(2007) 01 KL CK 0027

In the High Court Of Kerala

Case No : Ins. App. No. 28 of 2003

Employees'' State Insurance Corporation — APPELLANT

Vs

4 Aces Restaurant — RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 31, 31A
Employees State Insurance Act, 1948 — Section 2(12), 39(4), 39(5), 45C, 45D

Citation : (2007) 115 FLR 566 : (2007) 1 ILR (Ker) 457 : (2007) 2 LLJ 903

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : P. Sankarankutty Nair, for the Appellant; A.V. Zavier and Jimmy George, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—This is an appeal, preferred by the Employees'' State Insurance Corporation aggrieved by the order passed by the Employees Insurance Court, Alleppey in I.C. No. 104/2001. I.C. No. 104/2001 was preferred by the respondent herein challenging the demand of interest of Rs. 29,113/-for the belated payment of contribution. For the period from April, 1990 to March, 1999 contribution was paid by the respondent only on July 4, 2000 and hence the Corporation demanded interest of Rs. 29,113/- as per Section 39(5) of the ESI Act. ESI Court was of the view that levy of interest can be demanded only from the date of judgment of this Court in M.F.A. No. 1216/1993 dated November 2, 1999.

2. Counsel appearing for the Corporation submitted that the Insurance Court has committed a grave error in holding that the Corporation can demand interest only from the date of judgment of this Court in M.F.A. No. 1216/1993. Counsel submitted that the Corporation had demanded contribution from respondent applicant since the establishment was covered under the E.S.I. Scheme since power was used for the manufacturing process and that the applicant fell under

the definition of "factory" employing 10 or more persons. Corporation took up the stand that after the amendment to Section 2(12) of the ESI Act which came into force with effect from October 22, 1989 the position which existed prior to that date had been completely changed and in view of that all hotels should be brought under coverage of E.S.I. Scheme. The demand for contribution made by the Corporation was challenged by the applicant and others before the E.S.I. Court and the E.S.I. Court upheld the challenge. Corporation preferred M.F.A. 1216/1993 which was allowed by this Court, vide judgment dated November 2, 1999 following the judgment of the Apex Court in G.L. Hotels Limited and Others Vs. T.C. Sarin and Another, . The order passed by the Insurance Court was accordingly set aside and appeal was allowed. Few of the applicants had submitted that, there is controversy with regard to the number of employees employed in their establishment. The Division Bench therefore remitted those cases back to the Insurance Court to settle that controversy with regard to the number of employees employed.

3. Applicant (respondent herein) did not raise that contention and paid the contribution on July 4, 2000 which was due for the period from April, 1990 to March, 1999 for which period Corporation imposed interest of Rs. 29,113/- as per Section 39(5) of the Act. We are of the view, the legal issue, raised in this case is fully covered by our judgment., in M.F.A. 1024/2001 Cannanore Drug Lines v. E.S.I. Corporation 2007 Lab IC 497 wherein this Court has taken the view that merely because a party has failed to pay contribution allegedly under a bona fide impression or belief that the establishment is not covered under the provisions of the ESI Act that parry cannot escape from the liability of paying interest on the delayed payment of E.S.I, contribution u/s 39(5) read with Regulation 31-A. A learned single Judge of this Court in O.P. No. 33454/2002 has also taken the same view which we fully concur. For disposal of this case, we may extract Section 39(4) and (5),

39. Contributions: (4) The contributions payable in respect of each (wage period) shall ordinarily fall due on the last day of the (wage period) and where an employee is employed for part of the (wage period) or is employed under two or more employers during the same (wage period), the contributions shall fall due on such days as may be specified in the regulations.

(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 rate as may be specified in the regulations till the date of its actual payment:

Provided that higher interest specified in the regulations shallnot exceed the lending rate of interest charged by any scheduled bank.

(b) Any interest recoverable under Clause (a) may be recovered as an arrear of land revenue or u/s 45-C to Section 45-I.

We are of the view that the provision for demand of interest for belated payment of contribution is a mandatory provision. Sub-section (5)(a) of Section 39 specifically says that if any contribution payable under the Act is not paid by the principal employer or on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of 12% per annum or at such higher rate as may be specified in the regulations till the date of its actual payment. The rate of interest is prescribed in the statutory provision itself, so also the nature of interest. Further, it is also stated in the proviso that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank. Sub-section (4) of Section 39 says that the contributions payable in respect of each (wage period) shall ordinarily fall due on the last day of the (wage period) and where an employee is employed for part of the (wage period) or is employed under two or more employers during the same (wage period), the contributions shall fall due on such days as may be specified in the regulations. Regulation 31 of the Employees'' State Insurance (General) Regulations 1950 stipulates that an employer who is liable to pay contributions in respect of any employee shall pay those contributions within 21 days of the last day of the calendar -month in which contribution fall due. Regulation 31-A states that an employer who fails to pay contribution within the period specified in Regulation 31 shall be liable to pay simple interest at the rate of 12% per annum in respect of each day of default or delay in payment of contribution. Statute specifically says as to when the contribution is payable and the consequence of non-payment in time. The consequence is that interest would be payable that is from the date from which the contribution is payable. The date of the judgment of this Court or that of the Insurance Court is not a relevant date to calculate interest.

4. We are therefore of the view, that the Insurance Court is not justified in holding that the demand of interest can be made only from the date of the judgment of this Court. Counsel for the respondent applicant brought to our knowledge a judgment of this Court in M.F.A. 1199/1999 and Regional Director, E.S.I. Corporation Vs. Cannanore Spinning and Weaving Mills, which in our view are not applicable to the facts of this case and would confine to the facts of those cases. Reference was also made to the decisio! of this Court in E.S.I. Corporation Vs. Bagsvig, wherein this Court he taken the view that merely because the E.I. Court has granted installment facility to pay off the principle contributions, it cannot be stated that statutory interest is waived. We endorse that view of the Division Bench. Appeal is therefore allowed and the order passed by the Insurance Court is set aside and the demand of interest is upheld.