

(2001) 04 AP CK 0058

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 2120 of 1991 and Batch

Ashok Leyland Limited, Ductron, Castings Limited, R.R.
District

APPELLANT

Vs

Deputy Tahsildar/Special Revenue Inspector (ESI) Recovery
Cell, Collectorate, R.R. District, Hyderabad and another

RESPONDENT

Date of Decision : 20-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 45
State Financial Corporations Act, 1951 — Section 29

Citation : (2001) 4 ALD 96 : (2004) 6 ALT 20 : (2002) 1 ALT 262 : (2001) 90
FLR 703

Hon'ble Judges : Satya Brata Sinha, C.J.;N.V. Ramana, J

Bench : Division Bench

Advocate : J. Siddaiah, SC for APSEB, G. Vidyasagar, G. Dharma Rao, B.G. Ravindra Reddy, SC for ESIC, P. Suresh, SC for Indian Bank, C. Kodanda Ram, I. Nagesh, Koka Satanaarayana Rao, C.V. Mohan Reddy, Government Pleader, for Medical Health and Family Welfare, V. Tulasi Reddy, M. Prabhakara Rao, K.G.K. Murthy, SC for SBI, A. Bhaskara Chari, K. Srinivasa Murthy, SC for SBH, E. Madan Mohan Rao, SC for SBI, Vedula Venkata Ramana, C.V. Ramulu, SC for APSRTC, D. Prabhakar Reddy, M. Panduranga Rao, G.V. Santharayudu, Ch. Ramesh Babu, S.V.R.S. Somayajulu, K. Ashok Reddy, Y. Rama Rao, K. Bhaskar Reddy, P.V.S.S.S. Rama Rao, SC for FCI, Ch. Danamjaya, V. Ravi Kiran Rao, P. Raghavender Reddy, SC for Gram Panchayat, S. Ravindranath, Nooty Rama Mohana Rao, SC for Andhra Bank, K.K. Waghray, M. Prabhakar, A. Sudarshan Reddy, P. Harinatha Gupta, Government Pleader, for Revenue, Vemuri Venkateswara Rao, SC for ESI Corpn., Gudapati Venkateswara Rao, Deepak Battacharjee, SC for SBI, Mrs. P. Nageswara Sree, Mrs. S. Vani and Mrs. A.K. Jayaprakash Rao, for the Appellant;

Judgement

S.B. Sinha, C.J.—In all these writ petitions, the question as to whether the provisions of the Employees' State Insurance Act, 1948 (for short "the ESI Act") is applicable to the units of the petitioners or not, and whether by reason of purchase of establishments/machinery of the loaness from the A.P. State

Financial Corporation in the auction held by them u/s 29 of the SFC Act, the petitioners are liable to contribute amount as employers towards their share to the Employees Insurance Corporation (for short "the Corporation"), under the ESI Act.

Section 74 of the ESI Act reads:

Constitution of Employees' Insurance Court:

(1) The State Government shall, by notification in the Official Gazette, constitute an Employees' Insurance Court of such local area as may be specified in the notification.

(2) The Court shall consist of such number of Judges as the State Government may think fit.

(3) Any person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a Judge of the Employees' Insurance Court.

(4) The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.

(5) Where more than one Court has been appointed for the same local area, the State Government may, by general or special order, regulate the distribution of business between them.

Section 75 of the ESI Act reads:

Matters to be decided by the Employees' Insurance Court:-

(1) If any question or dispute arises as to-

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution; or

(b) the rate of wages or average daily wages of an employee for the purposes of the Act; or

(c) the rate of contribution payable by a principal employer in respect of any employee; or

(d) the person who is or was the principal employer in respect of any employee; or

(e) the right of any person to any benefit and as to the amount and duration thereof; or

(ee) any direction issued by the Corporation u/s 55-A on a review of any payment of dependents' benefits; or

(f) xxxxxxxxxx;

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute subject to the provision of sub-section (2-A), shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) Subject to the provisions of subsection (2-A), the following claims shall be decided by the Employees' Insurance Court, namely :--

(a) claim for the recovery of contributions from the principal employers;

(b) claim by a principal employer to recover contributions from any immediate employer;

(c) xxxxxxxxxxxx;

(d) claim against a principal employer u/s 68;

(e) claim u/s 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and

(f) any claim for the recovery of any benefit admissible under the Act.

(2-A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claims or questions before the Employees' Insurance Court, the Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed under the Employees' Insurance Court under sub-section (2) of Section 54-A in which case the Employees Insurance Court may itself determine all the issues arising before it.

(2-B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation:

Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudication on any liability which by or under this Act is to be decided by a medical board, or by a medical appeal tribunal or by the

Employees" Insurance Court.

2. The question as to whether an employer can maintain an action before the ESI Court questioning the liability under the ESI Act, fell for consideration before, the Apex Court in Employees" State Insurance Corporation v. F. Fibre Bangalore (Private) Limited, 1997 SCC (L&S) 190, and in para 5 it was held:

The Full Bench of the High Court has held that in a case where the order u/s 45-A becomes final, there is no need for the Corporation to seek adjudication before the Insurance Court. In all other cases, the Corporation is required to go to the Insurance Court, have it adjudicated and then make a demand. We are of the view that the Full Bench of the High Court is clearly in error to reach that conclusion.

Though Section 75 of the Act does not envisage as to who has to approach the Insurance Court, by necessary implication when the employer denies the liability or applicability of the provisions of the Act or the quantum of the contribution to be deposited by the employer, it is for him to approach the Insurance Court and seek adjudication. It is not for the Corporation in each case whenever there is a dispute, to go to the Insurance Court and have the dispute adjudicated. Otherwise, the Act would become unworkable and defeat the object and purpose of the Act.

3. Having regard to the aforementioned authoritative pronouncement of the Apex Court, we are of the opinion that all questions, including the question of applicability of the ESI Act to the petitioners, can be raised before the Employees Insurance Court. Therefore, the petitioners should avail the remedies available to them.

4. The above aspect of the matter was also considered by a Division Bench of Patna High Court in Shriram Bearings Limited v. ESI Corporation, 1977 Lab.IC 1482 and N.P. Singh, J., as he then was, speaking for the Bench categorically held that even the Courts and Tribunals, constituted under the ESI Act, have inherent power to issue appropriate relief by way of injunction to the party before it and it can enforce the orders.

5. For the reasons afore-mentioned, we dispose of these writ petitions with the following observations/directions:

6. The petitioners may approach the ESI Court, constituted u/s 74 of the ESI Act, by filing appropriate applications, and in the event such applications are filed by the petitioners, the same shall be disposed of in accordance with law.

7. Having regard to the fact that law in this regard was uncertain, we hope and trust that the respondents for a reasonable period i.e., for a period 60 days, shall not take any coercive steps for recovery of the purported dues from the petitioners. No order as to costs.