

(2001) 09 KL CK 0034

High Court Of Kerala

Case No: M.F.A. No. 333 of 2001

Regional Director, E.S.I.
Corporation

APPELLANT

Vs

Cannanore Spinning and
Weaving Mills

RESPONDENT

Date of Decision: Sept. 13, 2001

Acts Referred:

- Employees State Insurance (Central) Rules, 1950 - Rule 50
- Employees State Insurance Act, 1948 - Section 2, 39(4), 39(5)

Citation: (2001) 2 LLJ 1573

Hon'ble Judges: P.R. Raman, J; K.A. Abdul Gafoor, J

Bench: Division Bench

Advocate: T.V. Ajaya Kumar, for the Appellant; U.K. Ramakrishnan, E.K. Madhavan, P.V. Lohithakshan, P. Vijayamma and V. Krishna Menon, for the Respondent

Final Decision: Dismissed

Judgement

K.A. Abdul Gafoor, J.

The Regional Director of the E.S.I. Corporation challenges in this appeal an order dated 31.10.2000 of the Employees Insurance Court, Kozhikode in E.I.C. No. 72/99, and contends that the respondent-employer is liable to pay the interest on the contribution payable by him in terms of S. 39(5) of the Employees State Insurance Act, 1948.

2. Certain facts are not in dispute, Employer is liable to pay contribution to the employees state insurance in respect of the employees as defined in S. 2(c) of the Act provided the wages payable come within the limit made mention of in R.50 of the Employees State Insurance (Central) Rules, 1950. An amendment was brought into the wage limit made mention of in the said rule by notification dated 23.12.1996 to be effective from 1.1.1971 enhancing the wage limit from Rs.3,000/- per month to

Rs.6,500/-. Thus, more employees came within the coverage of the Act. Employees were aggrieved as the employer will become liable to deduct contribution from their salary. Accordingly, the employees of the respondent who were brought under the coverage of the Act by reason of such amendment challenged the provision in O.P. No.2771/1997. They also prayed for a stay of all further proceedings for covering all workers and security staff pursuant to the amendment, in C.M.P. No. 5034/97 in the said Original Petition. This court issued an order of stay on condition that the petitioners therein i.e. the employees would undertake to discharge the liabilities, if ultimately the Original Petition is dismissed. So during the period when the stay order was in force, the respondent could not have acted in terms of the amendment and the added coverage. Consequently, honouring the interim order passed by this Court, the employees who had been earning wages in excess of Rs.3,000/- could not be said to have brought under the coverage. In such circumstances, the respondent was not liable to pay contribution to the E.S.I. Corporation in respect of those workmen under it in terms of the amendment made. The Original Petition was finally dismissed on 26.11.1997. Therefore, liability to pay contribution in respect of the employees under the respondent earning wages exceeding Rs.3,000/- and upto Rs.6,500/- had arisen, only after 21 days of the date of disposal of the Original Petition. Of course if the amendment had been upheld, the contribution payable on expiry of such 21 days shall be the entire amount payable from 1.1.1997, the date when the notification was brought into force. In such circumstances, the Employees Insurance Court considered this aspect and held that the respondent was not liable for interest during the aforesaid period. It is that judgment which is under challenge in this M.F.A.

3. It is contended by the appellant that when the challenge against the amendment was turned down, the provision became operative from the date of amendment itself. In such circumstances, all the liabilities cast in terms of the said amendment rest upon the employer and therefore the employer shall be liable to pay not only the contribution but also interest in terms of S. 39(5) of the Act from the date when the contribution was due for payment. It is further submitted relying on [Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others](#), that when challenge against notification or statutory amendment is repelled, the liabilities that are arising from the amendment shall be discharged by the person who is liable to pay and if there is any provision to charge interest, that shall also be paid.

4. There cannot be any quarrel with the proposition. The point covered by the decision cited by the counsel for the appellant is the challenge against the enhancement of electricity tariff. Consumers were really aggrieved by the notification. In such circumstances, when such consumers want to avert payment of enhanced rate by filing Original Petition and obtained stay and finally the Original Petition was dismissed upholding the amendment, casting the liability to pay the enhanced rate of tariff on the consumers together with interest, they are liable for interest from the due date. But in this case, the facts are different. As per the

amendment impugned in the Original Petition employees earning wages more than Rs.3000/- were brought under the coverage of the Act and they were aggrieved by the amendment, they filed Original Petition and obtained stay order as mentioned above. In such circumstances, only when the amendment had become operative as regards the workmen concerned, the employer can pay contribution deducting it from the wages of the workmen. Then alone there arises the contribution payable by the employer. When the amendment was thus inoperative because of the stay order, the payment in terms of the amendment had not become due to be paid. Sub-s. (4) of S. 39 makes it clear that the contribution payable in respect of a period shall ordinarily fall due on the last day of the wage period. Thus, there is an amount of elasticity attached to the liability for payment of contribution making it clear that it will ordinarily be payable as mentioned above. When there was stay order, with regard to coverage of employees drawing wage beyond Rs.3,000/- necessarily, the circumstances in the case are fit to invoke that elasticity and to hold that in this case it was payable only on the lapse of 21 days from the date of disposal of O.P. No.2771/97. The interest payable beyond the period had been taken care in the judgment impugned. In such circumstances, we hold that the Employees Insurance Court was perfectly justified in denying interest.

5. M.F.A. is dismissed. No. costs.