



CMA(MD).No.1413 of 2015

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2023

PRONOUNCED ON : 01.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1413 of 2015
and MP(MD).No.2 of 2015

The Management
Represented through the Partner
M/s.Coromandal Hydraulics
G-8, SIDCO Industries Estate
Dindigul

...Appellant

Vs

1.The Joint Regional Director
Employees State Insurance Corporation
Sub Regional Office
Panchdeep Bhavan 4th Main Road
K.K.Nagar, Madurai 625 020

2.The Recovery Officer
Employees State Insurance Corporation
Sub Regional Office
Panchdeep Bhavan 4th Main Road
K.K.Nagar, Madurai 625 020

...Respondents



CMA(MD).No.1413 of 2015

PRAYER:- Civil Miscellaneous Appeal filed under Section 82(2) of the E.S.I Act, 1948, to set aside the order and ex-order passed by the Employees State Insurance Court (Labour Court) Madurai in ESIOP.No. 59 of 2006 dated 13.07.2015 and allow the appeal.

For Appellant : Mr.V.O.S.Kalaiselvam

For Respondents : Mr.I.Pinaygash

JUDGMENT

The above appeal has been filed by the management challenging the dismissal order in E.S.I.O.P.No.59 of 2006 on the file of the Labour Court, Madurai.

2.According to the appellant, the corporation had initiated proceedings demanding the E.S.I.contribution for the wages paid to the employees who were engaged through contractor. Though the management had sent a proper reply on 19.09.1989, an order was passed by the corporation under Section 45-A of the E.S.I.Act demanding a sum of Rs.51,605/-. The said order of E.S.I.corporation was challenged before the E.S.I.Court in E.S.I.O.P.No.50 of 1989. The E.S.I.Court after



CMA(MD).No.1413 of 2015

considering the submissions made on either side, allowed the petition on 21.09.1993. The E.S.I.corporation had filed CMA.No.1095 of 1997 challenging the said order before the High Court. The High Court was pleased to allow the appeal filed by the Corporation and confirmed the order passed under Section 45-A of the E.S.I.Act.

3.Despite confirmation of the order under Section 45-A of the Act, the management has not paid the contribution amount. Hence, a notice of recovery dated 03.08.2006 was passed claiming a sum of Rs.1,83,607/- including the interest under Section 39-5(a) of the E.S.I.Act. A Prohibitory Order was also passed on 14.08.2006. These two orders were challenged before the Labour Court, Madurai in E.S.I.O.P.No.59 of 2006. After considering the submissions on either side, the Labour Court was pleased to dismiss the appeal. Challenging the same, the management has filed the present appeal.

4.The present appeal has been admitted on the following substantial questions of law:

“1.It is most respectfully submitted that whether the



CMA(MD).No.1413 of 2015

respondent without affording opportunities and without passing any order into it straight away claim the interest when there is no order as to the interest in CMA.No.1095 of 1997 dated 31.03.2006.

2.It is most respectfully submitted that whether interest can be levied for belated remittance of contribution when there was an order in favour of the appellant in the ESI Court and there after also the matter was pending in the appeal and there is no wilful delay in remittance of contribution.

3.It is most respectfully submitted that when the appellant not liable to pay contribution, but only in order to give quietus to the legal issues remitted the amount, will it invite interest.

4.It is most respectfully submitted that whether the order of the Labour Court is well within the principles of law laid down by this Court and other High Courts.

5.Whether the Labour Court followed the principles of evidence in its proper perspective.

6.Whether the Labour Court considered as to whether while passing the order by the respondent the principles of natural justice was followed.

7.Whether the Labour Court is right in dismissing the petition without considering the principles of law in its proper perspective.”



CMA(MD).No.1413 of 2015

WEB COPY

5.The learned counsel for the appellant had contended that immediately after passing of order by the High Court in CMA.No.1095 of 1997, the corporation had recovered the principal amount of Rs. 45,898/- from the bank account of the appellant on 30.08.2006. The High Court has not passed any order with regard to the recovery of interest. Therefore, the corporation was not legally entitled to recover any interest from the employer. The learned counsel had further contended that the default in contribution relates to the period between April 1976 to March 1986 and the order under Section 45-A of the Act was passed on 21.04.1989. Therefore, the entire proceedings was clearly barred by limitation and therefore, any attempt to recover the interest is not legally sustainable.

6.The learned counsel for the appellant had further contended that before initiating recovery proceedings, no notice was issued to the employer to explain the default and the mitigating circumstances. He had further contended that when the E.S.I.corporation has filed CMA.No.50 of 1989 and the same was disposed of only on 31.03.2006 and therefore, for the said period, the employer is not liable to pay any interest.



CMA(MD).No.1413 of 2015

WEB COPY

7.The learned counsel had further contended that when the original proceedings had ended in favour of the appellant and the corporation themselves have filed an appeal, the E.S.I.Court was not right in relying upon the judgment of the Hon'ble Apex Court reported in **(2005) 13 SCC 13 (Rajasthan Housing Board and others Vs. Krishna Kumari)**. Hence, he prayed for allowing the appeal.

8.Per contra, the learned counsel appearing for the respondents had contended that the period of limitation prescribed under the Act is only for determination of the contribution amount. Once the contribution amount is determined and there is any default or delayed payment, the same would certainly invite interest and damages. There is no limitation for claiming interest or damages. The learned counsel had further contended that the order passed by this Court in CMA.No.1095 of 1997 on 31.03.2006 has become final. Even thereafter, the management has not deposited the amount. Therefore, the corporation was constrained to initiate recovery proceedings and pass prohibitory orders.



CMA(MD).No.1413 of 2015

WEB COPY

9.The learned counsel for the respondents had further contended that once contribution has become due, it is for the employer to pay the contribution in time. It is not necessary for the corporation to demand the said contribution amount. If there is any delay or default in payment of the said contribution amount, the demand for interest is statutory in nature. Therefore, there is no question of calling for any interest from the employer for the delayed payment. The learned counsel had further contended that once the contribution has become final, the recovery and prohibitory orders are only consequential in nature and they cannot be challenged before the Labour Court. Hence, he prayed for dismissal of the appeal.

10.I have considered the submissions made on either side and perused the materials available on record.

11.It is not in dispute that the appellant company is covered under E.S.I.Act. Orders were passed under Section 45-A of the Act for the omitted wages paid to the employees engaged by the contractor. Though



CMA(MD).No.1413 of 2015

initially the employer has succeeded before the E.S.I.Court, ultimately this Court by an order dated 31.03.2006 in CMA(MD).No.1095 of 1997 has confirmed the order of the Corporation under Section 45-A of the Act.

12.It is not the case of the appellant that they have paid the contribution amount along with interest. After the order of this Court in CMA.No.1095 of 1997, admittedly the principal/contribution amount was recovered from the bank account of the employer. However, the recovery notice was issued and prohibitory orders were passed by the corporation for recovering the interest portion. The said order was challenged in E.S.I.O.P.No.59 of 2006 before the Labour Court, Madurai. The Labour Court was pleased to find out that the demand for interest towards belated payment is statutory in nature and therefore, no question of issuing notice or conducting enquiry for recovering the said amount would arise. The Labour Court had further relied upon the judgment of the Karnataka High Court reported in **2007-1-LLJ 830 (Employee's State Insurance Corporation Vs. Karnataka State Small Industries**



CMA(MD).No.1413 of 2015

WEB COPY

Development Corporation Limited) to arrive at a finding that the interim order obtained by one of the parties is at the risk and responsibility of that person. If the case is decided against such person, he would be liable to pay interest on the arrears of amount due which was stayed by an interim order.

13.The Labour Court had further found that an employer cannot exemption from the payment of interest for the period during which the litigation was pending. The Labour Court further confirmed the percentage of interest levied upon the employer based upon Section 39(5) and Regulation No.31(A) of the E.S.I.Act. Challenging the same, the present appeal has been filed.

14.The primary contention of the employer is that he was not issued with any notice prior to the passing of the recovery order or prohibitory order. A perusal of Section 39(5) of the Act makes it clear that the levy of interest is statutory in nature and the same is governed by Regulation 31(A). Further it is clear that there is no discretion vested



CMA(MD).No.1413 of 2015

with the authorities to waive or reduce the rate of interest. Therefore, no purpose would be served in issuing show cause notice or conducting an enquiry for the purpose of levying interest. Hence, the contention of the learned counsel appearing for the appellant that the order of levying interest is in violation of the principles of natural justice stands rejected.

15.The next contention of the learned counsel appearing for the appellant is that the proceedings were pending from the year 1989 onwards and therefore, the interest cannot be calculated during the period of litigation. The first order under Section 45-A of the Act was passed on 19.09.1989. Only the management had challenged the said order before the E.S.I.Court which ended in his favour on 21.09.1993. Naturally the E.S.I.Corporation had challenged the said order in CMA.No.1095 of 1997 which ended in favour of the Corporation on 31.03.2006. Therefore, it is clear that the proceedings were pending from the year 1989 to 2006 only because of the fact that the employer had unsuccessfully challenged Section 45-A order. The Hon'ble Supreme Court in a judgment reported in *(1997) 7 SCC 89 (Fenner (India) Ltd.,*



CMA(MD).No.1413 of 2015

WEB COPY

Vs. Punjab and Sind Bank), has held that the grant of interim order of stay is at the risk and responsibility of a person who obtains it and ultimately, if the case is decided against such person, he would be liable to pay interest on the arrears of the amount due which was stayed by an interim order. In view of the judgment of the Hon'ble Supreme Court, it is clear that the employer who had not paid contribution amount from the year 1989 to 2006 is certainly liable to pay interest for the said period.

16.As far as the plea of limitation with regard to the claiming of interest is concerned, as rightly contended by the learned counsel appearing for the respondents, a period of limitation is prescribed only for determination of contribution. Once the contribution amount is determined and the same is paid belatedly, the imposition of interest is consequential in nature and therefore, there is no limitation for claiming interest or damages for the delayed payment of contribution amount.

17.In view of the above said deliberations, all the substantial questions of law are answered as against the appellant and the Civil



CMA(MD).No.1413 of 2015

Miscellaneous Appeal stands dismissed. No costs. Consequently,
connected miscellaneous petition is closed.

01.06.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

1.The Labour Court

Madurai

2.The Section Officer

Vernacular Section

Madurai Bench of Madras High Court

Madurai

12/13



WEB COPY



CMA(MD).No.1413 of 2015

R.VIJAYAKUMAR,J.

msa

Pre-delivery order made in
C.M.A(MD)No.1413 of 2015

01.06.2023