(2007) 02 KL CK 0070

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5159 of 2007

Bhaskaran	APPELLANT
Vs	
Asst. Director, Employees'' State Insurance Corporation	RESPONDENT

Date of Decision : 15-02-2007

Acts Referred:
Employees State Insurance Act, 1948 — Section 44, 45A, 45A(1), 45A(2), 45B

Citation : (2007) 115 FLR 180

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : P.V. Kunhikrishnan, for the Appellant; T.D. Rajalekshmy, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—The petitioner, a licensee of a toddy shop for the abkari year ending on 31.3.2007, is faced with an order made by the Employees'' State Insurance Corporation, hereinafter referred to as the "Corporation", under Sub-section (1) of Section 45A of the Employees'' State Insurance Act, 1948, the "Act", for short. His contentions are that the mere issuance of a determination order u/s 45A(1) of the Act is insufficient to enforce recovery of any amount as determined thereby and that the Corporation has to obtain necessary orders from the Employees'' Insurance Court, hereinafter referred to as the "Court", u/s 75 of the Act before taking any further steps in terms of Sections 45C to 45I of the Act. Still further, it is contended that the Act does not apply to toddy shops and that no other toddy shop in the area has been proceeded against for determination of contribution u/s 45A.

2. The second limb of the contention is stated only to be rejected outright in the light of the decision of the Apex Court in Anitha v. E.S.I. Corporation 2003 (3) KLT 813, laying down that toddy shops, are also governed by the Act and because, proceedings u/s 45A cannot be averted by an employer on the ground that the authorities under the Act are yet to reach at other persons liable for

contribution in terms of the provisions of the Act.

3. In so far as the contention as to the enforceability of the determination order under Sub-section (1) of Section 45A is concerned, Sub-section (2) of Section 45A provides that an order made by the Corporation under Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45B or the recovery under Sections 45C to 45I. Therefore, a determination order u/s 45A(1) is sufficient for the recovery of the amount as an arrear of land revenue u/s 45B. Such a determination order is sufficient to enforce recovery of such amount in terms of Sections 45C to 45I. Merely because a determination order u/s 45A(1) is, by force of Sub-section (2) of Section 45A, also to be treated as sufficient proof of the claim of the Corporation u/s 75, it is impermissible to read into Sub-section (2) of Section 45A or to any of the other provisions of the Act, any obligation on the Corporation to establish its claim u/s 75 before the Court, before taking recourse to either Section 45B or the provisions of Sections 45C to 45I, for enforcement of the determination order made under Sub-section (1) of Section 45A.

4. The procedures for recovery under Sections 45B or Section 45C to Section 45I, as the case may be, do not depend upon any decision of the Court u/s 75. This is because, a determination order u/s 45A(1) is an order which is an enforceable order and one intended to be enforced, going by the terms of Sub-section (2) of Section 45A. The decision of the Apex Court in The Employees State Insurance Corporation, Bhopal Vs. The Central Press and Another, , cited by the learned Counsel for the petitioner, does not lay down to the contrary. Even if the Corporation moves the Court u/s 75, the Court is duty bound to direct the Corporation to perform its duty even in cases where the Corporation has failed to do so.

5. Section 45A was inserted in the Act to enable the Corporation to reach at those factories and establishments who do not file returns. It is necessary to reach at the erring employers, to give effect to the provisions of the Act which is one impregnated with social welfare as its objective. The factory or establishment is entitled to a reasonable opportunity of being heard before an order u/s 45A(1) is issued. If the argument is that such an order would need the support of a further direction by the Court, for its enforcement, one has to assume that the Legislature intended to extend a luxury track for an evader of statutory liabilities under the Act by giving him a stretched string of opportunities to evade contribution under the Act by dragging on the performance, of his obligations under the said social welfare legislation. It would also be a situation where one, who had failed to file returns and submit particulars and thereby, is a wrong-doer in the eye of law, would get more opportunities than-one who would abide by the law. It is plainly impermissible to interpret the statute in hand to dole out any such benefit in favour of those who invited proceedings under Sub-section (1) of Section 45A by their failure to file returns and provide particulars,

registers and records, as are to be furnished in terms of Section 44 of the Act. No such intention of the Legislature is to be inferred or applied in construing and interpreting Sections 45A and 45B as well as Sections 45C to 45I of the Act.

For the aforesaid reasons, the Writ Petition fails. The same is accordingly dismissed with leave to the petitioner for any statutory remedy that may be available against the determination order, in the light of the request made on his behalf, by his Counsel. It is also ordered that if the petitioner makes any remittance on the basis of the impugned orders, such payment by itself shall not work against him, if he seeks statutory remedies against the determination order, provided he pays such amount within one month from now.