed by the High Court. The said order would show that:

"The employer company have initially opposed the writ petition filed by the Employees Union and had also prayed for vacation of the ex-parte interim order dated 19.05.1986 passed by the High Court and/or prayed for suitable modification of the order to safeguard the interest of the respondent company (employer), in view of the provisions of the Act. However, the High Court after hearing the parties, confirmed the interim order dated 19.05.1986 and directed that no deduction shall be made either from the employer or the employees towards the contribution under ESI Act provided the respondent employer shall pay medical allowance to its workmen. Respondent No.2 again applied for modification instead of medical allowance, Respondent No.2 was providing/willing to provide medical facilities. The High Court thereafter by order dated 09.03.1988 substituted the words "payment" and "allowances" with "provide" and "facilities". Therefore with the modification of the initial ex parte order dated 19.05.1986 by subsequent orders dated 17.07.1987 and 09.03.1988, the respondent No.2 was restrained from making contribution to ESIC and was directed to provide medical facilities to the employees.

ESIC was not providing medical facilities to the employees in asmuch as the employees themselves contented in the writ petition that the hospital of ESIC was more than 12 kms away from the factory

and even ordinary medical facilities are not available to them and it was therefore, impossible for them to avail of the facilities."

21. It is submitted by learned senior counsel that under compulsion of the above order, the employer company did, in fact, provided medical facilities to the employees as per directions of the High Court and that the employees were also fully satisfied with the medical facilities provided by the employer and have never raised any grievance till date. It is also submitted that the respondent-company has spent large amount of money in view of the order of the High Court for providing medical facilities and subsequently also paid medical allowances to the employees. It is stated that if the High Court had not passed the order of injunction, the respondent-company would have contributed to the ESIC instead of spending monies on the medical facilities and allowances. In these circumstances, Mr. Anil Divan submitted that it would be unfair and unjust to make the employer to pay contribution towards ESIC since in lieu of the contribution to ESIC, the employer provided medical facilities as per the directions of the High Court and it would cause extreme and grave hardship to the employer if it is required to pay contribution for the past for no fault of its own. It is also submitted that no party should suffer because of the orders of the Court if duly complied with.

22. We see much force, substance and merit in the above submission of the learned senior counsel.

23. It is further pertinent to see that the first interim order was passed by the High Court on 19.05.1986 and it was modified on the application of the respondent No.2 on 17.07.1987 and 09.03.1988. The interim orders were not challenged at all by the ESIC and were thus accepted. Despite the pendency of the matter for 17 years, the ESIC did not file any reply or counter affidavit in the writ petition nor filed any application for variation/vacation of the stay as stated in the special leave petition and in fact accepted the interim order. It was, thus, not disputed by the ESIC that the employees were not getting any medical facilities from ESIC and they were in fact getting medical facilities from the employer.

24. The High Court observed as follows:-

"However, since there was an interim order of this court dated 19.05.1986 as modified on 17.07.1987, which directed that no deduction shall be made from the employer or employees towards contribution for E.S.I, and in fact E.S.I facility was not availed by the employees of respondent No. 3 hence in our opinion it would be unfair if the respondent No.3 and its employees are directed to pay contribution for the period when they never got this facility. Learned Counsel for respondent No.3 has stated that the respondent No.3 was giving medical relief to its employees on its own and no medical benefit was given by the E.S.I Corporation. Under these circumstances, we direct that no contribution shall be realized from the employer or employees till today towards E.S.I contribution, but from today onwards they will start paying E.S.I Contribution and employees may avail benefit of the E.S.I Scheme. With the above observation, this petition is disposed off finally."

25. In our opinion, the High Court was fully justified in passing the judicious order after considering the equities by directing the employer and the employees to make ESIC contribution for the future i.e. from the date of disposal of the writ petition and should not bear with the liability for the past inasmuch as the employees of the respondent No.2 has not availed any medical facilities from ESIC and at the same time the employer was providing the medical facilities due to interim order of the High Court. In these circumstances, the order passed by the High Court, in our considered opinion, meets the ends of justice and does not require interference by this Court under Article 136 of the Constitution of India.

26. This apart it is important to note that in the past 17 years when the interim orders passed by the High Court was enforced, several employees have left/retired and were paid the entire salary without any deduction and, therefore, it will be impossible for the employer to recover the part of the employees contribution in respect of the ESIC from the employees.

27. A separate counter affidavit was filed by the Mazdoor Union in support of the employer.

28. As regards the question of law raised by learned counsel for the ESIC regarding the view taken by the High Court, we are of the opinion that the view taken by the High Court was on account of the peculiar facts and circumstances of the case. As already noticed, the deduction of contribution of the members of the Union had been specifically stayed by the High Court and the same continued for a period of 18 years till the disposal of the petition and that none of the members of the Union had availed facilities of the ESI. In our view, passing of the final order by the High Court directing the payment of ESI contribution from the date of the said judgment does not amount to postponing the enforcement of notification and the same is also not in violation of the principles laid down by this Court in the various judgments referred to above. There has been no postponement of the enforcement of the notification in view of the peculiar circumstances of the case, namely, the non-availability of the facilities, non-deduction of contribution from the members of the Union for 18 long years, provision of medical relief by the Management. The High Court had directed deduction of contribution with effect from the date of the judgment, which, in our opinion, is perfectly justified.

29. This apart, the members of the Union included casual, temporary, contractual, badli workmen and it will be practically impossible to find each and every member of the Union to recover their contribution for the last 18 years and in fact some of the workmen who would have been the employees during all these years would have left, expired etc. and on account thereof also their contribution cannot be recovered. The judgments relied on by counsel for the appellant are distinguishable on facts and on law. The order passed by the High Court, in our opinion, is perfectly justified in view of the facts and circumstances of the case and it has been repeatedly held by this Court that such a relief can be granted in the peculiar facts and circumstances of the case and that there can be an exception as in the present case and, therefore, it cannot be said that the directions

issued by the High Court are not correct or that they are contrary to the power under Article 226 of the Constitution of India.

30. The High Court, in our opinion, while disposing off the writ petition filed by the Union has taken a just, pragmatic, fair and judicious view after considering all the equities and facts and circumstances of the case. Extreme hardship might have been caused to both the employer as well as the employee since no medical facilities have been availed by the workmen from ESIC and the employer had provided medical facilities to the workmen as per the Court orders and also had paid medical allowances.

31. In the result, all the three appeals are dismissed and the judgments passed by the High Court are affirmed. However, there will be no order as to costs.

32. The question of law is left open to be decided in an appropriate case.

Appeals dismissed.