
(2005) 01 KL CK 0052
In the High Court Of Kerala
Case No : M.F.A. No. 984 of 2002

Dy. Director

APPELLANT

Vs

B.P.L. Cellular Ltd.

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 40, 40(1), 40(2)
Employees State Insurance Act, 1948 — Section 2(4), 40(1)

Citation : (2005) 2 KLT 775 : (2005) 3 LLJ 74

Hon'ble Judges : K.K. Denesan, J

Bench : Single Bench

Advocate : T.P.M. Ibrahim Khan, for the Appellant; Antony Dominic and E.K. Nandakumar, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Denesan, J.—Appellants are the respondents in I.C. 40/99 on the file of the Employees Insurance Court, Alappuzha. Respondent herein was the applicant.

2. The case of the respondent/applicant was that the demand of Rs. 68,952/- made by the appellant as arrears of contribution for the period from 1/97 to 3/98 is arbitrary and illegal. Respondent further contended that during the period from 1/97 to 3/98 an amount of Rs. 33,961/- was paid in excess of the amount payable by the respondent-employer. Therefore, the respondent was eligible to get refund/adjustment of the excess amount paid.

3. The Insurance Court decided the first point against the applicant and held that it was liable to pay Rs. 66,952/- to the Employees State Insurance Corporation for the periods from 1/97 to 3/98. Regarding the second issue viz., adjustment of the excess amount paid by the respondent, the ESI Court found favour with the contention of the respondent and declared that the respondent was eligible to get adjustment of Rs. 33,961/- paid for the period from 1/97 to 3/98.

4. Appellants are aggrieved by the declaration granted by the ESI Court as above.

5. Learned counsel for the appellants contends that in the light of Regulation 40 of the Employees' State Insurance (General) Regulations, 1950, (for short, "the Regulations") the ESI Court erred in allowing the request made by the respondent-applicant for adjustment of the sum of Rs. 33,961/-. Regulation 40 of the aforesaid Regulations reads as follows:--

40. Refund of contribution erroneously paid:--

(1) Any contribution paid by a person under the erroneous belief that the contributions were payable by that person under that Act may be refunded without interest by the Corporation to the person, if application to that effect is made in writing before the commencement of the benefit period correspondent to the contribution period in which contribution was paid.

(2) Where any contribution has been paid by a person at a rate higher than that at which it was payable the excess of the amount so paid over the amount payable may be refunded without interest by the Corporation to that person, if application to that effect is made before the commencement of the benefit period correspondent to the contribution paid in which such contribution was paid.

(3) In calculating the amount of any refund to be made under this regulation there may be deducted the amount, if any, paid to any person by way of benefit on the basis of the contribution erroneously paid and for the refund of which the application is made.

(4) Where the whole or part of the amount of any contribution referred to in sub-regulations (1) and (2) are recovered from an immediately employer or deducted from the wages of an employee by the principal employer, he shall, on getting the refund of the amount due from the Corporation, be liable to pay back the amount so recovered or deducted to the person from whom the amount was so recovered or deducted.

(5) Applications for refund under this regulation shall be made in such form and in such manner and shall be supported by such documents as the Director-General may, from time to time, determine.

6. It is not in dispute that the date of commencement of the benefit period corresponding to the contribution period in which contribution was paid is 1.7.1998. The respondent submitted application for refund/adjustment on 10.7.1998. It is therefore contended by the appellants that the application for refund/adjustment ought not to have been allowed by the ESI Court, as the application was submitted beyond the period of limitation prescribed in Section 40(1) of the Regulations.

7. Learned counsel for the respondent-applicant submits that the declaration granted by the ESI Court for adjustment of the excess amount paid can be sustained on two grounds. (i) Regulation 40 employs the term "refund" and does not apply to a claim for "adjustment". The words "refund" and "adjustment" to do convey exactly the same meaning, but represent different ideas. Different

procedure has to be followed to fulfil the object of the two concepts. Regulation 40 imposes a restriction on the right, of the employer etc. who is otherwise entitled to get back the money erroneously paid. Regulation prescribes a time limit to apply for refund. This restriction is procedural in nature and applies only for refund. The substantive right to get the money back exists; but Regulation 40 says that the claimant cannot exercise his right unless done within the prescribed period. (ii) Regulation also says that it applies to cases where excess contribution was paid under the erroneous belief that the contributions were payable by him. Therefore, the amount paid shall be capable of being characterised as "contribution" and still further it should have been paid under an "erroneous belief."

8. I shall proceed to examine the latter contention first, as I feel that the respondent's case, based on that contention stands on a better footing than the former, and the impugned judgment can be sustained, even if one of the contentions alone is found acceptable.

9. It is true that the Employees State Insurance Act is a labour welfare legislation and, therefore, the provisions of the Act, the Rules and the Regulations must receive a liberal construction. But it does not mean that the above principle of interpretation of statutes applies to all the provisions of the welfare legislation. It is contended by the learned counsel for the respondent-applicant that Regulation 40 cannot be made applicable to the facts of this case, not only for the reason that what was prayed for was adjustment and not refund but also for the reason that the refund contemplated by the said provision is in respect of amount paid as excess contribution. Regulation 40 opens with the words "any contribution paid by a person under the erroneous belief that the contributions were payable by that person under that Act.....etc.". A sum of Rs. 33,961/- paid by the respondent during the period from 1/97 to 3/98 does not fall within the meaning of the term "contribution" as defined in Section 2(4) of the ESI Act. As per the definition the word "contribution" means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of the said Act. Amount of Rs. 33,961/- was paid in respect of employees for whom no contribution was payable at all. Therefore, what was paid will not partake, in the eye of law, the character of ESI contribution. Regulation 40 applies to excess payments made towards contribution and not otherwise. Therefore, if the employer pays some amount in respect of an employee for whom contribution has to be paid, in excess of the amount due, Regulation 40 comes into play. Likewise, if the employee pays contribution in excess of the amount due, Regulation 40 of the Regulations would apply. These are cases where the ultimate beneficiary of the excess contribution paid is the employee/worker concerned for whose benefit the law was enacted. It is for the above reason that the Regulations stipulate that any amount paid by the employer or the employee in excess of the contribution actually due, even if due to an erroneous belief, refund of that amount can be claimed only within the

stipulated period of time. The intention of Regulation 40 is to protect the interest of the employee and prevent the possible act of taking back amounts once paid which enure to the employee's benefit though in excess of what was actually due. Hence by imposing restrictions on the right of the employer to get the amount refunded, the statute consciously leans in favour of the employee and this aspect has to be kept in mind while interpreting the provisions of the Act as also the Regulations framed thereunder. But the liberal interpretation applicable to labour welfare legislations need be applied only to those provisions which are intended to confer benefits to that section or class of people for whose benefit the provision has been made. If the beneficiary of the liberal construction or interpretation of Regulation 40 is not the employee or worker, then that kind of interpretation will not accord with the object of the statute. In such a situation, the provisions has to be understood applying other appropriate rules of construction. The Act or the Rules or the Regulation does not expect or intend that the ESI Corporation should be benefited out of a mistaken payment made by the employer or the employee. If the Corporation wants to gain or make money out of such mistakes committed by the employer or the employee it will amount to unjust enrichment. Therefore Regulation 40 need not be liberally construed if it results in undue advantage or benefit to the Corporation. Hence the word contribution in Regulation shall be understood as that word is defined in the Regulations. In this view of the matter I hold that the respondent is eligible to get adjustment of Rs. 33,961/- paid in excess during the period from 1/97 to 3/98 with reference to the date of remittance against their liability of Rs. 68,952/- mentioned above.

10. As I have found that the impugned order is sustainable on the above ground, I do not consider it necessary to deal with the contention that limitation applies only to refund and that adjustment of the amount is outside the purview. The above contention is left open.

11. It is true that the ESI Court did not properly approach the issue, and further, that the reasons assigned by the ESI Court for granting of the reliefs are not sustainable. However, as the matter can be viewed from a different angle and perspective, and so viewed the order is sustainable, the ultimate relief granted by the ESI Court does not call for interference in this appeal. I therefore confirm the impugned order of the ESI Court. It follows that M.F.A. is liable to be dismissed. I do so. There will be no order as to costs.