
(1976) 06 CAL CK 0019
In the Calcutta High Court

Agarwal Hardware Industries

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 11-06-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Criminal Procedure Code, 1973 (CrPC) — Section 195
Employees State Insurance Act, 1948 — Section 45B, 74, 75, 76, 77
Income Tax Act, 1961 — Section 254

Citation : (1976) 1 CALLT 9 : 80 CWN 848 : (1976) 2 ILR (Cal) 111 : (1977) 1 LLJ 192

Hon'ble Judges : M.N. Roy, J;Anil Kumar Sen, J

Bench : Division Bench

Judgement

Anil K. Sen, J.—In this appeal u/s 82(2) of the Employees" State Insurance Act, 1948 (hereinafter referred to as the said Act) and in the revisional application in the alternative, the appellant challenges an order dated April 30, 1971, passed by the Employees" Insurance Court, West Bengal, in Case No. 53 of 1971. By the said order the said Court dismissed the appellant's application for an interim stay pending the disposal of the proceedings initiated before the said Court u/s 75 of the said Act or further proceedings of a certificate proceeding. Such application of the appellant was dismissed by the said Court not on merits but on a view that the said Court had no jurisdiction to entertain such an application. This appeal thus involves a short but an important question of law as to whether an Employees" Insurance Court constituted u/s 74 of the said Act and adjudicating a dispute under Chapter VI thereof has any jurisdiction to entertain any application for an interim relief when made in support of a relief claimed and awaiting adjudication in the proceedings u/s 75 of the said Act.

2. Facts are not in dispute. The Employees" State Insurance Corporation, the respondent in this appeal (hereinafter referred to as the Corporation demanded of the appellant a contribution of Rs. 63,965.24 p. to the Employees" Provident Fund in respect of some contractors" employees alleged to be working in the

factory of the appellant. The appellant disputed such a claim on various grounds including one of denial of any liability under the said Act to make any such contribution in respect of any such employee. The Corporation, however, with a view to enforce realisation of such a demand started a certificate proceeding under the provisions of the Bengal Public Demand Recovery Act read with Section 45B of the said Act. The appellant carried the dispute to the Employees' Insurance Court as aforesaid by filing an application raising a dispute u/s 75 of the said Act. Pending disposal of the proceedings so initiated, the appellant on an independent application prayed for an interim stay of the certificate proceedings. As stated hereinbefore, the said Court dismissed the said application on a view that it had no jurisdiction to entertain such an application and as a matter of fact the said Court observed:

....Powers of Employees' Insurance Court to act as a civil Court appear to have been limited by Section 78 of E.S.I. Act. By necessary implication, all the powers of a civil Court under CPC cannot be invoked by this Court. The E.S.I. Act, which is a self-contained Act, also does not provide for issuing of injunction or restraint orders. The E.S.I. Court, therefore, is deprived of any inherent power which is available to a civil Court. The injunction or restraint matter cannot be said to be a matter required to be or which may be decided by E.S.T. Court under the Act which has been provided by amendment u/s 75(1)(k) of E.S.I. Act.

Considering all these I am of opinion that E.S.I. Court has no power to issue restraint order as sought for....

The correctness of the view so taken by the said Court is being challenged in this appeal.

3. Mr. Datta, learned advocate appearing for the appellant has first contended that the dispute so raised in the interim application is a dispute which comes within the wide terms of Section 75(1)(g) of the said Act and as such the jurisdiction to entertain such a claim is expressly conferred on the said Court by the statute which provision the said Court overlooked in dismissing the application. Mr. Datta, has next contended that in any event such a claim being incidental and ancillary to the said claim under adjudication by the said Court, the said Court had the inherent jurisdiction to entertain such an application for interim relief. To hold otherwise, Mr. Datta, learned advocate for the appellant contends, would lead to strange consequences, namely, that though the said Court is capable of and can grant permanent relief in respect of a dispute coming within the scope of Section 75, the Court, however, would have no jurisdiction to grant a temporary relief in support of such a permanent relief which again may frustrate the very object of adjudication.

4. Mr. Roy, learned advocate appearing for the Corporation has, however, strongly supported the view taken by the said Court when it held that the said Court not being an ordinary civil Court could have no inherent power to entertain any application for an interim relief or grant any such relief in exercise of

inherent powers which are exclusive to ordinary Courts only. Mr. Roy has referred to and relied on a catena of case laws in support of such a proposition. But, in his usual fairness Mr. Roy, learned advocate for the respondent-Corporation has conceded that even in the absence of an express grant by the statute constituting and empowering a Tribunal for the purpose of adjudicating any particular dispute, an implied grant may be spelt out if it be found that such an interim relief is incidental and ancillary to the principal relief and without it the permanent relief claimed may be frustrated. Mr. Roy, learned advocate in his ingenuity has sought to make a distinction between a jurisdiction inherently possessed and a jurisdiction conferred by a grant. According to Mr. Roy, while ordinary Courts possess such inherent jurisdiction, Tribunals which are creatures of statute have no such inherent jurisdiction, their jurisdiction being limited by the grant express or implied on the provisions of the statute.

5. In considering the rival contentions put forward before us we should first consider the material provisions of the Act itself constituting the Tribunal, that is to say, the said Court and laying down the procedure for adjudication by it and the powers to be exercised by it. The Employees' Insurance Court is undoubtedly a special Tribunal constituted u/s 74 of the Act and such a Tribunal possesses the limited jurisdiction of adjudicating only such disputes as are specified in Section 75 of the Act. No doubt the jurisdiction to be exercised by such a Tribunal is exclusive as is explicit on the provisions of Section 75(3) of the Act. Section 77 of the Act provides that all proceedings before such Tribunal are to be initiated on applications made in the manner prescribed by the Rules and Section 76 provides the forum and also provides for transfer of such proceedings from one Tribunal to the other in the circumstances and in the manner prescribed. Section 77 further provides for the limitation for the proceedings to be initiated. Section 78 is important when it provides that such a Tribunal is vested with some of the powers of the civil Court as under the CPC expressly specified in that section. This section further provides that the Tribunal so constituted shall be deemed to be a civil Court within the meaning of Section 195 and Chapter 35 of the Code of Criminal Procedure. The other procedure to be followed by the Tribunal in adjudicating these disputes is as prescribed by the Rules. Section 78(4) provides that an order passed by such a Tribunal shall be enforceable "as if it were a decree passed in a suit by a civil Court". Section 81 authorises the Tribunal to submit any question of law for the decision of the High Court and Section 82 provides for an appeal against an order of the Tribunal limited to questions of law and also provides the limitation for such an appeal. Section 83 prescribes the conditions in which pending an appeal by the Corporation, the Tribunal can withhold payment of any sum directed to be made by its order under appeal. These are the only material provisions in the Act providing for the constitution of the Employees' Insurance Court and the manner and procedure of adjudication of disputes and claims by such a Tribunal. These provisions abundantly make it clear that in setting up such a Tribunal, the Legislature did not set it up as one of the ordinary civil Courts in the hierarchy of Courts envisaged by Constitution. It

is only some of the powers of ordinary civil Courts which has been extended to these Tribunals and they are being deemed as Courts for limited purposes. To that extent, therefore, these Tribunals are not Courts but Tribunals.

6. Though we speak of Courts in contradistinction from Tribunals, it should be remembered that it is often difficult to find a line of distinction between a Court and a Tribunal invested with judicial powers set up to discharge judicial functions. In *Royal Aquarium and Summer and Winter Garden Society v. Parkinson* [1892] 1 QB 431 Fry, L.J., pointed out the question to be considered is whether the Tribunal is a Court, nor whether it is a Court of justice, for there are Courts which are not Courts of justice but nevertheless Courts in law. The cases like that in the case of *Malabar Hill Co-operative Housing Society Ltd. Vs. K.L. Gauba and Others*, which seeks to distinguish such Tribunals from Courts on the ground that such Tribunals do not exercise inherent judicial powers of the State really rely on the principles enunciated in the case of *Shell Company of Australia Limited v. Federal Commissioner of Taxation* [1931] A.C. 275, without, however, taking note of the fact that that decision is based on the particular constitutional provision which prohibits investment of judicial powers in any Tribunal other than a Court. This aspect was made clear by the Supreme Court in the case of *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, . In this case the Supreme Court pointed out that in India though on consideration of policy the State transfers its judicial functions and powers mainly to Courts established by the Constitution, yet that does not affect the competence of the State by appropriate measures to transfer a part of its judicial powers and functions to Tribunals by entrusting to them the task of adjudicating upon special matters and disputes between the parties. In that case the Supreme Court observed :

It is really not possible or even ex-pedient to attempt to describe exhaustively the features which are common to the Tribunals and Courts and features which are distinct and separate. The basic and the fundamental feature which is common to both Courts and the Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State.

7. There is no unanimity in judicial pronouncements on the issue as to whether a Tribunal possesses any inherent power which the Courts undoubtedly possess. While in the cases of *Haji Mahabub Hossain and Others Vs. Biswanath Nandy and Another*, ; *Sm. Indira Debi and Another Vs. State of West Bengal and Others*, ; In re *Mackinnon Muckensie & Co. Pvt. Ltd.*, (1967) 71 Cal. WN 340; *Patna Electric Supply Workers Union Vs. A. Hassan and Another*, ; *Anand Prakash and Another Vs. Assistant Registrar, Co-operative Societies and Others*, , the view taken is that a Tribunal possesses no inherent power, a view to the contrary is taken in the cases of *M.N. Ghosal Vs. P.K. Banerjee and Others*, ; *Sudhakar Mukherjee Vs. Gofur Sheikh and Others*, ; *Raj Mohan Guha v. Alam Gazi*, (1913) 17 CWN 625 ; *Baulchand Sen v. Sirils Chandra Sen* (19) Cal. L.I. 251 : AIR 1914 Cal. 170 and In re: *S.N. Komarasawami Goundan*, . Then again there is another set of decisions where it is held that though the Tribunal possesses no inherent power,

yet it possesses certain powers which are ancillary to the satisfactory discharge of functions with which it is invested. Investment of such ancillary powers is said to be implied. Reference may be made to the cases of *N.K. Dharmadas Vs. State Transport Appellate Tribunal of Kerala and Others*, ; *Sushil Kumar Sengupta v. State Transport Authority* 70 CWN 341; *Bengal Border Transport (Private) Ltd. Vs. Chairman, Regional Transport Authority and Another*, , *Kamal Singh Rampuria and Others Vs. Corporation of Calcutta and Others*, and *Zakeria Suleman Vs. The Collector, Yeotmal and Others*, . It should be remembered that inherent power to act *ex-debito justitiae* or to do real or substantial justice for the administration of which alone the Court exists is inherent in a Court and is not conferred by any provision like Section 151 of the CPC or Section 561A of the Criminal Procedure Code, *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, . But if that power emanates from the judicial powers exercised by and functions discharged by an ordinary Court, a question may still be raised as to why a Tribunal invested with same judicial powers and functions should not have the same inherent power though within its limited field of operation. Is there any real distinction between such inherent powers and ancillary powers impliedly invested on such Tribunals? These are wider issues which may have to be tested in an appropriate case. But it is now settled principle that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective and granting interim relief like stay pending an appeal or an adjudication in an appropriate case is undoubtedly use of such means impliedly invested in such Tribunals. In the case of *Income Tax Officer, Cannanore v. M.K. Mohammad Kunh'* AIR 1969 S.C. 430. Supreme Court held that the Appellate Tribunal exercising powers u/s 254 of the Income Tax Act has powers to grant stay in appropriate cases as incidental or ancillary to its appellate jurisdiction though in the statute itself there is no express grant of any such power. The same principle, in our opinion, would equally apply in the cases like the present one. There may be cases where not granting an interim relief pending an adjudication u/s 75 of the said Act may frustrate the very adjudication itself and render the final order to be passed by the Tribunal illusory. Therefore, it would be reasonable to consider that the said Act in conferring the jurisdiction to adjudicate on disputes specified by Section 75 of the Act impliedly granted the power of doing all such acts and employ all such means as are essentially necessary for effectively discharging its obligation to adjudicate and that statutory power carries with it the duty in proper cases to make orders for stay.

8. Such being the position in law we are of the opinion that the Tribunal below was clearly in. the error in thinking that it had no jurisdiction to entertain the application for interim relief filed by the appellant. On merits whether the appellants would be entitled to interim relief or not is a different issue yet to be decided on merits as the Tribunal had refused to go into the merits of the claim and had thrown away the application in limine. The second point raised by Mr. Datta, therefore, succeeds and we consider it unnecessary to decide the other

points raised by him as even on the second point this appeal is bound to succeed.

9. The appeal, therefore, succeeds and is allowed. The order impugned in this appeal is set aside. The Tribunal is directed to rehear the appellant's application for interim relief on merits.

10. There will be no order as to costs in this appeal.

11. As the appeal succeeds it is unnecessary to make any order on the alternative application and it is also disposed of by this order. The Rule for interim stay which was directed to be heard along with the appeal is discharged only on the ground that the appeal having succeeded the Rule has become infructuous.

12. The appellant is released of the security furnished by him under the orders of this Court.

M.N. Roy, J.

13. I agree.