
(1999) 04 CAL CK 0058
In the Calcutta High Court
Case No : Civil Order No. 1765 of 1998

Employees" State Insurance Corporation	APPELLANT
Vs	
Mackintosh Burn Ltd. and Another	RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:

Constitution of India, 1950 — Article 227
Employees State Insurance Act, 1948 — Section 45(1), 75, 75(2), 82

Citation : (2000) 1 LLJ 155

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Subal Moitra, for the Appellant; Amitava Ghosh and Nirmalendu Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

B. Bhattacharya, J.—This revisional application under Article 227 of the Constitution of India is at the instance of Employees" State Insurance Corporation and is directed against Order No. 3 dated March 10, 1998 and Order No. 8 dated April 2, 1998, passed by the learned Judge, Employees" Insurance Court, Calcutta, in Tender Case No. 7 of 1998.

By the first order, the learned trial Judge entertained an application u/s 75(2B) of the Employees" State Insurance Act, 1948 (Act), filed by opposite party 1 by directing opposite party 1 to deposit a sum of Rs. 15,499/-with the petitioner and restrained the petitioner from proceedings further or from giving effect to the disputed demand notice till the disposal of the aforesaid Tender Case No. 7 of 1998.

2. By second order, viz., Order No. 8 dated April 2, 1998, the learned trial Judge passed a direction upon the petitioner to show cause why action should not be taken against the petitioner for non-compliance of the previous order of the Court. By the said order, the petitioner was further directed to release the captive money withdrawn from the bank by the petitioner.

3. The only question that arises for determination in this revisional application under Article 227 of the Constitution of India is whether an Employees' Insurance Court can direct the Corporation to refund money determined u/s 45-A of the Act which has already been realised in accordance with the provision u/s 45(1)(b) of the Act before final adjudication of the application u/s 75 of the Act.

4. There is no dispute that the petitioner by complying with the provisions contained in Section 45(1)(b) of the Act realised a sum of Rs. 1,66,350 on March 3, 1998. One day prior to the aforesaid realisation, opposite party 1 filed an application u/s 75 of the Act which gave rise to the aforesaid Tender Case No. 7 of 1998 thereby disputing the amount payable by opposite party 1.

5. In the said tender case on an application u/s 75(2B) of the Act, the learned Court below on March 10, 1998, directed opposite party 1 to deposit a sum of Rs. 15,499 by April 9, 1998. Since the amount had already been realised through execution and attachment, the present petitioner refused to accept the aforesaid sum of Rs. 15,499 as ordered by the learned trial Judge. Complaining such action of the petitioner, opposite party 1 filed an application before the learned Court below for a direction upon the petitioner to accept the cheque. By the second order, the learned trial Judge directed the petitioner to release the amount already recovered and directed the petitioner to accept the aforesaid amount of Rs. 15,499. The learned Court below also issued a show cause notice as to why action should not be taken against petitioner for no-compliance of the order, dated March 15, 1998.

6. Sri. Moitra, the learned advocate appearing on behalf of the petitioner, has contended before this Court that the learned Court below acted without jurisdiction in directing refund of the amount already realised through execution u/s 45(1)(b) of the Act. According to Sri Moitra, the said amount having been already realised at a point of time when there was no injunction order from the Court below, the learned Court below cannot pass a direction for refund of the said amount unless it is finally adjudicated by the learned Court below on the application u/s 75 of the Act that such amount is not payable to the petitioner by opposite party 1.

7. Sri Ghosh, the learned advocate appearing on behalf of opposite party 1, has on the other hand supported the order passed by the learned trial Judge and has contended that during the pendency of the tender case u/s 75 of the Act, the petitioner having realised the disputed amount, the Court had jurisdiction to pass such a direction.

8. After hearing the learned advocates for the parties and after going through the provisions contained in the Act it appears to this Court that Employees' Insurance Court can in view of Section 75(2B) of the Act restrain the petitioner from realising any amount till the disposal of the proceeding u/s 75 of the Act even unconditionally. But mere pendency of an application u/s 75 of the Act cannot prevent the petitioner or its recovery officer from realising the amount

alleged to be due if there is no order of injunction to that effect. In the instant case on March 3, 1998, when the amount was realized by the petitioner through recovery officer, although the proceeding u/s 75 of the Act was pending, no order or injunction was passed restraining the petitioner from realising the amount. Such order was passed on March 10, 1998 when execution was complete. Under the aforesaid circumstances, so long the proceeding initiated u/s 75 of the Act is not disposed of and so long it is not finally held that the amount realised by the petitioner is not in fact due, the Employees' Insurance Court cannot pass any direction for refund of the amount which had already been realised through due process of execution. In the instant case there is no finding that the process of execution u/s 45(1)(d) of the Act was illegal or without jurisdiction.

9. Therefore, I find substance in the contention of Sri Moitra that as regards order dated April 2, 1998, the same is totally without jurisdiction and as such is liable to be set aside. So far as the Order No. 3 dated March 10, 1998 is concerned, in my opinion, the said order was passed in the ignorance of the fact that the amount has already been realised through execution and as such the said order should be ignored.

10. Sri Ghosh, the learned advocate appearing on behalf of opposite party 1, has strongly relied upon Section 82 of the Act and has contended that the question raised by the petitioner cannot be entertained in this application under Article 227 of the Constitution of India inasmuch as the same is a substantial question of law and is required to be adjudicated in an appeal u/s 82 of the Act.

11. In support of such contention Sri Ghosh has relied upon a decision of Allahabad High Court in the case of Modi Steel Unit-A v. Employees' State Insurance Corporation Ghaziabad, and Ors. 1984 (48) FLR 499.

12. After going through the aforesaid provisions of the Act and the decision, I find that the order passed by the Employees' Insurance Court is not appealable unless some substantial question of law is involved in the said order.

13. In the instant case in view of the fact that the order passed by the Employees' Insurance Court was without jurisdiction on the face of the provisions contained in the Act, I do not find that any substantial question of law is involved which will make the order dated April 2, 1998 appealable.

14. Over and above, the law is now settled that mere existence of an alternative remedy by way of an appeal is no bar in invoking under Article 227 of the Constitution of India if the order impugned is without jurisdiction.

15. In view of the fact that the Act does not authorise the Employees' Insurance Court to pass any order of refund of money already realised before adjudication of the dispute u/s 75 of the Act, the Order No. 8 was patently without jurisdiction and as such this is a fit case where this Court should exercise its jurisdiction under Article 227 of the Constitution of India.

16. Therefore, the orders impugned are set aside. The learned Employees'

Insurance Court is directed to dispose of the proceeding u/s 75 of the Act as expeditiously as possible.

The revisional application is thus allowed. In the facts and circumstances there will be however, no order as to costs.