(2019) 10 TEL CK 0005

In the Telangana High Court

Case No : Writ Petition No. 17936 Of 2019

M/S. V. Bakers Q — APPELLANT

Vs

State Of Telangana vvv — RESPONDENT

Date of Decision : 16-10-2019

Acts Referred:

Employees' State Insurance Act, 1948 — Section 45G

Citation : (2019) 10 TEL CK 0005

Hon'ble Judges : T. Vinod Kumar, J

Bench : Single Bench

Advocate : B. Chandrasen Reddy, R. Shyam Sundar, B.G. Ravindra Reddy

Final Decision : Allowed

Judgement

1. Challenge in the writ petition is to the garnishee notice issued by the 4th respondent to the banker of the petitioner i.e., the 6th respondent in the writ petition. The notice is issued under Section 45-G of the Employees' State Insurance Act, 1948 in Proceedings No.52Q/29262-0011 dated 22.07.2019 for recovery of a sum of Rs.9,60,796/-, whereby the 6th respondent-bank was directed to pay the said amount from the account of the petitioner maintained with the 6th respondent to the credit of 4th respondent, failing which 6th respondent-bank is also put on notice that it will be considered to be an employer in default in respect of the said amount specified in the notice and further proceedings may be taken against the 6th respondent for realization of the amount. The said action of 4th respondent in issuing the impugned notice is called in question as being illegal, arbitrary and contrary to the orders passed by this Court in Writ Petition No.15158 of 2019 dated 29.07.2019 and consequently to set aside the same.

2. Counter affidavit on behalf of respondent Nos.2 to 4 is filed opposing the relief sought for in the writ petition.

3. Heard Sri B. Chandrasen Reddy, learned counsel for the petitioner, Sri R.

Shyam Sundar, learned Assistant Government Pleader for Labour appearing for 1st respondent and Sri B.G. Ravindra Reddy, learned Standing Counsel appearing for respondent Nos.2 to 4.

4. By the impugned notice, the 4th respondent is seeking to recover a sum of Rs.9,60,796/- which is claimed to be the principal amount due along with interest as on 22.07.2019. The break-up of the said demand is - Rs.4,68,325/- being the principal amount due for the period from 01.07.2008 to 30.09.2012 as per the orders of the 5th respondent in E.I.C.No.13 of 2014 and the balance amount being interest due thereon up to 22.07.2019, as detailed in para-6 of the counter affidavit.

5. Insofar as the orders of the 5th respondent-Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad, dated 07.05.2019 in E.I.C.No.13 of 2014 is concerned, the petitioner herein approached this Court by filing Writ Petition No.15158 of 2019. This Court on 29.07.2019 while directing the petitioner to take necessary steps to convert the said Writ Petition as Civil Miscellaneous Appeal, ordered notice to the respondents. Further this Court granted interim stay on condition of the petitioner depositing 50% of Rs.4,68,325/- being the principal amount due as per the order of the 5th respondent, within a period of four weeks from the date of the said order i.e., 29.07.2019. Since, the petitioner submitted that it had already paid an amount of Rs.1,96,100/- during the pendency of the E.I.C., this Court also observed that amounts, if any, paid by the petitioner shall be given credit to, while arriving at the 50% of the amount directed to be paid under the said interim order.

6. It is the case of the writ petitioner that by virtue of the interim order granted by this Court in W.P. No.15158 of 2019, the petitioner was required to pay the balance amount of Rs.38,063/- only on or before 28.08.2019 to comply with the condition imposed. That even before expiry of the said period of four weeks granted by this Court, the 4th respondent issued impugned notice dated 22.07.2019 attaching the account of the petitioner maintained with the 6th respondent bank and recovered a sum of Rs.1,05,565/- being the available balance amount in the said account, as against an amount of Rs.38,063/- being payable pursuant to the interim orders of this Court resulting in excess recovery. Thus, it is claimed that the impugned notice is contrary to the interim order dated 29.07.2019 passed in W.P. No.15158 of 2019 by this Court and is liable to be set-aside.

7. In the course of hearing, when this Court sought to know as to when the impugned notice was sent from the office of the 4th respondent to the 6th respondent and sought for production of the dispatch register, the learned Standing Counsel representing the 4th respondent fairly stated that the impugned notice was delivered to the 6th respondent-bank only on 07.08.2019, as seen from the stamp affixed by the 6th respondent. The counsel could not confirm the actual date of dispatch or the mode i.e., by registered post or by personal delivery as mentioned on the notice nor produced the dispatch register.

In the absence of the respondents placing any material before this Court to establish the actual date of dispatch and the mode of such dispatch, it can safely be presumed that the dispatch of impugned notice either by registered post or personal delivery to the 6th respondent, is only after the date of passing of interim order by this Court on 29.07.2019, though dated 22.07.2019.

8. Further, a perusal of the impugned garnishee notice, as issued read along with paragraph No.6 of the counter affidavit, it is clear that though the total amount including interest is shown to be Rs.9,60,796/-, it has not taken note of the amount paid by the petitioner to an extent of Rs.1,96,100/- during pendency of EIC proceedings. Though in the counter filed on behalf of respondent Nos.2 to 4 in para-7, it is sought to be explained that only a sum of Rs.1,78,825/- is due from the petitioner being 50% of the amount of the demand of Rs.9,60,796/- as per the interim orders of this Court, the said submission does not merit consideration and is liable to be rejected for more than one reason. Firstly, the 4th respondent did not take into consideration the amount of Rs.1,96,100/- paid by the petitioner during the pendency of E.I.C. No.13 of 2014, either from the principal amount or the interest while determining the amount due from the petitioner as on 22.07.2019. Secondly, the claim of the 4th respondent in the counter affidavit that only a sum of Rs.1,78,825/- is due from the petitioner being 50% of the demand of Rs.9,60,796/- after taking into consideration the amount paid and amount recovered under garnishee notice, is without any basis, as this Court by interim order dated 29.07.2019 directed the petitioner to pay 50% of the principal amount due of Rs.4,68,325/- only, did not take into consideration the interest amount being claimed, as interest is only a consequential liability based on the determination of the principal liability on the out come of the CMA.

9. Further, the inaction of the 4th respondent in revising the garnishee notice either by reducing the amount being claimed as due by giving credit to the amount paid by the petitioner to the credit of E.I.C. No.13 of 2014 or modifying the same, pursuant to the interim orders of this Court dated 29.07.2019, would go to show the casual approach of the 4th respondent and calls for interference by this Court.

10. The entire action of the 4th respondent in initiating and issuing the impugned garnishee notice to 6th respondent-bank, though purportedly dated 22.07.2019, is to be viewed as intended to circumvent the orders of this Court dated 29.07.2019. Further, as no credit for the amount paid earlier during the pendency of EIC No.13 of 2014, having been given, in the impugned notice, the same is liable to be set aside.

11. In view of the conclusions reached as above, the impugned garnishee notice issued by 4th respondent claiming the amount specified therein, is contrary to the orders of this Court dated 29.07.2019 in Writ Petition No.15158 of 2019, apart from being also incorrect as it had failed to determine the due amount by giving credit to the amounts paid by the petitioner. Though an effort is sought to

be made by the Standing Counsel for ESIC stating that the said orders came to be delivered only on 14.08.2019, thus, they were not aware of the orders of this Court dated 29.07.2019, the said contention is also liable to be rejected for the reason discussed above.

12. For the foregoing discussion, I am of the view that the impugned garnishee notice issued by the 4th respondent to the banker of the petitioner i.e., 6th respondent cannot be sustained and is liable to be set aside and accordingly, I do so.

13. Since it is stated that as already an amount of Rs.1,05,565/- has been recovered pursuant to the impugned garnishee notice, the 6th respondent-bank is hereby directed not to make any further payment.

14. Accordingly, the writ petition is allowed and the impugned garnishee notice dated 22.07.2019 in proceedings No.52Q/ 29262-0011 issued by 4th respondent is set aside.

However, there shall be no order as to costs.

15. As a sequel thereto, Miscellaneous Applications, if any, pending in this Writ Petition shall stand closed.

