09.10.2023

Court	: **04**
Item	: **12**
Matter	: **FMA**
Status	: **DISMISSED**
Bench ID	: **266048**
Transcriber	: **NANDY**

FMA 445 of 2023
with
CAN 2 of 2023

M/s. Shree Nursing Electric Stores & Anr.
Vs.
The learned ESI Court, West Bengal, Kolkata & Ors.

Mr. Sisir Kumar Dey, Advocate
Mr. Debasish Kundu, Advocate
……for the Appellants
Mr. Saumitra Banerjee, Advocate
……for the Respondent Nos. 2, 3 & 4

1. The instant appeal is filed assailing an order no. 28 dated 01.03.2023 passed in Tender Case No. 14 of 2018 by the Employees' Insurance Court, West Bengal, Kolkata disposing of an application under Section 75 (2B) of the Employees State Insurance Act, 1948 (hereinafter referred as 'the said Act') directing the appellant to deposit 30% of the claimed amount by 18.04.2023. The said Court further proceeded to pass an injunction restraining the Corporation from taking any coercive action against the appellant subject, however, to deposit of the said amount.
2. The ground of assailing the impugned order is founded on the definition of a 'factory' under Section 2(12) of the said Act which postulates that any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine.
3. It is sought to be contended that all along there was less than ten persons employed in the establishment and, therefore, the Corporation as well as the Court did not take into consideration the above aspect.

Taking aid of Section 45A of the said Act, it is sought to be contended that no order shall be passed by the Corporation in respect of a period beyond five years from the date on which the contribution shall be payable. Consequent thereupon, the appellant contends that the direction by the Corporation to pay the amount from 2011 is in contravention to the second proviso to Section 45A (1) of the said Act. Lastly it is submitted that Section 75(2B) empowers the Court either to waive or reduce the sum to be deposited subject to the reasons being recorded in this regard. Section 83 of the said Act is also placed in service at the behest of the appellant that the moment an appeal is preferred by the Corporation, the Court may, if so directed by the High Court, withheld the amount of any sum directed to be paid by an order appealed against pending the decision in the said appeal.

4. Taking the last plea, the submission of the appellant is misconceived as the said Section is applicable to a case where the Corporation has presented an appeal against an order of the Employees' Insurance Court and the Court, which obviously means the Employees' Insurance Court, may withheld the payment of any sum subject to the decision of the appeal or any order is passed by the High Court before whom such appeal is pending. It is no longer *res integra* that the language used in the statute has to be read in the manner and the context in which the same is used and in absence of any ambiguity, no external aid nor a purposive construction is required to be resorted to. The said provision was restricted to an appeal filed by the Corporation. The reason is obvious that in

absence of any direction, the payment cannot be withheld, if already deposited with it.

5. So far as the definition of 'factory' is concerned, a proceeding was initiated under the said Act by the statutory authority and finding that the establishment of the petitioner comes within the ambit of the said Act is yet to be decided by the Employees' Insurance Court. The appeal against an interlocutory order should be confined within the precincts of the said provision and the higher forum/appellate forum should not make any observation which would negate and/or render the proceeding pending before the Court below infructuous and/or redundant.

6. All the points which are available to the appellant, if taken before the Court below, shall be decided in accordance with law and, therefore, we do not intend to go into the aforesaid aspect at this stage, more particularly, when an order passed on an application under Section 75(2B) of the said Act is a subject matter of challenge in the instant appeal.

7. So far as the applicability of Section 45A of the said Act is concerned, it is sought to be contended that the Corporation cannot direct the payment beyond five year from date on which the contribution shall be payable. It is essentially a mixed question of fact and law and, therefore, at this stage it would not be proper to go into the aforesaid aspect as the matter is pending before the Court below and if such point is taken, shall be decided on the basis of the available materials-on-record.

8. So far as the plea of Section 75(2B) of the said Act is concerned, it bestowed power upon the Court to pass

an order directing the Corporation to deposit with the Court as condition precedent for entertaining the proceeding. Though the enabling provision provides a deposit of 50% of the claimed amount but the proviso inserted thereto gives discretion to the Court to waive or reduce the amount to be deposited subject to recording the reasons in writing.

9. The Appellate Court shall not interfere with the order passed by the Court below in exercise of discretion vested in the statute unless such discretion appears to be unreasonable, irrational and beyond the parameters of settled law. Even if the Appellate Court thinks another view is possible yet the Appellate Court shall not interfere with the said order if the view expressed by the Court below is also one of the possible views.

10. The Insurance Court has extensively recorded the reasons for reducing the amount as condition precedent under the aforesaid provision which does not appear to us unreasonable, irrational and de hors the law.

11. We thus do not find any merit in the instant appeal.

12. **FMA 445 of 2023** is accordingly dismissed along with connected application.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)