
(2007) 08 CAL CK 0058
In the Calcutta High Court
Case No : C.O. No. 2334 of 2000

Employees" State Insurance Corporation APPELLANT
Vs
Jaiswal Rolling Mill RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 10B, 31A
Employees State Insurance Act, 1948 — Section 38, 38(5), 39, 39(5), 43

Citation : (2008) 116 FLR 1060 : (2008) 2 LLJ 1021

Hon'ble Judges : Arunabha Basu, J

Bench : Single Bench

Advocate : Subal Maitra and Asim Banerjee, for the Appellant; Nanda Dulal Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Arunabha Basu, J.—The application filed under Article 227 is directed against the judgment and order passed by the learned Judge of the Employees" Insurance Court, Calcutta in connection with E.S.I. Case No. 51/1995.

2. The applicant Employees" State Insurance Corporation filed the application under Article 227 praying for an order to set aside the order passed by the said Court in refusing to direct recovery of interest from Opposite Party for delay in payment of E.S.I. contribution.

3. The main contention of the petitioner is that the Opposite Party, Jaiswal Rolling Mill is a factory, covered under the provisions of Employees" State Insurance Act, 1948 (hereinafter called the Act) was issued notice for an amount of Rs. 43,540.00 payable as employer"s contribution for the period from January 1, 1986 to June 30, 1992. In the said notice dated December 14, 1993 (Annexure B), a sum of Rs. 14,717.10 was also demanded being interest at the rate of 12% per annum for each day delay/default. The total amount claimed vide (Annexure B) was Rs. 58,257.10 being the principal amount of contribution as well as the amount of interest payable by the Opposite Party. The Opposite Party failed to

deposit either the principal amount or the amount of interest. The Opposite Party filed the application before the Learned Court below in terms of provision as prescribed u/s 75(1)(g) of the Act praying for an order to set aside and to quash the notices dated September 15, 1993 and December 14, 1993.

4. Learned Court below after considering the evidence, both oral and documentary, adduced by the respective parties directed vide judgment and order dated January 20, 2000 that the Opposite Party (applicant before the Learned Court below) shall deposit a sum of Rs. 43,540.00 as contribution for the period from January 1986 to June 1992. The Learned Court refused to direct any payment of interest in terms of the notice issued by the petitioner.

5. The relevant portion of the order passed by the Learned Court below runs as follows:

That this case be and the same is allowed in part on contest without cost. The applicant is hereby directed to deposit a sum of Rs. 43,540/- with the opposite party- E.S.I. Corporation as contribution for the period from January 1986 to June 1992 within one month from the date of the order failing which the interest will run. The applicant is not liable to pay interest on the amount of Rs. 43,540/- and the opposite party is directed not to recover the interest from the applicant for the above said amount. The notices be modified accordingly.

6. Learned Court below while disallowing the payment of Interest came to the finding that the applicant (Opposite Party here) was always ready and willing to comply with the provisions of the E.S.I. Act but as the code number was not allotted, the applicant could not deposit the amount. Learned Court below was also of the view that the Opposite Party duly submitted 01 form in the year 1986. Learned Court below was of the view that as code number was not allotted by the E.S.I Corporation and as there was delay and laches on the part of the corporation, the applicant should not suffer and be directed to pay interest.

7. Learned advocate appearing for the petitioner, submitted that learned Court below failed to consider the scope of the Act and while refusing payment of interest, committed serious illegality. It is the contention of the learned advocate for the petitioner that the Act being the outcome of benevolent legislation, which protects the interest of the Employees, the learned Court below failed to appreciate that Opposite Party was required to pay interest in view of their non deposit of the amount/contribution within the period as prescribed under law. It was also the contention of the learned advocate for the petitioner that E.S.I. Court is required to decide the dispute by strictly following the provisions of law but so far as the present case is concerned, the learned Court below failed to discharge its duties and failed to correctly interpret the provisions of the Act as well as the rules and regulations framed therein.

8. In reply, learned advocate for the Opposite Party, while supporting the order passed by the Learned Court below, pointed out that the direction as contained in the judgment and order under challenge was already complied by the Opposite

Party. The judgment was delivered on January 20, 2000 and a communication being reference No. JRM 32/99 dated February 9, 2000 is annexed with the affidavit -in-opposition, showing payment of the amount of Rs. 43,540.00 as directed by the learned Court below. Incidentally no cross objection is filed by the Opposite Party.

9. It is also contended by the learned advocate for the Opposite Party that Learned Court; below rightly decided the issue that as the laches were committed by the petitioner E.S.I. Corporation, it was not a fit case to award interest.

10. Learned advocate for the petitioner in support of his contention has also referred to a single Bench decision of this Court in *Prabatak Jute Mills Ltd. v. Employees' State Insurance Corporation and Ors.* 1982 (2) CLJ 248.

11. The only issue which requires determination is whether the learned Court below committed illegality in refusing to award interest. The scope and object of the Act clearly indicates that the Act came into force to provide for certain benefits to employees. The object of the Act is reproduced below:

Act No. 34 of 1948

An Act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto.

Whereas it is expedient to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto.

12. The benefit available to the employees under the Act is:

A. Sickness benefit.

B. Maternity benefit, and

C. Disablement and dependants benefit.

13. The scope and object of the Act gives a clear indication that the Act in question is the outcome of benevolent legislation primarily to protect and to grant benefits to the employees under certain contingencies viz. sickness, maternity and employment Injury. I am in agreement with the submission made by learned advocate for the petitioner that the Act in question is an outcome of benevolent legislation.

14. Section 39 of the Act prescribes contributions. Section 39(5)(a) of the Act provides for liability to pay simple interest and the said provision runs as follows:

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 shall not exceed the lending rate of Interest charged by any scheduled bank.

15. Careful reading of the provision about payment of interest, as highlighted above, will show that in case of non payment of contribution, which is payable under the Act on the date on which such contribution has become due, the principal employer is liable to pay interest at the rate of 12% per annum or at such higher rate as may be specified in the regulation.

16. The main contention of the Opposite Party is that due to non allotment of Code by the Corporation in spite of submission of 1 form by the Opposite Party, the contribution for the period from January 1, 1986 to June 30, 1992 could not be deposited in time and as the delay took place due to laches on the part of the Corporation, the Opposite Party is not liable to pay interest. It is evident that the said submission was accepted by the learned Court below.

17. A copy of the application filed by the Opposite Party before the learned Court below is annexed with this petition as Annexure C.

18. The Opposite Party in the aforesaid application prayed for an order to set aside and quash the notices dated September 15, 1993, December 14, 1993 and also prayed before the learned Court below that the Opposite Party is not liable to deposit the contribution for the period from January 1986 to June 1992 prior to allotment of the registration number.

19. A careful perusal of the application which was filed before the learned Court below will show that the Opposite Party initially received the communication dated April 11, 1986 under which the officer of the Corporation in reply to the letter dated April 10, 1986 by the Opposite Party sought certain information and also directed:

Further you are requested to fill up form 01 available at R.O. and submit the same for registration.

20. It is evident that on receipt of the said communication the Opposite Party did not take any steps but entered into series of communications with the Corporation primarily on the ground that the employer has already introduced Group Insurance Scheme with the United India Insurance Company Ltd. for the workmen of the Rolling Mill. The said communication is dated September 1, 1986 in which the Opposite Party sought the clarification in order to take necessary action as per law. The letter dated September 1, 1986 was responded by the Corporation by its letter dated October 23, 1986 intimating that the area Ranigunj is already under the implemented area since February 1, 1981 within the purview of the E.S.I. Act and it is obligatory on the part of the employer to make compliance with the provisions of the Act. In spite of receiving the said direction Opposite Party continued further correspondences respectively dated

November 27, 1986, May 19, 1988, August 18, 1989 and July 31, 1992. In the communication dated August 18, 1989 the Opposite Party again sought for certain clarification primarily questioning whether the factory is covered under the provisions of E.S.I. Act. In the communication dated July 31, 1992 the Opposite Party requested in following terms:

So please supply us necessary challan and other requisite form the rate of contribution of Employee and Employer for our further proceedings.

21. The finding of the learned Court below is mainly restricted about the allotment of code but the learned Court below failed to consider the series of communications undertaken by the Opposite Party. The Opposite Party primarily took the plea that the said factory is not covered under the provisions of the Act as because it has stated and continued Group Insurance policy of the workmen.

22. Section 38 of the Act provides that subject to the provisions of the Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act.

23. Section 38 of the Act as highlighted above, creates a statutory obligation on the part of the employer to insure its employees. In view of the clear language of the statute, a party is required to act strictly in terms of the provisions of the Act. If any employer fails to discharge its statutory duty/obligation, he does so at his own peril.

24. The Opposite Party is mainly relying on series of communications in order to put the blame oh the Corporation about delayed allotment of code. But the learned Court below failed to consider that the series of communications effected by Opposite Party was replied all along by the corporation. Even assuming for the sake of argument that the allotment of code was communicated vide letter dated July 24, 1992 and the factory was allotted code No. 41-7270-53. Relevant portion of the said communication under para 6 is reproduced below:

For the sake of convenience, your factory has/been allotted code No. 41-7270-53 which may kindly be used in all communications sent to this office and all forms at the places indicted for the purpose. The Local Officer of the Corporation situated at JUIN BITII, Burnpur Road, Asansol-4 has been instructed to render necessary assistance to you in connection with registration of your employees, In case you find any difficulty or for any other purpose which may be necessary in connection with Scheme you are requested to contact the Manager of the above Local office who will render necessary help in the matter.

25. On consideration of various documents annexed by the respective parties, it appears that Opposite Party sought to frustrate the operation of law by entering into various communications. Even assuming for the sake pf argument that Opposite Party entered into those communications, seeking clarifications of different points, this by itself, in my view, cannot postpone or suspend the operation of law. Ignorance of law is no defence. When a party is required to

discharge certain liabilities under the provisions of Act, it is his duty to do so without entering into unnecessary correspondence because such correspondence cannot override the effect of law. The Opposite Party sought legal opinion from the Corporation as if the operation of law depends on the legal advice/opinion that may be rendered by the Corporation. Such a course of action, if accepted will only benefit, unscrupulous employer to avoid discharging his statutory liability. The same in its turn will defeat the very purpose for which the enactment came into force.

26. Regulation 10-B provides for registration of factories or establishments. The said regulation is reproduced below:

10-B Registration of Factories or Establishments.-(a) The employer in respect of a factory or an establishment to which the Act applies for the first time and to which an Employer's Code Number is not yet allotted, and the employer in respect of a factory or an establishment to which the Act previously applied but has ceased to apply for the time being, shall furnish to the appropriate Regional Office not later than 15 days after the Act becomes applicable, as the case may be, to the factory or establishment, a declaration of registration in writing in Form 01 (hereinafter referred to as Employer's Registration Form).

(b) The employer shall be responsible for the correctness of all the particulars and information required for and furnished on the Employer's Registration Form.

(c) The Appropriate Regional Office may direct the employer who falls to comply with the requirements of paragraph (a) of this regulation within the time stated therein, to furnish to that office Employer's Registration Form duly completed within such further time as may be specified and such employer shall, thereupon, comply with the instructions, issued by that Office in this behalf.

(d) Upon receipt of the completed Employer's Registration Form, the appropriate Regional Office shall, if satisfied that the factory or the establishment is one to which the Act applies, allot to it an employer's Code Number (unless the factory or the establishment has already been allotted an Employer's Code Number) and shall inform the employer of that number.

(e) The employer shall enter the Employer's Code Number on all documents prepared or completed by him in connection with the Act, the rules and these regulations and in all correspondence with the appropriate office.

27. The said regulation, as quoted above, provides for registration of factories or establishments. The factory or an establishment is required to furnish to appropriate regional office, a declaration of registration in writing in Form 01. The said declaration is required to be submitted not later than 15 days after the Act becomes applicable. A communication which was sent by the Corporation directing submission in form 01 cannot operate at the starting point of the application of the Act. In terms of the regulation, duty is cast on the employer to furnish the same not later than a period of 15 days after the Act becomes

applicable. Allotment of Code comes under Clause (d) of Regulation 10-B and precondition of such allotment is the receipt of completed Employer's Registration Form. So far as the present case is concerned, even after receiving the communication dated July 24, 1992 under which the code was allotted, the Opposite Party entered into further communication as detailed above, demanding supply of necessary challan and other requisite form. There is a further communication by the Opposite Party dated August 1, 1992 intimating about various communications entered by the said Opposite Party on different dates.

28. In my view learned Court below failed to appreciate that the Opposite Party tried to frustrate the operation of law by entering into various communications with the corporation and therefore the Opposite Party cannot be permitted to take the plea that in view of delayed allotment of code, it was not in a position to deposit the contribution. To accept such proposition will be to defeat the very purpose of the Act and the learned Court below failed to appreciate that different correspondence by the Opposite Party does not necessarily mean its bona fide approach in the matter.

29. On the contrary it was for the Opposite Party to furnish the necessary registration form within the period of 15 days in terms of Regulation 10-B when Opposite Party failed to do so, it cannot be permitted to take shelter on the various communications made to the Corporation, as a bona fide ground for non deposit of contribution within the period as required under law.

30. The allotment of code is not a precondition about the operation of the Act. The regulation has the force of subordinate legislation and the same is promulgated under the provisions of the Act. The Regulation cannot supersede the specific provision of the Act. The Act cast an obligation on the part of the employer to effect contribution and it is for the employer to take all effective steps for implementation of Act.

31. The argument that the implementation of the Act will depend on various clarifications sought from the Corporation by the Opposite Party will be to negate the very purpose of the Act.

32. The learned Court below in my view failed to appreciate the actual scope of the Act while deciding the issue about non payment of interest in favour of the Opposite Party.

33. The language of Sub-section (5)(a) of Section 38 clearly stipulates that interest will be payable, if the contribution payable under the Act is not paid by the principal employer on the date on which such contribution has become due.

34. Section 43 of the Act stipulates method of payment of contribution. Section 43 also provides that the Corporation may make regulations for any matter relating or incidental to the payment and collection of contribution. Regulation provides among others the mode and manner of payment of contribution.

35. Payment of contribution being a statutory duty under the Act and the

regulation only provides the mode and manner of such contribution, no employer can avoid delay in payment.

36. In view of above discussion, I am unable to agree with the finding of the learned Court below about refusing to grant interest as claimed by the corporation and as such that portion of the order is liable to be set aside and quashed.

37. Learned advocate for the petitioner submitted that the simple interest of 12% will be payable in terms of Section 39(5)(a) of the Act. It was also contended that under Regulation 31-A, the interest payable is at the rate of 15% per annum in respect of each day of default or delay in payment of contribution. But in my" view the amount of interest as raised in the notices dated December 14, 1993 will only be payable. In the notice dated December 14,1993 interest of Rs. 14,717.10 was claimed being the interest at the rate of 12% per annum for each day of delay/default.

38. On consideration of entire matter and in view of the finding as recorded above. I hold that the application under Article 227 is required to be allowed. The order refusing interest by the learned Court below in its judgment and order dated January 20, 2000 in connection with E.S.I, case No. 51/1995 is hereby set aside and quashed. Opposite Party is directed to deposit the amount of Rs. 14717/- being the amount of interest within a period of 2 weeks from date of receipt/communication of the order falling which the amount shall be recovered as per law.

39. There shall be no order as to costs.

40. Urgent xerox certified copy of this judgment and order, if applied for, be given to the parties on usual undertaking.

41. Later on learned advocate for the Opposite Party verbally prays for stay of operation of the order for the period of two weeks. The same is considered and rejected.