

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HEMANT GUPTA; J., V. RAMASUBRAMANIAN; J.

APRIL 27, 2022

CIVIL APPEAL NO. 3464 OF 2022 (ARISING OUT OF SLP (CIVIL) NO. 30369 OF 2017)

THE DIRECTOR, EMPLOYEES STATE INSURANCE HEALTH CARE & ORS.

Versus

MARUTI SUZUKI INDIA LIMITED & ORS.

Employees State Insurance Act, 1948; Section 45-AA - Once the statute has fixed the condition of pre-deposit before filing an appeal, such condition is required to be satisfied - Giving appellate authority a discretion to waive of the amount determined, is clearly not sustainable. (Para 8)

(Arising out of impugned final judgment and order dated 27-10-2016 in CWP No. 12922/2014 passed by the High Court of Punjab & Haryana at Chandigarh)

For Petitioner(s) Mr. Vaibhav Manu Srivastava, AOR Mr. Mahesh Srivastava, Adv.

For Respondent(s) Mr. C. U. Singh, Sr. Adv. Mr. Sachin Mittal, AOR Mr. Zubin M. John, Adv. Ms. Ritu Bharadwaj, Adv. Mr. Amjid Maqbool, Adv

ORDER

HEMANT GUPTA, J.

Leave granted.

1. The challenge in the present appeal is to an order dated 27.10.2016 passed by the High Court of Punjab & Haryana at Chandigarh holding that the requirement of pre-deposit under Section 45-AA of the Employees State Insurance Act, 1948¹ is not mandatory and that the appellate authority is empowered to waive, either partially or completely, the requirement of pre-deposit in the same circumstances and conditions as explained in its earlier judgment in **Punjab State Power Corporation Limited v. The State of Punjab & Ors.**²

2. Section 45-AA of the Act reads thus:

"45-AA. Appellate Authority - If an employer is not satisfied with the order referred to in Section 45-A, he may prefer an appeal to an appellate authority as maybe provided by regulation, within sixty days of the date of such order after depositing twenty five per cent of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation. Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as maybe specified in the regulation."

3. Respondent No. 1³ suffered an order dated 30.12.2013 passed by the Deputy Director of the appellant Corporation, calling upon the employer to pay a sum of Rs.48,81,884/- for a period from October, 2009 to August, 2010 in respect of trainee/apprentices. The

¹ For short, the 'Act'

² 2015 SCC OnLine P&H 20535

³ For short, the 'employer'

employer filed an appeal along with an application to seek exemption from depositing 25% of the said contribution. Since the employer did not deposit 25% of the compensation as assessed, the appellate authority passed an order declining such request inter alia for the reason that there is no provision under the Act to consider an appeal without the pre-deposit. Thereafter, the recovery certificate was issued to recover the amount assessed along with interest. However, instead of depositing the amount, the employer invoked the writ jurisdiction of the High Court. The High Court held as under:

“24. Thus, it is held and declared that the requirement of predeposit under Section 45-AA is not mandatory and the Appellate Authority is empowered to waive, either partially or completely, the requirement of pre deposit in the same circumstances and conditions as explained in detail in the PSPCL case (supra). To summarize, the Appellate Authority is empowered to partially or completely waive the condition of pre-deposit in given facts and circumstances. It is, however, not to be exercised in a routine manner or as a matter of course. Only when a strong prima fade case is made out, will the Appellate Authority consider, whether to grant interim protection/ injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the Appellate Authority is satisfied that the entire purpose of the appeal would be frustrated or rendered nugatory because of the condition of pre-deposit for hearing the appeal and a reasoned order would require to be passed.”

4. In Punjab State Power Corporation Limited, the High Court examined the following three questions:

- “(a) Whether the State is empowered to enact Section 62(5) of the PVAT Act?
- (b) Whether the condition of 25% pre-deposit for hearing first appeal is onerous, harsh, unreasonable and, therefore, violative of Article 14 of the Constitution of India?
- (c) Whether the first appellate authority in its right to hear appeal has inherent powers to grant interim protection against imposition of such a condition for hearing of appeals on merits?”

5. The questions (a) and (b) were taken up together. The High Court held that the State is empowered to enact Section 62(5) of the Punjab Value Added Tax Act, 2005⁴ and that condition of pre-deposit of 25% for hearing first appeal is not onerous, harsh, unreasonable and violative of the provisions of Article 14 of the Constitution of India. However, in respect of the third question, the High Court referred to an earlier judgment of five Judges Full Bench of the High Court in **Ranjit Singh v. State of Haryana & Ors.**⁵ to hold that even when no express power has been conferred on the first appellate authority to pass an order of interim injunction/protection, by necessary implication and intendment in view of various pronouncements, such power to grant interim injunction/protection is embedded under Section 62(5) of the PVAT Act. The High Court held as under:

“40. Before we record our conclusion on question No. (c), noticed hereinbefore, it would also be apposite to refer to a five Judges Full Bench of this Court in *Ranjit Singh v. State of Haryana*, (2012) 2 RCR (Civil) 353 to which one of us (Ajay Kumar Mittal, J.) was a member which was dealing with similar provision i.e. Section 13B of the Punjab Village Common Lands (Regulation) 1961 wherein entertainment of appeal was subject to deposit of amount of penalty imposed under sub section (2)

⁴ For short, the ‘PVAT Act’

⁵ 2011 SCC OnLine P&H 15

of Section 7 of the said Act with the Collector. This court after considering the entire case law on the point and by reading down the provision held that Section 13 B of the said Act would be read down to incorporate within it the power in appellate authority to grant interim relief in an appropriate case by passing a speaking order even while normally insistence may be made on pre-deposit of the penalty. In such a case, the appellate authority would have to give reasons for granting interim relief of stay. It is, thus, concluded that even when no express power has been conferred on the first appellate authority to pass an order of interim injunction/protection, in our opinion, by necessary implication and intendment in view of various pronouncements and legal proposition expounded above and in the interest of justice, it would essentially be held that the power to grant interim injunction/protection is embedded in Section 62(5) of the PVAT Act...”

6. In **Ranjit Singh**, the High Court was dealing with Section 13B of the Punjab Village Common Lands (Regulation) Act, 1961 mandating that no appeal shall lie unless the amount of penalty is deposited with the Collector. The Court held as under:

“56. In order to save the validity of this proviso, it may have to be read down for which there are precedents. As observed in Shyam Kishore's case (supra), the appellate Judge would have incidental and ancillary power, which should not be curtailed except to the extent specifically excluded by the statute. There is no indication in the proviso that jurisdiction of the appellate Judge is excluded altogether to waive the penalty and, thus, the inherent rights of the appellate Judge to waive the condition in appropriate case can be read into the provision...”

7. The judgment in **Punjab State Power Corporation Limited** came up for consideration before this Court in a judgment reported as **Tecnimont Pvt. Ltd. v. State of Punjab & Ors.**⁶. This Court upheld the decision of the High Court on question Nos. 1 and 2 but reversed the decision of the High Court on question No. 3. It was held as under:

“22. In the light of these principles, the High Court rightly held Section 62(5) of the PVAT Act to be legal and valid and the condition of 25% of pre-deposit not to be onerous, harsh, unreasonable and violative of Article 14 of the Constitution of India. Now we turn to question (c) as framed by the High Court and consider whether the conclusions drawn by the High Court while answering said question were correct or not.

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29. If the inherent power the existence of which is specifically acknowledged by provisions such as Section 151 of the CPC and Section 482 of the Cr.P.C. is to be read with the limitation that exercise of such power cannot be undertaken for doing that which is specifically prohibited, same limitation must be read into the scope and width of implied power of an appellate authority under a statute. In any case the principle laid down in **Matajog Dobey 1955 (2) SCR 925** states with clarity that so long as there is no express inhibition, the implied power can extend to doing all such acts or employing such means as are reasonably necessary for such execution. The reliance on the principle laid down in **Kunhi (1969) 2 SCR 65** cannot go to the extent, as concluded by the High Court, of enabling the Appellate Authority to override the limitation prescribed by the statute and go against the requirement of predeposit. The High Court was clearly in error in answering question (c).

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31. In the premises, we accept the conclusions drawn by the High Court as regards questions (a) and (b) are concerned but set aside the view taken by the High Court as regards question (c). The appeals preferred by the assesses are therefore dismissed and those preferred by the State against the decision in respect of question (c) are allowed. ...”

⁶ 2019 SCC OnLine SC 1228

8. We find that the view taken by the High Court, while relying on its earlier judgment in **Ranjit Singh**, that appellate authority would have the implied power to grant interim relief is not tenable. Once the statute has fixed the condition of pre-deposit before filing an appeal, such condition is required to be satisfied. The judgments of the High Court in **Ranjit Singh** and **Punjab State Power Corporation Limited** observing that the appellate authority has the implied power to waive the amount determined cannot be said to be in accordance with law. Hence, the condition of pre-deposit, said to be not mandatory and giving appellate authority a discretion to waive of the amount determined, is clearly not sustainable and is thus set aside. Consequently, the present appeal is allowed.

9. Since the employer has not deposited 25% of the determined amount which led to dismissal of the appeal, we grant four weeks' time to the employer to deposit 25% of the amount so determined. If the said amount is deposited, the appellate authority shall consider the appeal on merits in accordance with law.
