

(1988) 05 AHC CK 0070
In the Allahabad High Court
Case No : Writ Petition No. 7965 of 1988

Modi Steels and Another	Vs	APPELLANT
Employees State Insurance Corporation and Others		RESPONDENT

Date of Decision : 20-05-1988

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 45A(1), 45A(2), 45B, 75

Citation : (1988) 2 AWC 980

Hon'ble Judges : V.N. Khare, J; M.M. Lal, J

Bench : Division Bench

Advocate : Markandey Katju, for the Appellant; B.N. Asthana, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Lal, J.—In this writ petition filed by M/s. Modi Steels and another, the Petitioners have prayed for a writ of certiorari to quash the impugned orders dated 21-8-1986, 15-2-1987 and 13-12-1987, by which a sum of Rs. 15,12,603/- plus interest has been claimed from the Petitioners as their contribution under the Employees State Insurance Act and also for a writ of mandamus directing the Respondents not to recover the said amount mentioned in the said orders.

2. We have heard learned Advocate General, who appeared on behalf of the Petitioners, and Sri B.N. Asthana who appeared on behalf of the Respondents.

3. Learned Advocate General appearing on behalf of the Petitioners has urged that unless the aforesaid dispute is decided by the Insurance Court u/s 75 of the aforesaid Act, the aforesaid amount cannot be recovered from the Petitioners as arrears of land revenue u/s 45B of the said Act. The said argument is misconceived because Sub-section (2) of the Section 45-A provides that an order made by the Corporation under Sub-section (1) shall be sufficient proof for recovery of the amount determined by such order as arrears of land revenue u/s 45-A of the said Act. This shows that even before the dispute is decided by the

Insurance Court, the amount determined u/s 45-A(1) of the aforesaid Act can be recovered as arrears of land revenue.

4. Learned Advocate General appearing for the Petitioners has, however, referred to us *Krishna Mills Co. v. The Regional Director* 1973 Lab. IC 408, in which it has been observed that where an employer disputes its liability to pay contribution in respect of certain contract labour, the Regional Director of the Employees state Insurance Corporation is incompetent to decide that dispute and he cannot stay the recovery proceedings without referring the dispute to be decided by the Employees Insurance Court. He has further referred to us *Regional Director, Employees State Insurance Corporation v. Fibre Bangalore (P) Limited* AIR 1980 Kar 86 (FB). On the basis of the said rulings learned Advocate General has urged before us that till the dispute, which the Petitioners have raised before the Insurance Court u/s 75 is decided, the aforesaid amount cannot be recovered from them. In our opinion the said argument is without substance and the aforesaid rulings do not help the Petitioners. So far as the decision of the Karnataka High Court reported in 1973 Lab. IC 408 is concerned, the Bench was not considering the case where there was an order u/s 45-A of the Act preceding the demand. With respect to the same the Full Bench of the Karnataka High Court in AIR 1980 Kar 86 (para 4) also observed that the decision of the Court in *M/s, Krishna Mills Co.* case, the Bench was not considering a case where there was an order u/s 45-A of the Act preceding the demand. The Full Bench further clarified the position that in cases other than the case covered by the provisions of Section 45-A of the Act, the dispute had to be decided by the Insurance Court before the amount could be recovered from the employees. This is how the Full Bench answered the question referred to in para 6 of its judgment:

Where in case to which provisions of Section 45-A of the Act are attracted, the Corporation by an order made in accordance with that section determines the amount of contributions payable and that claim is disputed by the employer it would not be necessary for the Corporation to seek a resolution of that dispute before the Insurance Court. Such a claim is recoverable as arrears of land revenue. If the employer disputes the claim it is for him to move the Insurance Court for relief. In other case--other than cases where determination of the amount of contributions u/s 45-A is made the Corporation, if its claim is disputed by the Employer, should seek an adjudication of the dispute before the Insurance Court before enforcing recovery.

5. We are, thus, of the opinion that where an amount is determined u/s 45-A of the aforesaid Act, the said amount can be recovered from the employer as arrears of land revenue u/s 45-B of the Act even before the dispute with respect to the same is decided by the Insurance Court in proceedings u/s 75 of the Act and that in cases other than the cases u/s 45-A of the Act, the amount cannot be recovered till the dispute is decided by the Insurance Court. It may be observed at this place that admittedly the Petitioners have filed a suit u/s 75 of the aforesaid Act and the same is pending adjudication before the Insurance Court.

6. Learned Advocate General appearing on behalf of the Petitioners has referred to us Annexures Nos. 2 and 5 and on the basis of the same has tried to urge that the amounts mentioned therein in no way can be called the wages. With respect to the same it may be noted from para 10 of the Annexure No. 5 that the corporation on the other hand has taken a stand that all the said items were infact wages. In our opinion the controversy and dispute as to whether the said items are infact wages or not can be adequately decided by the Insurance Court in the suit pending before it u/s 75 of the Act.

7. Learned Advocate General appearing for the Petitioners further urged that the impugned order in fact could not be said to be an order u/s 45-A of the aforesaid Act. In this context it may be observed that throughout the writ petition, the Petitioners have referred to the impugned orders passed against them as orders u/s 45-A of the aforesaid Act. Besides, the impugned orders also mentions to have been passed u/s 45-A of the aforesaid Act. Any way, the pith and substance of the argument of the learned Advocate General appearing on behalf of the Petitioners is that the items with the Corporation as stated to be wages were infact not wages. With respect to the same we have already observed that the said fact can be adequately determined and decided by the Insurance Court in the suit filed by the Petitioners before it.

8. Learned Advocate General appearing for the Petitioners has further urged before us that the impugned order was not speaking order. In our view the Petitioners can raise the said point as well before the Insurance Court in the aforesaid suit.

9. Learned Advocate General appearing for the Petitioners has lastly urged before us that although the Petitioners have moved an application for stay before the Insurance Court yet the said application has not so far been decided. Learned Counsel for the Respondents on the other hand submitted that the Insurance Court had no power to grant stay order in such cases. In our view the express grant of statutory power carries with it, by necessary implication, the authority to use all reasonable means to make such grant effective and granting interim relief like stay pending an appeal or an adjudication in an appropriate case is undoubtedly use of such means impliedly invested in such body. There may be cases where not granting an interim relief pending an adjudication, may frustrate the very adjudication itself and render the final order to be passed by the Tribunal illusory, See AIR 1969 SC 130 --I.T.O. Cannanore v. M.K. Mohammed Kunhi and Agarwal Hardware Industries Vs. Employees" State Insurance Corporation, .

10. In result, therefore, we are of the view that the Insurance Court has got power to dispose of the said application and grant stay order if a case is made out for the same during the pendency of the suit before it u/s 75 of the Insurance Act.

11. The suit filed u/s 75 of the Insurance Act and the application for stay pending

before the Insurance Court under the circumstances of the case require expeditious disposal. With the observations that the Insurance Court shall decide the suit finally pending before it u/s 75 of the aforesaid Act possibly within a period of six weeks and also decide and dispose of the stay application within a week from the date of the service of a certified copy of this judgment upon it by the Petitioners, this writ petition is dismissed.