

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

204

FAO-522-1991

Date of Decision : November 26, 2019

M/S CON CAST STEELS LTD. AND ANOTHER

.....Appellants

VERSUS

EMPLOYEE STATE INSURANCE CORPORATION AND OTHERS

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Aalok Jagga, Advocate
for the appellants.

Mr. Adrash Malik, Advocate
for the respondents.

NIRMALJIT KAUR, J. (Oral)

The present appeal is filed against the order dated 18.3.1991 passed by the Employees Insurance Court, Chandigarh in ESI case No.94 of 17.8.1984.

While praying for setting aside the said order, learned counsel for the appellants inter-alia raised number of arguments including that the very impugned order is non-speaking order and is contradictory on facts.

As per the order, representations had been filed in response to the show cause notice and the trial Court duly considered the same, whereas, it is the stand of the respondents that no reply had been received. Meaning thereby, that the very order passed by the respondent-Employees State Insurance Corporation was without considering the said

reply/representations.

The show cause notice was issued on 11.5.1981. Thereafter, the appellants filed their representations on 3.6.1981 Ex.P78, dated 31.8.1981 Ex.P79 and dated 27.9.1983 Ex.P80. However, the final order was passed by the Regional Director, ESI Corporation on 28.6.1984. A perusal of the said order dated 28.6.1984 shows that the representations mentioned above were not considered and it was passed by holding that no reply had been filed to the show cause notice. Whereas, the trial Court, while dismissing the case of the appellants, held that the said order was passed after considering the representations placed on record as Exs.P78 to P80. The said observations are reproduced below:-

“From the evidence of the parties, it is also clear that the impugned order was passed after having considered the representation sent by the petitioners to the Regional Office, which are Ex. P78 to Ex.P80.”

It is, therefore, obvious that the appellants had duly replied to the show cause notice vide their representations Exs.P78, 79 and 80 but in spite of the same, the respondent-Authority proceeded to pass the final order without considering the same. Infact, the final order dated 28.6.1984 should have been set aside by the Court on this ground alone with liberty to file afresh. The same was not done and instead, the Court proceeded to pass the order and judgment dated 18.3.1991.

At this stage, learned counsel for the appellants on instructions has very fairly stated that they shall pay the amount due to them but without interest in order to settle the dispute.

Learned counsel for the respondents, however, while opposing the same submitted that there is no provision for waiving off the interest.

In view of the facts as noted above, this Court may note that in case the impugned order passed by the Court as well as the order dated 28.6.1984 passed by the Deputy Regional Director, is set-aside with liberty to pass a fresh order, it may culminate in either of the two eventualities;

- (a) The show cause notice in itself may be set-aside by the Authority concerned after considering the representations Exs. P78 to P80, in which situation, the appellants will not be liable to pay any amount or;
- (b) The appellants may be made liable to pay the amount as already ordered but in that case, they will not be liable to pay the interest for the intervening period as the earlier order would have been set-aside by this Court, while remanding the matter.

Taking the worse situation against the appellants in the present set of circumstances, they will be liable to pay the entire amount of Rs.60,096.20/- from the date of the show cause notice i.e. 11.5.1981 to deposit Rs.60,096.20/- upto the date of the passing of order of stay by the Court on 22.4.1991.

Therefore, in these circumstances, accepting the statement of learned counsel for the appellants that they are ready to deposit the balance amount of Rs.30,096.20/- as Rs.30,000/- was deposited as per the

conditional order of stay passed in the present FAO on 22.4.1991, the present appeal is disposed of, without going into the merits, with the following directions :-

The appellants shall deposit the balance amount of Rs.30,096.20/- alongwith interest from 11.5.1981 till the passing of the order dated 22.4.1991 on the total amount of Rs.60,096.20 Ps.

Accordingly, the appeal is disposed of in the above terms.

It is clarified that there shall be no interest for the period from 22.4.1991 onwards in view of the above discussion as well as on account of the stay in favour of the appellants since 22.4.1991, vide which, they were directed to deposit only Rs.30,000/-.

November 26, 2019
ajay-1

(NIRMALJIT KAUR)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No