

The Transport Corporation of India Ltd. through Santnu Patra Manager - Legal Vs. Employees State Insurance Corporation & Ors.

Civil Appeal No. 3135 of 2011
2021-01-01 | Abhay S. Oka, J.
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Full judgment text

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[Civil Appeal No. 3135 of 2011]

Abhay S. Oka, J.

1. The appellant has taken an exception to the Judgment and Order dated 29th March 2010 passed by a Division Bench of Gujarat High Court in a Letters Patent Appeal. The first respondent is the Employees' State Insurance Corporation (for short "the Insurance Corporation") established under the Employees' State Insurance Act, 1948 (for short "the said Act of 1948").

2. By a notice dated 6th April 1990, a demand was made by the Insurance Corporation in the sum of Rs.8,01,510/- by way of contribution payable by the appellant for the period from 30th July 1975 to 31st March 1988. The contribution was demanded as per the provisions of Regulations 29, 31 and 33 of the Employees' State Insurance (General) Regulations, 1950 (for short 'the said Regulations').

The notice referred to unamended Regulation 31-A of the said Regulations under which interest at the rate of 6% per annum was payable on the overdue amount. Another notice dated 16th July 1990 was issued by the Insurance Corporation by invoking Section 45-A of the said Act of 1948 demanding interest at the rate of 6% per annum on the sum of Rs.7,79,491/- up to 19th of October 1989 and interest at the rate of 12% per annum up to 31st July 1990.

3. The appellant filed an application under Section 75 of the said Act of 1948 before the Employees' Insurance Court at Ahmedabad for challenging the said demand. By the Judgment and order dated 17th August 1993, the learned Judge of the Employees' Insurance Court declared that the appellant was liable to comply with the provisions of the said Act of 1948 with effect from 1st April 1988 and it was not liable for the period prior to 1st April 1988. Hence, the notices of demand were quashed.

4. The Insurance Corporation preferred an appeal against the said decision of the Employees' Insurance Court. The learned Single Judge of the Gujarat High Court by his Judgment and Order dated 10th July 2006 allowed the said appeal by holding that Head Office of the appellant was covered by the said Act of 1948 in the year 1975 and therefore, employees working in Branch Office of the appellant in Gujarat get covered by the beneficial sweep of the said Act of 1948. Hence, the appellant was held liable to pay contribution from 30th March 1975.

5. By the notice dated 26th July 2006, recovery proceedings were initiated against the appellant. A writ petition was filed by the appellant for challenging the said demand. It was withdrawn with liberty to make a representation. On the basis of the representation made by the appellant, the Insurance Corporation passed an order on 23rd November 2006.

By the said order, the Insurance Corporation directed the appellant to pay interest on the delayed payment of contribution for the period from 30th March 1975 to 31st March 1988 amounting to Rs.21,27,087/- and interest of Rs.3,97,722/- at the rate of 12% per annum from 1st March 2006 to 2nd August 2006 within fifteen days.

The appellant challenged the said order by filing a writ petition which was dismissed by the Judgment and order dated 9th February 2010 by the learned Single Judge. Being aggrieved by the said order, a Letters Patent Appeal was preferred by the appellant which has been dismissed by the impugned Judgment and order.

6. The submission of Shri Ritin Rai, the learned Senior Counsel in support of the appeal is that there was uncertainty about the liability of the appellant to pay contribution and the legal position was crystallised for the first time when by Judgment and Order dated 10th July 2006, the learned Single Judge of Gujarat High Court held that the appellant was liable to pay contribution from 30th July 1975.

The learned Senior Counsel submitted that the liability of the appellant was crystalized only on 10th July 2006 and therefore, the arrears of contribution became payable only from that day. His submission is that interest cannot be demanded for the period prior to the said date. He submitted that clause (a) of sub-section (5) of Section 39 of the said Act of 1948 makes the principal employer liable to pay simple interest at the rate of 12% per annum or a such higher rate as may be specified in Regulations.

However, this provision was brought on the statute book with effect from 20th October 1989. He submitted that for the period prior to the said date, interest was demanded by the Insurance Corporation by invoking Regulation 31-A of the said Regulations. Inviting our attention to various clauses of sub-section (2) of Section 97 of the said Act of 1948, he submitted that there was no power therein to frame Regulations for levy of interest.

He submitted that till 28th January 1968, there was a power to frame Regulations for levy of interest at a rate not exceeding 6% per annum on the overdue contributions and from 20th October 1989, there was a power to make Regulations prescribing the rate of interest higher than 12% on delayed payment of contributions.

He submitted that till 20th October 1989, there was no provision in the said Act of 1948 empowering the Insurance Corporation to levy interest. In absence of any such statutory power, by framing the Regulations under Section 97, the power to levy interest could not have been conferred on the Insurance Corporation.

7. Lastly, he relied upon the decision of this Court in the case of Employees' State Insurance Corporation and Ors. v. Jardine Henderson Staff Association and Ors.¹ and submitted that this is a fit case to exercise jurisdiction of this Court under Article 142 of the Constitution of India for waiver of interest. He also relied upon another decision in the case of Transport Corporation of India Ltd. v. Employees' State Insurance Corpn. and Ors.²

8. The learned counsel appearing for the respondent Shri Atul Batra submitted that as held by this Court in the case of M/s. Goetze (India) Ltd. v. Employees' State Insurance Corporation³, there is no power to waive interest.

9. We have given careful consideration to the submissions. There is no dispute that the interest demanded from the appellant is in terms of Regulation 31-A of the said Regulations. In the writ petition filed by the appellant before the Gujarat High Court, in Letters Patent Appeal and in this appeal, the appellant has not challenged the validity of the Regulation 31-A.

It must be noted here that the Judgment and Order dated 10th July 2006 of the Gujarat High Court affirming the liability of the appellant to pay contribution from 30th March 1975 onwards has attained finality and therefore, the liability of the appellant to pay contribution as demanded cannot be questioned.

10. As noted earlier, for the period up to 19th October 1989, interest at the rate of 6% per annum was demanded as per unamended Regulation 31-A. Only for the arrears of contribution payable after 19th of October 1989, interest at the rate of 12% has been claimed. Interest at the rate of 12% is payable as per clause (a) of sub-section 5 of Section 39 of the said Act of 1948 which was brought on the statute book with effect from 20th October 1989.

For a period prior to 20th October 1989, interest has been claimed at the rate of 6% per annum as per unamended Regulation 31-A. Hence, the demand for interest cannot be faulted with in absence of any challenge to the Regulation 31-A.

11. Now the only question is whether interest payable or a part thereof can be waived. In the case of M/s. Goetze (India) Ltd. (supra), this court held that there is no power under the said Act of 1948 to waive statutory interest. However, the learned Senior Counsel appearing for the appellant has invoked the jurisdiction of this Court under Article 142 for waiver of interest.

He has mainly relied upon decision of this Court in the case of Jardine Henderson Staff Association and Ors. (supra). Perusal of the said decision shows that in the facts of the case, it was found that the employer had provided better medical facilities to the employees than what are provided under the said Act of 1948 and

there were no complaints by the employees or their Unions about the medical services provided.

It was found that without paying contribution, the object of the said Act of 1948 was fulfilled. Therefore, the said decision was in the peculiar facts of the case.

12. In this case, no material is brought on record to show that better medical facilities were provided by the appellant to its employees. Hence, this is not a fit case to exercise the power under Article 142 of the Constitution of India.

13. Hence, we find no merit in the appeal. The appeal fails and is dismissed with no order as to costs.

1 2006 (6) SCC 581

2 2000 (1) SCC 332.

3 2008 (8) SCC 705

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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