

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -2124 of 2021

M/s. Star Denim Pvt. Ltd.

Versus

Government of Sindh and another

Date of hearing & order : 29.03.2021

Mr. Farhan-ul-Hassan Minhas, advocate for petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through this petition, petitioner-M/s. Star Denim Pvt. Ltd. is asking for setting aside of the impugned letter dated 10.03.2021, whereby Audit Officers of the Sindh Employees' Social Security Institution ('SESSI') attempted to visit the establishment of the petitioner to verify the Secured Workers engaged by for issuing the R-5 cards so they could get the financial / Medical care facility.

2. Briefly stated the facts of the case are that the petitioner-establishment is engaged in Manufacturing and Export of Woven Garments and is registered with the respondent-SESSI and as present is paying its SESSI contribution, however, respondent-SESSI initiated physical verification of Secured Workers of petitioner-establishment from time to time and finally impugned letter dated 10.03.2021 was issued to visit the petitioner-establishment as discussed supra. The aforesaid action on the part of respondent-SESSI was objected by the petitioner-establishment on the ground that as per section 23 of the Sindh Employees' Social Security Act, 2016, (the Act 2016) they had already inspected in 2020 and a certain amount was assessed and the same was paid to them accordingly, however, they again issued another letter dated 08.02.2021 which was also complied with but now they have issued a fresh notice of inspection vide letter dated 10.03.2021 to conduct the audit in violation of section 23 of SESSI Act, 2016, which provides that no staff member of the institution shall visit the premises of any establishment opting the self-assessment scheme under section 21 to check employers books records, etc. during 02 years.

3. Per learned counsel since the period of audit has been restricted i.e. two years and the inspection has already been carried out as discussed supra as such no further audit/inspection is required to be conducted. He prayed for the declaration to the effect that the notice issued by the respondent-SESSI dated 10.03.2021 is illegal. Learned counsel relied upon the documents attached with the memo of the petition and argued that respondent-SESSI is causing harassment to the petitioner by issuing notices just to fulfill their illegal demands. Prima facie, this assertion cannot be probed in the constitutional petition and it is for the petitioner to seek remedy under the law.

4. We have heard the learned counsel for the petitioner-establishment on the maintainability of this petition and perused the material available on record.

5. The impugned letter dated 10.03.2021 explicitly provides that the earlier letter dated 03.03.2021 was/is not an annual audit, however, they insisted to visit the establishment to verify the secured workers engaged by issuing the R-5 cards so that they could get the financial/medical care facility. Prima facie, there is much difference between the words inspection/examine/checking of employers' books, records, etc.; and, verifying the secured workers as provided under section 22 & 23 of the Act 2016, if there would have been the examination of accounts, books, record and other documents relating to the employment of persons and payment of wages, the situation would have been different and restricted clause would have come into play. Since the impugned letter is restricted to the extent of physical verification of secured workers, which could not be construed to be used for another purpose as respondent-SESSI filed letter dated 10.09.2020 assessed the amount of contribution and resultantly certain amount was paid by respondent-SESSI vide receipt dated 18.09.2020 (page 23 & 29). For convenience sake, an excerpt of section 23 is as under:

“23. Officials of Institution to check employer’s books.- (1) Any official of the Institution duly authorized by a certificate in a form specified in the regulations, may, for the purpose of inquiring into the correctness of any of the particulars stated in the records or returns referred to in section 22 or for the purpose of ascertaining whether any of the provisions of this Act have been complied with

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- (a) require an employer to furnish to him such information as he may consider necessary; or
- (b) at any reasonable time enter in any establishment or other premises occupied by such employer and require any person found incharge thereof to produce and allow him to examine such accounts, books

and other documents 10 relating to the employment of persons and payment of wages, or to furnish to him such information, as he may consider necessary; or

(c) examine, with respect to any matter relevant to the purposes aforesaid, the employer, his agent or any person found in such establishment or other premises, or any other person whom the said official has reasonable cause to believe to be or to have been a secured person.

(2) The official referred to in sub-section (1), shall be bound to secrecy as regards all matters with which he becomes acquainted in the performance of his duties and which do not relate to matters provided for in this Act.

(3) If an employer fails to maintain records or to submit returns as required by regulations, or otherwise fails to comply with the provisions of sub-section (1) and thereby makes it difficult to ascertain the identity of persons required to be secured or the amount of contribution payable, the contribution shall be assessed on the basis of such evidence as the Institution may find satisfactory for this purpose.

(4) No staff member of the Institution shall visit the premises of any establishment, opting for the Self-Assessment Scheme under section 21, for the purpose of checking of employer's books, record, etc., during the period of two years.

(5) The number of annual inspections in respect of those establishments which do not opt for self-assessment scheme shall be restricted to only one which shall be notified to the establishments in advance and shall, at the maximum, be restricted to last two years.

6. The aforesaid provision empowers the respondent-SESSI to check the record and verify the secured workers to protect the secured workers as to whether the workers are registered with SESSI or not and getting their financial benefits and medical care facility, more particularly this is only verifying the number of secured workers who are currently working in petitioner-establishment. The impugned letter does not speak about the audit/inspection of the record. Prima facie, this could not be construed to violate section 23 (4) (5) of the Act 2016 as portrayed by the petitioner.

7. The Act 2016 was introduced with the main object to provide benefits to certain employees or their dependents in the event of sickness, maternity, employment, injury, or death, and for matters ancillary thereto. We, therefore, are of the view that the petitioner-establishment is under a legal obligation to make its contribution under law, and apparently, there is no harm to allow the respondent-SESSI to verify the secured workers from the petitioner-establishment for the purpose as discussed supra.

8. In the light of the above facts and circumstances of the case, we are of the view that this Court in its Constitutional jurisdiction cannot interfere in the internal affairs of respondent-SESSI, so far as the impugned letter dated 10.03.2021 is concerned; and, we also do not see any illegality in the aforesaid letter, warranting interference of this Court under Article 199 of the Constitution. Hence, the instant Petition is found to be meritless and is accordingly dismissed in *limine* along with the listed application (s) with no order as to costs. However, the petitioner is at liberty to seek the remedy before the proper forum under law.

JUDGE

JUDGE

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