

**(1978) 11 PAT CK 0008**  
**In the Patna High Court**  
**Case No : M.A. No. 330 of 1976**

Chairman, M/s. Heavy Engine Ring Corporation Ltd. and  
Others

APPELLANT

Vs

The Regional Director, Employees' State Insurance  
Corporation

RESPONDENT

**Date of Decision : 28-11-1978**

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 1(4), 2A, 82(2)

**Citation : (1979) PLJR 212**

**Hon'ble Judges : Harilal Agrawal, J;B.P. Jha, J**

**Bench : Division Bench**

**Advocate : K.R. Chatterjee and Kumar Bahadur, for the Appellant;  
Sachchidanand Sahay, for the Respondent**

## **Judgement**

Hari Lal Agrawal, J.—This miscellaneous appeal has been tiled by the appellants u/s 82(2) of the Employees' State Insurance Act, 1948 (to be referred hereinafter as "the Act") against an order of the Employees Insurance Court. The appellants are the employers and officers of M/s Heavy Engineering Corporation Ltd. (to be referred hereinafter as H.E.C.). The relevant facts giving rise to this appeal may be briefly stated as follows. The H.E.C. has five factories separately registered under the Factories Act as separate units and they are:

- (1) The Heavy Machines Building plant,
- (2) The Foundry Forge plant,
- (3) The Heavy Machine Tools plants,
- (4) The Central Training Institute, and
- (5) The Central Transport Carriage.

Each of the above units is also separately registered u/s 2A of the Act. The case of the company is that all the aforesaid five factories are administered by its

office at Dhurwa, Ranchi, which is a distinct and separate establishment from its five units aforesaid and, therefore, the provisions of the Act will have no application to employees working in this establishment. Section 1(4) of the Act provides that the provisions of the Act shall apply in the first instance to all the factories other than seasonal factories and according to its Sub section (5) if they are to be applied to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise, then a notification in the official gazette as prescribed, has to be issued. It is not disputed that no such notification has been issued so far making the provisions of the Act applicable to H.E.C. as such.

2. As would appear from the preamble of the Act, it has been promulgated to provide for certain benefits to the employees of the factories in case of sickness, maternity, "employment injury" and some other matters in relation thereto. For the above ends in view the Acts contemplates constitution of a corporation and Insurance of all the employees in the factories or establishments to which this Act applies, and raising of a fund by contributions to be made by the employer and the employees both. To this Act a new chapter, namely, Chapter VA was inserted by Act 53 of 1951, providing certain transitory provisions relating to employers' special contribution. This is a small chapter consisting of only a few sections, namely, sections 73A to 73I. It may be mentioned that the whole chapter itself ceased to have application with effect from 1-7-1973. For our purpose the relevant section is section 73A which deals with the employer's special contribution. I would do better to quote its Sub-sections (1) & (3) hereunder, and indicate the salient features of the other provisions under this chapter.

73A. (1) For so long as the provisions of this Chapter are in force, every principal employer shall, notwithstanding anything contained in this Act, pay to the corporation a special contribution (hereinafter referred to as the employer's special contribution) at the rate specified under Sub-section (3).

(2) \*\* \*\* \*

(3) The employer's special contribution shall consist of such percentage, not exceeding five percent of the total wage bill of the employer, as the Central Government may, by notification in the official Gazette, specify from time to time:

\*\* \*\* \*

Section 73D lays down that the employer's special contribution payable under this chapter may be recovered as if it were an arrear of land, revenue, and Section 73E empowers the corporation for the purpose of determining whether the employer's special contribution is payable under this chapter, or for determining the amount thereof, by general or special order, to require any principal or immediate employer or any other person to furnish such information or returns to such authority, in such form and within such time as may be specified in the order.

3. A few provisions of Chapter VI also need be, noticed. Section 74 authorises the State Government to constitute an Employees' Insurance Court for specified local areas in the manner laid down therein and Section 75 prescribes the matters which can be decided by that court, one of them being in respect of any contribution or benefit or other dues payable or recoverable under this Act (Clause g).

Section 78 confers upon the employees' Insurance court all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, Compelling the discovery and production of documents and materials objects, etc. An appeal has been provided u/s 82(2) against an order of this court to the High Court if it involves a substantial question of law.

Section 99A which was inserted by, Act 44 of 1966, empowers the Central Government to make such provisions or give such directions, not inconsistent with the provisions of this Act, as appears to it to be necessary on expedient for removing any difficulty in giving effect to the provision of the Act. These are all the relevant provisions of the Act with which we are concerned in this case.

The definition of "employee" as given u/s 2(9) of the Act was also enlarged by inserting some inclusive provisions by Section 2 of Act 44 of 1966 and was enforced with effect from 28.1.1968. By this amendment within the category of an employee employed for wages in or in connection with the work of a factory or establishment to which this Act applied, all such persons "employed for wages on any work connected, with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products, of the factory or establishment" were included.

After coming into force of the above provision, a large number of cases cropped up in different High Courts in India as to whether the employees working in the head office and other places outside the factory premises, were covered by this extended meaning given to the word "employee", and it was held that it did apply to those categories of persons employed even outside the factory if their work was of the nature as mentioned in the provision just noticed above although in the case before us this question does not arise for our consideration and the liability on this account has not been disputed by the appellants, none the less I would simply mention some of the cases which took the above view and they are (1) M/s Hindustan Lever Ltd. V. Employees State Insurance Corporation and others [(1973) Lab. I.C. 706]. (2) The Hyderabad Asbestos Cement Products Ltd. V. The Employees Insurance Court (Industrial Tribunal) Ramkot and others [(1976) Lab. I.C. 868 (F.B.)]. (3) Boehringer Knoll Ltd. Vs. Employees' State Insurance Corporation, (4) Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc., as well as a recent decision of the Supreme Court in (5) Hyderabad Asbestos Cement Products Ltd. Vs. Employees Insurance Court and Another,

4. The appellants did not pay any contribution as required of them "under Section 73A of the Act, and accordingly the respondent Regional Director issued a notice dated 14.9.1973 to the Assistant Personnel Manager of the H. E.C. demanding the employer's special contribution with effect from 28.1.1968 up to 30.6.1973 on ad hoc basis at the rates of (1) Rs. 125/-, (2) Rs. 150/-, (3) Rs. 210/-, and (4) Rs. 250/- per month per employee in accordance with the different notifications issued by the Government of India, dated 24.9.1966, 22.8.1968, 17.2.71 and 24.3.1972 respectively. The Assistant Personnel Manager was required to make upto said deposits latest within 10 days failing which legal action was to be taken. It appears that the appellants did not comply with the demand. The Corporation then appears to have proceeded to assess the contribution itself but the details of the procedure adopted by it have not been made known to us, nor there is anything on the record from which this information can be gathered. However, from a letter dated 31.10.73 addressed to the Collector, Patna which is actually an application under Section 5 of the Revenue Recovery Act, 1890, praying for realisation of the dues; It appears that the Corporation assessed the contribution payable by the H. E.C. at Rs. 73, 284/- for the period from 28.1.68 to 30.6.73. A sum of Rs. 15,905/- was added as interest payable u/s 97(1)(iii) of the Act.

The four notifications which were issued from time to time, each time superseding the earlier one were referred by the respondent in its notice dated 14.9.73 copies whereof were produced before us at the time of hearing by the advocate appearing for the respondent, and they show that the Central Government issued the said notifications u/s 99A of the Act fixing the employer's special contribution to be calculated at different rates per month on ad hoc basis, where the employer had not submitted the periodical returns required under the Act on the basis of the total wage bill. It appears that the assessment was made by the respondent on the basis of the total wage bill. It appears that the assessment was made by the respondent on the basis of these notifications.

5. In view of the assessment made by the respondent, the appellants filed an application u/s 75(1)(g) of the Act in the Employees Insurance Court, Patna, and some of the pleas taken by the appellants were that the imposition of the special contribution in respect of the head office employees was illegal and arbitrary that the assessment was made behind their back without ascertaining the facts and giving them any opportunity to be heard and that no step under the Revenue Recovery Act should have been taken without the dispute between the parties having been settled and decided by the said Court.

6. In the written statement filed by the respondent, no details were given as to how the determination of the number of employees amenable to the benefits of special contribution was made and what procedure was adopted by him; rather it has been asserted by him that it was not necessary for him to get it decided such type of claims by the court and recovery, could be resorted to even without settlement of such disputes by the Employees Insurance Court, and that the

assessment was valid in view of the notification issued by, the Central Government.

7. The Employees Insurance Court framed various issues and issue No. 3 was ?.. whether the employees of the Head office M/s Heavy Engineering Corporation are employees within the meaning of Section 2(9) of the Act?"

It has already been seen that the amendment of Section 2(9) of the Act does not include generally, even within the extended meaning, all the r employees employed on any work in any establishment or the Head Office etc., but covers only three categories of them namely, persons employed for wages on any work connected with (1) administration of the factory, (2) purchase of raw material for, and (3) distribution or sale of the product of the factory. No enquiry appears to have been made by the respondent as to how many employees working in the Head office or at any other place of the principal employer was connected with the above categories of work, nor the assessment appears to have been made under the procedure prescribed by Section 73A(3) of the Act which limits the liability of the employer to make contribution on a percentage not exceeding 5 per cent of the total wage bill of the employer, as the Central Government may fix from time to time. All that appears to have been done in this case is to make the assessment on an ad hoc basis in pursuance of the different notifications made by the Central Government u/s 99A of the Act already referred to earlier.

8. On a consideration of the scheme of the Act and on reference to the various relevant provisions in this regard I feel inclined to take the view that the procedure adopted by the respondent is entirely illegal and the assessment cannot be upheld.

After the amendment by Act 44 of 1966, the Corporation may call upon any person incharge of any factory or establishment to furnish any particulars. Where the employer falls to furnish returns and maintain registers in relation to the persons employed by him, the Corporation has to determine the amount of contribution on the strength of such information as it may collect and then to make the demand u/s 45A. Section 45A again empowers the Corporation to make a demand of the amount determined by it and if the employer refuses to comply with the demand; the matter can be brought before the Employees Insurance Court u/s 75 of the Act.

The procedure, however, adopted by the Corporation in this case, as it appears from the facts stated above, is wholly unwarranted in law and the Central Government could not take recourse to issuing notifications u/s 99A of the Act to obviate the obligations of the Corporation in making a proper and regular assessment. Assessment made on the basis of such notifications issued u/s 99A of the Act was set aside by the Supreme Court in the case of (6) The Employees State Insurance Corporation, Bhopal Vs. The Central Press and Another, where it was observed that the provisions of Section 99A of the Act could not be availed of for the purpose of supplying a defect of overcoming difficulty in adjudication of

a dispute for which the Employees Insurance Court is given ample power and that the Corporation has itself to collect the information initially and make a provisional assessment on the basis of that information.

9. When the matter went to the court and when an issue was also framed by it, as already extracted earlier it has failed to determine the real question, and on recording the finding that the Head-quarter Administration "cannot be said to be not connected with the administration of the factory" It has held that the employees of the establishment of the Headquarters would be the employees within the meaning of Section 2(9) of the Act, without determining any other relevant matter in the case.

10. As already discussed earlier, in view of the dispute raised by the appellants, the court below was bound to fix the number of such [employees of the Headquarters which [were covered by the extended meaning given to the word "employee" u/s 2(9) of the Act and thereafter it was also necessary for it to determine as to what would be the quantum of the special contribution in terms of Section 73A(3) of the Act. It is obvious that in the absence of the determination of the real question between the parties, and, making a valid assessment, the steps taken by the respondent for recovery of the disputed amount, by making a reference to the Collector u/s 5 of the Revenue Recovery Act, cannot be allowed to proceed.

11. In a recent decision of the Supreme Court in the case of (7) Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation, , where the assessment of the quantum of the employer's contribution was made on an ad hoc basis because they had merely pleaded non liability and had made no returns, the same was set aside and the matter was sent back to the Corporation to make a fresh assessment after allowing an opportunity of hearing to the principal employers. I would, however, remit the matter to the court below itself.

12. In the result, I allow this appeal, set aside the order of the Employees Insurance Court and remit the matter back to it, and direct for a fresh determination of the dispute in accordance with law as explained above. It will be open to the court to permit the parties to adduce such additional and further evidence as they may choose in that regard.

On the facts and in the circumstances of this case, I shall leave the parties to bear their own costs.

B.P. Jha, J.

13. I agree. The Employees State Insurance Corporation (hereinafter referred to as the Corporation) directed the appellant to give the employer's special contribution under Chapter VA. on the basis of the notification issued u/s 73H and Section 99A of the Employees State Insurance Act, 1948 (34 of 1948). (hereinafter referred to as the Act). The grievance of the learned counsel of the appellant is that the Corporation erred in fixing the rate in these notifications

issued u/s 73H and 99A of the Act, as it does not amount to removal of difficulties. Section 73H (deleted) and 99A of the Act provided that if any difficulty arises in giving effect to the provisions of the Act, the Central Government may make such provisions or give such directions, not inconsistent with the provisions of the Act, as appears to it to be necessary or expedient for removing the difficulty. In this connection, Section 73A(3) of the Act was referred to. Section 73A(3) provides that the employer's special contribution shall consist of such percentage, not exceeding five per cent of the total wage bill of the employer. In these notifications; the Central Government did not fix the percentage as required in Sub-section (3) of Section 73 of the Act, and as such, these notifications fixing the rates on ad hoc basis are inconsistent with Section 73A(3) of the Act and as such the rates given in these notifications cannot be given effect to.

14. The grievances of the learned counsel of the appellant is that the Corporation has to determine the amount of contribution payable in respect of the employees in factory or establishment. In the present case, the appellant did not submit any return as required u/s 44 of the Act, and, as such, the Corporation assessed the contribution as required in Section 45A(1) of the Act. Section 45A(1) of the Act requires that the Corporation may determine the amount of contribution payable in respect of the employees of the factory Or establishment on the basis of the information available to it. The Corporation is required to determine the number of the employees before sending the notice of contribution to the employer. In the present case; the Corporation did not furnish any information to the Employees Insurance Court in respect of the number of the employees. The Corporation did not satisfy - the Employees Insurance Court as to whether the employees are covered by Section 2(9) of the Act or not. Any employee employed by an employer cannot be an employee u/s 2(9) of the Aft. It is therefore, incumbent upon the Corporation to show to the Employees Insurance Court that the employees are covered by the definition of Section 2(9) of the Act. In other words, the Corporation ought to have shown that the employees are connected with the purchase of raw materials, or the distribution or sale of the products, of the factory or establishment. The Employees Insurance Court was also required to investigate the matter in this manner. The Employees Insurance Court is further required to investigate the number of the employees in the factory or establishment and whether the employees are covered by Section 2(9) of the Act or not. In the present case, neither the court nor the Corporation furnished any material to substantiate this aspect of the matter. In the absence of these materials, the case has to be remanded to the Employees Insurance Court with a direction to show that the court will direct the Corporation to give the number of employees employed in the factory or establishment as governed by Section 2(9) of the Act. The Corporation will charge only the rate as given in Section 73A(3) of the Act.

15. The impugned Act is a beneficial enactment for the employees in case of sickness, maternity and employment injury; There are two types of contribution

as envisaged under the Act, that is, the employees' contribution and the employer's contribution. u/s 2A of the Act, every factory or establishment shall be registered under the provisions of the Act. The factory or establishment shall have to submit returns, and every principal employer is required to maintain a register in respect of the factory or establishment. The scheme of the Act is that if there is any dispute between the employer and the Corporation; it shall be decided by the Employees Insurance Court. The civil court shall have no jurisdiction in respect of the dispute under the provisions of the Act. In the result, the appeal is allowed and this case is sent back to the Employees Insurance Court for fresh trial on the basis of the observations made above.