(2008) 05 KL CK 0016

In the High Court Of Kerala

Case No : M.F.A. No. 1400 of 2001 and Ins. Appeal No. 17 of 2003

Employees'' State Insurance Corpn. APPELLANT

Vs

Bharat Hotel RESPONDENT

Date of Decision : 27-05-2008

Acts Referred:
Employees State Insurance Act, 1948 — Section 39(5)(a)

Citation : (2008) 118 FLR 936 : (2008) 2 KarLJ 689 : (2008) 2 KLJ 689 : (2008) 3 KLT 195 : (2009) 1 LLJ 340

Hon'ble Judges : P.N. Ravindran, J;J.B. Koshy, J

Bench : Division Bench

Advocate : T.P.M. Ibrahim Khan Sr. SC Rlys and P. Sankarankutty Nair, for the Appellant; U.K. Ramakrishnan (Sr.), P.V. Lohithakshan, P. Vijayamma, Sandeep E., A.V. Xavier and Thushara James, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—In these cases, there was a dispute regarding the coverage of establishments of the respondents. Initially, Employees'' Insurance Court was of the view that the establishments were not covered. Later, after appellate decision it was finally held that both establishments are covered and they are liable to pay contribution. Then the question is whether they are liable to pay interest on the contribution payable. Employees'' Insurance Corporation was of the view that interest is payable from the due date of payment of contribution and accordingly demands were raised. The E.I. Court held that since there was a decision of the Court, establishments bona fide believed that they are not liable to pay contribution and in the above circumstances, interest is not payable for the past period. That is questioned by the Insurance Corporation in these appeals. When the appeals came up for hearing the learned single Judge noticed difference in opinion in Cannanore Drug Lines Vs. Employees State Insurance Corporation, and Regional Director, E.S.I. Corporation Vs. Cannanore Spinning and Weaving Mills, in which one of us (Justice J.B. Koshy) was a party. In the Cannanore Spinning and Weaving Mills'' case (supra) employees approached the court and got a stay and, therefore, the employer was prevented from paying contribution. On that circumstances, this court held that they are not liable to pay contribution for the period in which they were prevented from paying contribution because of the court order. Parties shall not suffer due to court order. The unreported decision in M.F.A. No. 1199 of 1999 is based on the facts of that case.

2. In these cases, it is true that date of coverage of establishments and number of persons employed in the establishments etc. were disputed, but, that is finally settled. Once it is held that contribution is payable from a particular date and if there is delay, interest is payable from that date as it is a statutory obligation to pay interest, Parties themselves went to the court and obtained stay. Section 39(5)(a) of the Employees'' State Insurance Act, 1948 reads as follows:

39. Contribution ? xx xx

(5)(a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent, per annum or at such higher of twelve per cent, per annum or at such higher rate as may be specified in the regulations till be date of its actual payment:

Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

Regulation 31A of the Employees'' State Insurance (General) Regulations, 1950 reads as follows:

31A. Interest on contribution due, but not paid in time - An employer who fails to pay contribution within the periods specified in regulation 31, shall be liable to pay (simple interest at the rate of (twelve per cent) per annum) in respect of each day of default or delay in payment of contribution).

The statutory provisions are very clear and capable of one interpretation only. Hence, ration of the decision in Cannanore Drug Lines cases (supra) lays down the correct legal principle and there is no conflict between the decision in Cannanore Drug Lines case and Cannanore Spinning and Weaving Mills case (supra) as facts are different. But, if the delay was occurred due to bona fide reasons, damages can be waived on the facts of each case as imposition of damages is penal in nature and mens rea is necessary unlike statutory obligation to pay interest for delayed payment of contribution. In the above circumstances, imposition of interest on the contribution from the due date of payment has to be upheld.

In the circumstances, both appeals are allowed. However, if there is any dispute regarding the calculation of interest or amount, parties are free to approach the Employees'' State Insurance Corporation.

