

(2006) 03 AHC CK 0077
In the Allahabad High Court
Case No : Special Appeal No. 248 of 2006

Employees State Insurance Corporation and Others	APPELLANT
Vs	
L.M.L. Ltd. and Another	RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:

Employees State Insurance Act, 1948 — Section 39(5), 45A, 45H, 75

Citation : (2006) 2 AWC 1735 : (2006) 109 FLR 615 : (2006) 3 LLJ 33

Hon'ble Judges : Ajoy Nath Ray, C.J.; Ashok Bhushan, J

Bench : Division Bench

Advocate : J.N. Tewari and Rajesh Tiwari, for the Appellant; B.C. Rai, for the Respondent

Final Decision : Dismissed

Judgement

Ajoy Nath Ray, C.J. and Ashok Bhushan, J.—We are in respectful agreement with the reasoning given and the order passed by an Hon'ble single Judge on the 7th of March, 2006.

2. The brief facts are that on or about the 6th of January this year, an assessment order was passed u/s 45A of the E.S.I. Act, 1948. The amount of contribution was a little above Rs. 80 lac. The amount of interest at the rate of 12% u/s 39, Sub-section 5 (a) came to a little under Rs. 50 lac and as such the total amount was about Rs. 1.31 crore.

3. The assessment was not in respect of ordinary employer's contribution but was made notionally on labour value of 25% in respect of certain repair and other works done on the writ petitioner's factory machinery.

4. On the 6th of February, 2006, a notice was served upon the respondent-writ petitioner for payment of the total amount. The notice mentioned a period of 15 days as the period allowed for payment.

5. On the 21st of February, 2006, the account of the writ petitioner in an H.D.F.C.

Bank was attached and a banker's cheque was obtained for an amount, which was a little above Rs. 1.1 crore. The balance amount to make up for the deficit of Rs. 1.31 crore was taken away on 22.2.2006.

6. The Hon'ble single Judge has ruled that the taking of action on the 21st of February, 2006 was not authorised by law as 15 days from the date of service of notice had not elapsed by then.

7. We are of the opinion that the mere mention of 15 days in the notice, which was served on 6.2.2006 did not by itself cast any legal obligation on the appellant to withhold action for 15 days.

8. The mandatory requirement for allowing 15 days to elapse arises on a joint reading of Section 45H of the E.S.I. Act which makes, inter alia, the provisions of the second schedule of the I.T. Act, 1961 applicable, and the clauses in Part-I of the said Schedule II. Under Clause 2 of Part I notice is to be issued by the Tax Recovery Officer specifying requirement of payment within 15 days, and Clause 3 states that no step in execution of a certificate shall be taken until the period of 15 days has elapsed since the date of the service of the notice required by the preceding rule....

9. The issue is whether Clause 3 was broken by taking money away from the respondent's bank account on 21.2.2006 itself and thus effecting recovery in a substantial way on that very date.

10. In legal matters, unless there is strong cause to the contrary, parts of a day are not counted. As such, if there is a prohibition against taking of action within a period of one day from 6.2.2006, no action can be taken on 7.2.2006. On pure arithmetic, if one day is made 15 days, 21.2.2006 becomes a prohibited date.

11. The recovery was therefore wrong. So was the attachment levied on 21.2.2006.

12. His Lordship has moulded the relief by directing that about Rs. 43 lac shall be retained by the appellants. This is because the respondent has gone upto the E.S.I, Court u/s 75 of the Act and unless the Court otherwise waives, the appeal would not be entertainable without 50% deposit.

13. His Lordship has ordered retention of only 50% of the principal amount and not 50% of the interest.

14. In any event the matter is now before the E.S.I. Court, the respondents had gone there on 17.2.2006; they had filed a stay application as well as an application for waiver of deposit. The date of hearing was fixed for 24.2.2006 but before that date could come the above events took place.

15. It will be for the E.S.I. Court hereafter to proceed in accordance with law and the parties will also similarly proceed hereafter in accordance with law.

16. The learned Judge has also noticed that the respondent is a relief

undertaking and that its factory is under a virtual lock out with 6000 employees not working there, as the recovery has created a financial crunch. We are not concerned with these matters. We are only concerned with the illegality of the recovery and the taking of steps on 21.2.2006. Once that is set aside, which is hereby done, the Court has to mould reliefs. In our respectful opinion the relief has been perfectly moulded by allowing E.S.I, to retain Rs. 43 lacs approximately and directing them to refund the balance of the illegally recovered amount to the respondent industry/principal employer.

17. The period of two weeks fixed for return of the money has already elapsed; as such the return has to be made forthwith.

18. A prayer for extension of time for return is made by Mr. Tiwari, but it is unhesitatingly turned down, as it is not proper for a public authority not to return money illegally recovered from anybody, or hold on to it even for a single day.

19. The appeal is dismissed.