

(2004) 04 MAD CK 0184
In the Madras High Court
Case No : W.A. No. 4 of 2004

Joint Regional Director, Sub-Regional Office E.S.I.
Corporation Ltd.

APPELLANT

Vs

Fenner (India) Ltd.

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 50
Employees State Insurance Act, 1948 — Section 38, 39(5), 40(2)

Citation : (2004) 3 LLJ 300

Hon'ble Judges : N. Kannadasan, J;K. Govindarajan, J

Bench : Division Bench

Advocate : V.K. Vijayaraghavan, for the Appellant; S. Ravindran, for T.S. Gopalan, for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajan, J.—The above writ appeal is filed against the order passed by the learned Judge in W.P. No. 7384 of 1998, dated March 12, 2003.

2. The respondent-management filed a writ petition seeking to issue a writ of prohibition, prohibiting the appellant (sic) from claiming interest of Rs. 1,89,564 on the payment of ESI Contribution for the period between January, 1997 and October 1997. The said writ petition was filed on the basis that the employees' union filed a writ petition in WP. No. 2250 of 1997 and obtained an order of injunction on February 19, 1997. Ultimately, the said writ petition was dismissed on October 27, 1997.

3. It is not in dispute that the contribution was paid and the amount which is subject-matter in the writ petition is only in dispute. After dismissal of the said writ petition and after paying the amount to the appellant-Corporation the respondent-management has filed the above writ petition as stated above as if they are not liable to pay the interest for the period during which there was an order of injunction.

4. The learned Judge found in the order that it is open to the respondent-Corporation to initiate action for recovery of interest as the interim order was merged with the order of dismissal of the writ petition. In effect, the learned Judge found that the appellant-Corporation is entitled for the said amount and the same can be recovered. But the learned Judge found that the appellant-Corporation has to proceed only against the employees who are liable to pay the contribution. Aggrieved against the said finding, the appellant-Corporation has filed the above appeal.

5. Learned counsel for the appellant-Corporation referring to Sections 38, 39(5) and 40(2) of the Employees' State Insurance Act, 1948, hereinafter called the Act and also Regulation 31 of the Regulations, 1950, submitted that they cannot proceed against the employees directly as there is no provision under the Act for such recoveries from the employees. He also submitted that when the learned Judge has accepted the case of the appellant-Corporation that they are entitled to recover interest, the Corporation should have been permitted to recover the same from the respondent-management.

6. Learned counsel for the respondent-management also admitted that there is no provision under the Act to recover the amount from the employees directly by the appellant-Corporation. So we need not discuss about the same in detail as to how the order of the learned Judge, with respect to the above said direction, to proceed against the employees, cannot be sustained. Since such a direction to the appellant-Corporation to proceed against the employees cannot be sustained, the same is set aside and the appellant-Corporation is entitled to recover the amount from the employer, but as found by the learned Judge, the same can be recovered by the employer from the salary of the employees of the respondent-management.

7. With the above modification, this writ appeal is allowed. No costs.