05.10.2023
Item No.5
Court No.550
Saswata

W.P.A. 7345 of 2023
J. Engineering & Anr.
Versus
Union of India & Ors.

Mr. Souvik Nandy
Mr. U.K.Jana
...For the petitioners
Mr. S.C.Prasad
...For the ESIC

1. The petitioner no. 1 is a proprietorship firm and is an enlisted contractor under the provisions of Kolkata Municipal Corporation Act, 1980 and the rules framed thereunder. The petitioner no. 1 is also engaged in the supply of contract labourers as security guards, both skilled and unskilled, in various establishments and factories and is covered by the provisions of Employees' State Insurance Act, 1948 (hereinafter referred to as the "said Act").
2. It is the petitioners' contention that the petitioners, from time to time, in accordance with the provisions of the said Act, have not only made payment of the contributions but have also furnished returns. It is also the petitioners' contention that in terms of the ESIC guidelines, the petitioners are required to maintain bank account with the State Bank of India for the purpose of depositing statutory dues, i.e., contributions under the said Act.

3. In terms of Rule 21 of the Employees State Insurance (Central Rules), 1950, all monies accruing or payable to the Corporation shall be received by such officers of the Corporation as may be authorized by it in this behalf. The amount so received shall as soon as practicable be acknowledged by a recipient in Form-1 and deposited in the Reserve Bank of India or the State Bank of India or any of its subsidiaries or the nationalized banks to the account of the fund, provided that any money may also be paid directly to the account of the fund to any scheduled bank authorized for the Government agency business.
4. According to the petitioners, the petitioners had from time to time deposited the contribution with the State Bank of India. Notwithstanding the aforesaid, the respondent no. 3, for the first time in or about June 2022 had, *inter alia*, raised a dispute regarding non-payment of contribution, for the month of September 2014. According to the petitioners, the petitioners had duly submitted the relevant challan for the year 2014 demonstrating deposit of the contributions with the State Bank of India. Despite the aforesaid proof of deposit, by a communication in writing dated 15th June 2022, the respondent no. 3 had called upon the petitioners to submit relevant bank statements in

support of the petitioners' claim as regards deposit of a sum of Rs.67,262/- towards the contribution for the month of September 2014. Following the issuance of such letter, the petitioners were served with a demand notice in Form- ESI CP 2 dated 14th September 2022, inter alia, calling upon the petitioners to make payment of a sum of Rs.67,262/- towards the contribution payable for the month of September 2014 and a sum of Rs.63,311/- towards interest computed up to 23rd August 2022, aggregating a sum of Rs.1,30,573/-.

5. By such communication, the petitioners were informed that a certificate dated 23rd August 2022 has already been issued and forwarded by the authorized officer of the ESIC, Kolkata for recovery of a sum of Rs. 1,30,573/- and the petitioners were called upon to make the payment of the aforesaid sum within 15 days from the date of receipt of the notice, failing which appropriate steps will be taken for recovery. The same was followed by a garnishee order issued under Section 45G of the said Act dated 20th December 2022, whereby the petitioners' bank account maintained with the Bank of India, Sarat Bose Road Branch was attached towards recovery of a sum of Rs.1,33,287/-.

6. The petitioners were made aware with regard to the factum of such attachment when a copy of the

aforesaid letter dated 20^{th} December 2022 was forwarded to the petitioners. Immediately upon receipt of the said letter, the petitioners had, by a communication in writing dated 10^{th} March 2023, clarified their position once again. Since despite receipt of such clarification no steps were taken by the respondents to release the petitioners' bank account from the order of attachment, the writ petition being WPA 7345 of 2023 was filed before this Court challenging the said order of attachment.

7. At the interim stage on 5^{th} April 2023 since, it was argued on behalf of the petitioners that the aforesaid order of attachment had been issued without taking steps under Section 45A of the said Act and since, the respondents could not demonstrate service of any order under Section 45A of the said Act, the attachment notice dated 20^{th} December 2022 was stayed. This matter has come up for final hearing after exchange of affidavits.

8. Mr. Nandy, learned advocate appearing for the petitioners submits that the petitioners had, at all material times, complied with the provisions of the said Act. The petitioners have not only made payment of the contribution in time but had also filed returns. Notwithstanding, the petitioners complying with the provisions of the said Act, the respondent no. 3 all on a sudden in the year 2022

has alleged that the petitioners had not complied with the provisions of the said Act in the year 2014, by not depositing the contributions for the month of September 2014.

9. According to Mr. Nandy, the petitioners had duly kept the respondent no. 3 informed with regard to payments made by the petitioners and had also upon the aforesaid issue being raised had disclosed the challan. The challan bears the seal and signature of the State Bank of India, which is otherwise authorized to accept contributions for and on behalf of the Corporation. Notwithstanding, the matter pertaining to the year 2014, the respondents insist for disclosure of bank statements showing debit of the petitioners' bank account in respect of the cheque transaction as indicated in such challan.

10. In any event, it is submitted that the provisions of the said Act provide for determination of the contribution in certain cases. Section 45A of the said Act categorically provides for eventualities of this nature. In this case, admittedly, no notice of hearing of any proceedings under Section 45A of the said Act had been served on the petitioners. No determination under Section 45A of the said Act has been made. It is still further submitted that the Corporation could not have passed any order in

respect of the disputed period as the same is beyond 5 years from the date on which contributions becomes payable.

11. Having regard to the aforesaid, it is submitted that the entire proceeding seeking recovery is without the sanction of law and is barred by limitation and cannot be sustained and the same should be set aside.

12. *Per contra*, Mr. Prasad, learned advocate appearing for the ESIC submits that it is not possible for the ESIC to keep track of the contributions paid. In this case, since it was detected that there was a short payment for the month of September 2014, the petitioners were called upon to demonstrate proof of payment. The petitioners having failed to demonstrate proof of payment, a certificate proceedings had been initiated and pursuant to such certificate proceeding, a recovery notice has been issued. He says that there is no irregularity on the part of the respondents to enforce its claim by issuing a certificate proceeding.

13. It is still further submitted that since there was a shortfall for a particular period, no order under Section 45A of the said Act is necessary. In any event, according to Mr. Prasad, this is continuing wrong and as such, the petitioners cannot evade

the liability by contending that the same is barred by limitation.

14. Heard the learned advocates appearing for the respective parties and considered the materials on record.

15. In this case, it is noticed that the petitioner no. 1 is covered under the provisions of the said Act and has been complying with the provisions of the said Act. Since, in the year 2022 the respondents had detected that there was a short payment in respect of the contribution for September 2014, the respondents had called upon the petitioners to demonstrate proof of payment. According to the petitioners, the aforesaid contribution for the month of September 2014 was paid to the State Bank of India and to demonstrate the factum of such payment, reliance has been placed on a challan issued by the State Bank of India, itself.

16. As pointed out by Mr. Nandy Rule 22 of the said Rules, authorizes payment of contribution to be made directly to the bank. In this context, to appropriately appreciate the above, Rule 22 of the said Rules is extracted hereinbelow:

> *"**22. Procedure for crediting moneys to the Banks.-** (1) All moneys accruing or payable to the Corporation shall be credited to the approved bank and not utilised directly for any purpose.*

(2) The bank or banks shall be required at the end of every calender month to furnish to the Corporation or such officer as may be authorised by it in this behalf, a statement of the amounts deposited in and withdrawn from the Fund during the month. These statements shall be examined by the Director-General before the expiry of a period of two months following the period to which the statements relate."

17. A perusal of the aforesaid Rule would demonstrate that when an amount is deposited with the bank, it is the obligation of the bank at the end of the calendar month to furnish to the Corporation or such officer as may be authorized by it in this behalf, a statement of the amount deposited in and withdrawn from the fund during the month. The statement is statutorily required to be examined by the Director-General before the expiry of two months following the period to which the statements relate.

18. It would, thus, be apparent that the respondents had, at all material time, knowledge as regards the contributions paid. Having regard to the aforesaid, the submission of Mr. Prasad that it is difficult for the Corporation to keep track of the contributions **received**, cannot be accepted. I also notice Section 45A of the said Act, categorically reads as follows:-

*"45A **Determination of contributions in certain cases. —***

(1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished

or maintained in accordance with the provisions of section 44 or any [Social Security Officer] or other official of the Corporation referred to in sub-section (2) of section 45 is [prevented in any manner] by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment: [Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard:] [Provided further that no such order shall be passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable.]
(2) An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under section 45B [or the recovery under sections 45C to 45-I].

19. In the instant case, admittedly no order under Section 45A of the said Act had been passed. No proceedings under Section 75(1) of the said Act has been initiated by the respondents. It is, thus, apparent that there has been no determination of the amount in arrear.

20. From the disclosure made by the respondents in the affidavit in opposition, it appears that the application for recovery of contribution has been made under Sections 45C to 45I of the said Act. From a perusal of Section 45C of the said Act it would be apparent that there has to be a

determination of an amount that has fallen in arrear under the said Act. Admittedly, no such determination has been made.

21. Having regard to the aforesaid and the delay in initiation of proceedings, I am of the view that the respondents could not have enforced the recovery by way of attachment under Section 45G of the said Act, at this stage, without first making a determination.

22. In view thereof, the order of attachment dated 20th December 2022 is set aside and/or stands quashed.

23. The writ petitioner being WPA 7345 of 2023 is accordingly disposed of.

24. The aforesaid order, however, shall not prevent the respondents from taking steps to determine the liability of the petitioner in accordance in law.

25. All parties to act on the basis of the server copy of this order, duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)