NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 26 of 2015

M/s B. S. B. K. Private Limited B.S.B.K. House Nandini Road, Bhilai-490011, Chhattisgarh Through Manager **---- Appellant**

Versus

The Regional Director, Employees State Insurance Corporation, 18, South Avenue Choubey Colony, Raipur, Chhattisgarh **---- Respondent**

For Appellant	:	Mr. H.B. Agrawal, Senior Advocate with Ms. Preeti Yadav, Advocate
For Respondent	:	Mr. Pradeep Saxena, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board

16/07/2018

This appeal was admitted on following substantial question of law :

> "(1) Whether the Employees' State Insurance Court/ the Labour Court was justified in entertaining challenge to the demand notice without the Principal employer complying with the provisions contained under Section 75 (2-B) of the Employees' State Insurance Act, 1948 (for short 'the ESI Act, 1948') ?
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> (2) Whether the provisions of the ESI Act, 1948 would apply to the appellant concern when they are providing medical facilities/health services as per the direction of the Supreme Court in the matter of **Metal & Engineering Worker's Union Vs. Union of India and others {SLP (Civil) No.8485/1990}**?
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> (3) Whether the demand notice pertaining to a period more than 5 years old is barred by limitation under Section 77(1) of the ESI Act, 1948 ?
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> (4) Whether the appellants are entitled to benefit of order passed in W.P. No.1507/1999 {**M/s. Project Automobiles and others Vs. State of M.P. and others}** even though they were not party in the said writ petition ?"

2. Shorn of unnecessary details, the appellant employer aggrieved by certain demands raised by the Employees State Insurance Corporation in the matter of

alleged liability of the employer to make contribution towards Employees' Insurance Scheme, a beneficent scheme in the employees, an application under Section 77 of the Employees' State Insurance Act, 1948 was preferred by the appellant/employer before Insurance Court/Labour Court constituted under Section 74 of the Employees' State Insurance Act, 1948 (for short 'the ESI Act, 1948'). The Insurance Court rejected the appellant's claims on merits.

3. When this appeal was preferred against the order of the Insurance Court, this Court found that apart from the questions of law arising for consideration on the merits of the case, a substantial question of law has also arisen as to whether the application of the appellant could at all be entertained for want of compliance of pre-deposit requirements as provided under Sub-Section (2-B) of Section 75 of the ESI Act, 1948.

4. On the first substantial question of law, learned counsel for the appellant vehemently argued that when the application was filed before the Insurance Court by the appellant, the Court, having prima facie found that the appellant had a strong prima facie case, passed an interim order on 31.03.2006. This interim order, it is argued, staying recovery impliedly amounts to granting complete waiver as required under Sub-Section (2-B) of Section 75 of the ESI Act, 1948 referred to above. Therefore, it cannot be said that there was no waiver and for that reason, on account of non-deposit of 50% of the demands, the application was not liable to be entertained and dismissed.

5. Per contra, learned counsel for the respondent-Corporation would argue that the Insurance Court could not have usurped the jurisdiction to examine appellant's claim on merits unless the mandatory requirement of pre-deposit was satisfied or waiver either in full or part was granted on being asked, by the Insurance Court.

6. Chapter-VI of the Employees' State Insurance Act, 1948 is a self-contained code providing for mechanism for adjudication of disputes and claims. Under Section 74, the Employees' Insurance Court is constituted by the State Government by way of notification published in the Official Gazette. It provides that the Court shall consist of the judges as the State Government may think fit to include. Section 75 of the ESI Act, 1948, provides for the matters which can be decided by the Employees' Insurance Court. Sub-Section (2-B) of Section 75 of the ESI Act, 1948 importantly provides for mandatory pre-deposit with a stipulation for waiver at the discretion of the Court. The provision being relevant is

extracted herein below :

> "**S.75(2-B)**. No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation:
>
> Provided that the Court may, for reasons to be recorded in writing waive or reduce the amount to be deposited under this sub-section."

7. A bare reading of the provision leads to conclusion that the law prohibits raising of dispute between a principal employer and the Corporation in respect of any contribution or any other dues, by the principal employer in the Employees' Insurance Court unless the principal employer has deposited with the Court, 50% of the amount due from him as claimed by the Corporation. The proviso, however, confers discretion on the Court to waive or reduce the amount to be deposited under the demand notice. The law, however, puts a fetter on exercise of its discretion by providing that if the Court decides to waive or reduce the amount, it will have to record reasons in writing.

8. The statutory scheme is clear that present being a piece of beneficent legislation aimed at protecting the interest of the employees, by creating a statutory obligation of creation of insurance fund for them, if any kind of dispute is intended to be brought before the Insurance Court by the principal employer, it will have to deposit 50% of the amount under the demand of the Insurance Corporation. Waiver would be an exception to the Rule of pre-deposit. Under what circumstances, waiver could be granted, has not been specifically provided under the law and it has been left to the discretion of the Court to provide waiver or reduce the amount. Therefore, the Court cannot assume jurisdiction to entertain a dispute at the instance of the employer unless there is a pre-deposit in the manner provided under the law. The provision is mandatory. If at all, the Court intends to exercise a discretion to either waive or to reduce the amount claimed by the Corporation, the discretion has to be exercised judiciously. The Court has to be alive to relevant considerations and it has to then record reasons in writing, as mandated under the law, as to why waiver or reduction is being granted. If we read the interim order, referred to above, passed by the Court granting stay, on 31st March, 2006, by no stretch of imagination, it could be said to be an order of waiver or reduction. If we accept the argument of learned Senior counsel that grant of stay amounts to waiver, the provision contained in Sub-Section (2-B) of Section 75 of the ESI Act, 1948 will be rendered otiose and become meaningless.

The grant of stay against a demand and consideration of a case for waiver are two different aspects. The considerations prevailing while granting interim relief and those which must receive consideration for grant of waiver cannot be said to be one and the same. In fact, there is nothing in the order dated 31.03.2006 to divulge that the Insurance Court was at all alive to the mandatory requirement of pre-deposit as required under Sub-Section (2-B) of Section 75 of the ESI Act, 1948. The Insurance Court usurped the jurisdiction to pass the interim order completely oblivious of legislative mandate of pre-deposit. Unless, there was a pre-deposit, the Court could not have usurped the jurisdiction to decide the dispute raised at the instance of principal employer before it. Passing of an interim order is only a protection after usurping jurisdiction to decide the dispute on its own merit and it cannot be said that the interim order was passed in proceeding independent of the proceeding instituted upon application filed by the principal employer.

9. We find that the appellant raised a dispute. A reply was filed by the Corporation, the Insurance Court framed issues and after allowing the parties to lead oral and documentary evidence recording various finding on the merits of the case were rewarded. Having held that without complying with pre-deposit requirements and without there being any waiver or reduction, the Insurance Court could not usurp the jurisdiction to decide the dispute on merits, the entire exercise undertaken by the Insurance Court is without jurisdiction and authority of law which cannot be allowed to remain operative. The Insurance Court had no option but to dismiss the application as not maintainable or to allow the employer to apply for waiver or reduction, decide the same and then pass such order as would be permissible under the law.

10. As an upshot of our discussion, on the first substantial question of law, we have to hold that the application filed by the appellant before the State Insurance Court application under Section 75 of the ESI Act, 1948 was not maintainable for want of per-deposit of 50% of the demand or waiver or reduction.

11. Though, other substantial question of law has also been framed by the Court, three in number, which essentially deals with the merits of the case, we are not inclined to answer those questions as it would be futile exercise once we hold that the Court had no jurisdiction to take up the matter for decision on merits on the claim of the parties. It will be fair to both the parties that we set aside the impugned order and leave the appellant to either comply with provision of pre-deposit or apply for waiver or reduction before the Court. It will be open for the

respondent Corporation to take its own stand on such matter by contesting the same. The merits would be examined only after appropriate orders are passed as required under Sub-section (2-B) of Section 75 of the ESI Act, 1948.

12. The appeal is accordingly disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge

Rekha