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2013 LLR 496  
**ORISSA HIGH COURT**

Hon'ble Mr. B.N. Mahapatra, J.

W.P. (C) Nos. 17955 & 17956/2012, D/-5-11-2012

**National Aluminium Company Ltd. and Ors.**

vs.

**Employees' State Insurance Corporation & Ors.**

A. EMPLOYEES' STATE INSURANCE ACT, 1948 – Sections 39 and 40 – Petitioners received direction from the respondents to deposit ESI contributions in respect of contractors' workers followed by show cause notice – Petitioner challenged the demand of ESI Corporation before Employees' Insurance Court on the ground that respondents have no infrastructure to provide medical treatment to the workmen – Petitioner filed writ petition challenging the show cause notices issued by the respondents – Held, Employees' State Insurance Act provides for certain benefits to industrial employees in case of sickness, maternity, employment injury, etc. – Liability to pay entire contribution under section 39 of the Act is on the employer – Section 40 of the Act says that the principal employer shall pay in respect of every employee, whether directly employed by him or through an immediate employer, both the employer's and employees' contributions – Non-providing facilities of Hospitals/dispensaries to the contractors' labourers cannot exonerate the employer from its statutory obligations – There is no relation between contribution made and the benefit availed of – Any settlement contrary to provisions of law between employer and employees cannot exonerate the employer from its statutory obligations – Courts should be reluctant to interfere with the show cause notice unless it is shown to have been issued palpably without any authority of law as interference at this stage would be premature – Hence, writ petitions are dismissed. Paras 10, 18 to 26

B. OBLIGATION OF EMPLOYER – To deposit contributions – ESI Corporation is under no obligation to inform the factory owner that they are covered under the Act – The duty is enjoined on the principal employer to discharge statutory obligations by depositing the contributions, once the establishment is covered under the Act. Paras 14 to 17

**For Petitioners :** Mr. B. Rath, Mr. S.K. Jethy & Mr. S.K. Mishra, Advocates.

**For Respondent Nos. 1 & 2 :** Mr. P.P. Ray, Advocate.

**IMPORTANT POINTS**

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- Liability to pay entire contribution under the Act in respect of every employee, whether employed direct or through an immediate employer, for both the employer's and employees' contributions, is on the principal employer.
- Any settlement contrary to provisions of law between employer and employees cannot exonerate the employer from its statutory obligations.
- Courts should be reluctant to interfere with the show cause notice unless it is shown to have been issued palpably without any authority of law as the interference at this stage would be premature.
- Non-providing facilities of Hospitals/dispensaries to the contractor labourers cannot exonerate the employer from its statutory obligations as there is no relation between contribution made and the benefit availed of due to the fact that Employees' State Insurance Act provides for certain benefits to industrial employees in case of sickness, maternity, employment injury, etc.
- The duty is enjoined on the principal employer to discharge statutory obligations by depositing the contributions, once the establishment is covered under the Act.

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2015 LLR 635  
**MADRAS HIGH COURT**  
Hon'ble Mr. M. Duraiswamy, J.  
W.P. No. 391/2014 and M.P. No. 1/2014,  
D/-6-2-2015

**Brakes India Ltd. (Brakes Division), Sholinghur-631 102, rep. by its Vice-President (Pers. & HRD)**  
**vs.**  
**Employees' Provident Fund Organisation, Vellore rep. by its Regional Provident Funds Organisation**

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 – Sections 2 (f) and 14B – Provident fund dues and damages – Liability for depositing PF contribution – In respect of employees of independent contractor who was allotted and has been holding his own PF Code No. – Not of principal employer but of the Contractor – Contractor committed default in paying EPF contributions – EPF Authority initiated proceedings under section 7A of the Act against the contractor directing the principal employer to pay the amount if the contractor is found having committed the default – Petitioner-principal employer filed writ petition challenging the order of the EPF Authority – Held, EPF Authority not entitled to recover either PF contribution or damages from the principal employer – Contractors, registered with the PF Department, having independent Code number, are to be treated as 'independent employer' – However, the liability of unregistered contractors, would fall on the principal employer in view of clause 30 of the EPF Scheme, 1952 – Accordingly writ petition is allowed.  
Paras 10 to 13

**For Petitioner :** Mr. Sanjay Mohan for S. Ramasubramanian Associates, Advocates.

**For Respondent :** Mr. V.J. Latha, Advocate.

**IMPORTANT POINTS**

- EPF Authority not entitled to recover either PF contribution or damages from the principal employer in respect of employees engaged through contractors, registered with the PF Department, having independent Code number.
- Contractors, registered with the PF Department, having independent Code number, are to be treated as 'independent employer'.
- However, the liability of unregistered contractors, for payment of EPF contributions or damages, in case of default on his part, would fall on the principal employer, if not paid by the unregistered contractor, in view of clause 30 of the EPF Scheme, 1952.

**JUDGMENT**

**M. DURAISWAMY, J.—1** . The petitioner Company has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records connected with impugned order ref No. TN/VLR/38789/SDC/2013 dated 26.12.2013 on the file of the respondent and quash the same and direct that the respondent shall not have a right to proceed against the petitioner under section 14B of the PF Act.

**2.** The brief case of the petitioner is as follows:

2004 LLR 311  
**JHARKHAND HIGH COURT**  
Hon'ble Mr. Vikramaditya Prasad, J.  
Cr. M. P. No. 854 of 2003  
Decided on 7-8-2003

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**Aditya Puri**  
vs.  
**Union of India & Anr.**

**CONTRACT LABOUR (REGULATION AND ABO-LITION) ACT, 1970** - Sections 24 and 25(2) - Read with section 482 of Code of Criminal Procedure - Prosecution of the accused for violation of the provisions of the Contract Labour (R&A) Act - Liability is on the person who was incharge of office when offence was committed - To fasten liability on others who were not in charge at that point of time of office not correct - It should be shown that alleged violations were either with their consent or connivance or that commission of offence was attributable to their neglect - Said elements wanting in complaint filed against Branch Manager and Managing Director of company - Proceeding against them liable to be quashed.

Paras 5 to 7.

**CASES REFERRED**

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1. Indian Iron and Steel Co. v. State of Bihar, 1986 Lab 1C 2003.

Para 3

2. L. K. Ahuja v. State of Bihar, 1988 (36) BLJR 461.

Para 3.

3. Municipal Corporation of Delhi v. Ram Kishor Rohtagi, AIR 1983 SC 67: 1983 Cri LJ 159.

Para 3

**For Petitioner:** Mr. Satish Bakshi & Mr. A. Khan, Advocates.

**For Respondents:** Mrs. Sheela Prasad, Advocate.

**IMPORTANT POINT**

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Prosecution for violation of various provisions of Contract Labour (Regulation and Abolition) Act and the Rules thereto, of the persons who were not incharge of the office of the Company at a particular point of time, will be quashed since no such liability can be fastened when it has not been shown that the violations were made with their consent or connivance or the commission of offence was attributable to their negligence.

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2013 LLR 595  
**KARNATAKA HIGH COURT**  
Hon'ble Mr. K.N. Keshavanarayana, J.  
CP No. 6400/2012, D/-22-2-2013

**Mr. Shachindra Kumar, Factory Manager, Hindustan Unilever Ltd.**  
vs.  
**State of Karnataka, Department of Labour**

A. PAYMENT OF BONUS ACT, 1965 – Section 2(13) – Employee – Labour Department Authority under the Act lodged a complaint before the Judicial Magistrate against the petitioners for not making payment of bonus under the Act to the employees engaged through contractor – Judicial Magistrate took cognizance of the offence – Petitioners have challenged the order of the Judicial Magistrate by filing petition before the High Court – Held, definition of 'employee' under the Act does not include the contract labourers – In the absence of privity of contract of employer and workmen, non-payment or less payment of Bonus to contract labourers is not violation of section 11 attracting punishment under section 28 of the Act – Accordingly petition is allowed – Prosecution launched is quashed. Paras 9, 10, 12, 13, 16 & 17

B. PAYMENT OF BONUS ACT, 1965 – Section 11 read with section 28 – Launching of prosecution of principal employer for non-payment of bonus to contract labourers – Legality of – Held, contract labourers are not employees covered under the definition of 'employee' under the Act – Non-payment of bonus to contract labourers by the principal employer does not attract provisions of section 11 read with section 28 of the Act – Prosecution of principal employer unsustainable. Paras 5, 6, 11, 16 and 17

C. CRIMINAL PROCEDURE CODE, – Section 482 – Inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code – Quashing of prosecution launched by Authority under the Payment of Bonus Act, 1965 for non-payment of bonus to the employees of contractors by the principal employer – Principal employer is not liable to make payment of bonus to contract labourers as there is no relationship of employer and employee between the principal employer and the contract labourers – Prosecution of principal employer is quashed. Paras 16 and 17

**For Petitioner :** Sri K. Kasturi, Senior Advocate for Smt. Rukmini Menon.

**For Respondent :** Sri P. Karunakar, HCGP.

**IMPORTANT POINTS**

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- As per definition of 'employee' under section 2(13) of the Payment of Bonus Act, 1965, the contract labourers are not employees of the principal employer as there is no privity of contract between the principal employer and the contract labourers.
- Contract labourers are not entitled to claim bonus from the principal employer as they are not, in fact, employees of the principal employer.
- Non-payment or less payment of bonus to contract labourers by the principal employer is not violation of section 11 attracting punishment under section 28 of the Payment of Bonus Act.
- Launching of prosecution of principal employer for non-payment of bonus by the Authority under the Payment of Bonus Act is illegal, liable to be quashed.
- Principal employer is not liable to make payment of bonus under the Payment of Bonus Act, 1965 to contract labourers as there is no relationship of employer and employee between the principal employer and the contract labourers.

**ORDER**

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(5)

2012 LLR 1160  
**MADRAS HIGH COURT**

**Hon'ble Mr. K. Chandru, J.**

W.P. No. 6633/2008 and M.P. Nos. 1/2008 & 1/2009,  
D/-18-7-2012

**Superintending Engineer, Mettur Thermal Power Station, Mettur**

**vs.**

**Appellate Authority, Joint Commissioner of Labour, Coimbatore & Anr.**

PAYMENT OF GRATUITY ACT, 1972 - Gratuity payable - Workman was engaged through contractor as per provisions of Contract Labour (Regulation & Abolition) Act, 1970 - Section 21(4) - Contractor did not pay gratuity to the workman - Application, moved by workman before the Controlling Authority demanding gratuity from the petitioner being principal employer, was allowed - Order of Controlling Authority was upheld by the Appellate Authority - Petitioner challenged the orders of Appellate Authority and Controlling Authority in writ petition - Held, when the contractor who engages the workmen, does not pay the amount of gratuity to them, the principal employer is liable to pay all dues including gratuity to such workers as per provisions of section 21(4) of Contract Labour (Regulation & Abolition) Act, 1970 - Writ petition stands dismissed. Paras 7 and 8

**For Petitioner :** Mr. P.R. Dhilip Kumar, Advocate.

**For respondent No. 2:** Ms. M. Lakshmi for M/s. K.S. Shanmuganathan, Advocates.

**IMPORTANT POINT**

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- When the contractor, who engages the workmen, does not pay the amount of gratuity to them, the principal employer is liable to pay all dues including gratuity to such workers as per provisions of section 21(4) of Contract Labour (Regulation & Abolition) Act, 1970.

**ORDER**

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**PER K. CHANDRU, J.-1.** The writ petition is filed by the Superintending Engineer, Purchase and Administration, Mettur Thermal Power Station, Mettur Dam, challenging the order passed by the appellate authority, under the Payment of Gratuity Act, namely, the Joint Commissioner of Labour, Coimbatore, in AGA No. 52 of 2006, dated 29.9.2007, confirming the order passed by the Controlling Authority/Assistant Commissioner of Labour, Salem, in P.G. Case No. 6 of 2005, dated 2.5.2006. By the impugned order, the appellate authority dismissed the appeal filed by the petitioner and confirmed the order passed by the controlling authority in favour of the second respondent.

**2.** The writ petition was admitted on 18.3.2008. Pending the writ petition, this Court granted interim stay. The second respondent filed a vacate stay application. But however no orders have been passed. In the meanwhile, the matter was referred to the resolution of the dispute by the Permanent Lok Adalat. However, the dispute was not resolved in the Lok Adalat.

**3.** The question that arises for consideration in this petition was whether the claim made by the workman, namely, the second respondent, that he had put in service from 16.2.1988 to 31.12.2003, namely, a period of sixteen years is eligible for getting payment of gratuity, under the Payment of Gratuity Act, 1972.