
(1986) 07 MP CK 0038
In the Madhya Pradesh High Court
Case No : M.A. No. 360 of 1980

Employees' State Insurance Corporation	APPELLANT
Vs	
Dwarka Prasad Agarwal and Another	RESPONDENT

Date of Decision : 17-07-1986

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 45B, 75

Citation : (1988) ILR (MP) 26 : (1991) MPLJ 124

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : M.V. Tamaskar, for the Appellant; Ashok Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.

This order shall also govern the disposal of Misc. Appeals Nos. 361, 362, 363 and 364 of 1980 which involve identical facts and legal submissions.

The appellant Corporation filed applications u/s 75(2) of Employees State Insurance Act, 1948 (hereinafter referred to as "the Act") before the Employees State Insurance Court, Bhopal for recovery of employees' contribution from the respondents. It was alleged in the said application that Central Press (Dainik Bhaskar) is a factory as defined u/s 2(12) of the Act and hence the respondents were liable to pay employees' contribution as required u/s 40 of the Act. It was their case that in spite of the aforesaid legal obligation, the respondents have not paid employees' contribution and have also failed to produce records for inspection. The appellants, therefore prayed that the Insurance Court be pleased to order recovery of the amount together with interest and costs. This claim was resisted by the respondents who denied that the respondent No. 2 was a factory or was liable to pay employees' contribution. Their defence as contained in the written-statement, was that the Act was not applicable to them. The court by its

order dated 4-3-1967 held that the Central Press and Dainik Bhaskar were owned by respondent D. P. Agarwal and were situated in one and the same premises. It also held that the respondent No. 1 is the proprietor of the factory and hence the principal employer, and is not liable to pay employees' contribution. The Court further held that since the appellants had claimed the amount on ad hoc basis, the said respondent was not bound to pay the same. The respondent No. 2 i.e. Central Press (Dainik Bhaskar) was held to be a factory only and not covered by the term principal employer and therefore no liability could be fastened on them. The claim was consequently rejected, only because it was based on ad hoc calculations. An appeal against the aforesaid order was filed in this Court and was subject matter of Misc. Appeal No. 109 of 1967. The said appeal was heard and decided by a learned Single Judge of this Court on 14-11-1969 and was allowed. This Court, directed that the wages shall be calculated at the rate of Rs. 125/- per month and contribution on that basis paid. Against this appellate order a L. P. A. was filed before a Division Bench of this Court and was decided on 1-12-1971. The Division Bench did not agree with the learned Single Judge and therefore set aside his order and restored the order of the Insurance Court. The appellants approached the Supreme Court against the order in L. P. A. The Supreme Court held that, "The claim by the Corporation was rejected erroneously merely on the ground that there was difficulty in determining the basis of wages in a particular factory so as to enable a calculation of the amount of contribution to be made by the employer." (Para 4). While remanding the matter for fresh consideration of, the Insurance Court, the Supreme Court observed that, "The Corporation itself should have gathered information u/s 45A. The Employees Insurance Court should be apprised of this information and is under a duty of determining the basis of calculation itself. It cannot expect the Central Government to overcome such a difficulty, by order or direction u/s 99A of the Act." According to the Supreme Court, "The nature of the proceedings was not properly understood either by the Employees Insurance Court or by the High Court," and held that the Division Bench of the High Court while accepting the appeal failed to give a direction that the Employees Insurance Court should itself perform its duties. That is how these appeals were remanded to Insurance Court for performing its duties. From the proceedings of the case it appears that after the remand, the appellant remained satisfied with whatsoever material and evidence it had placed earlier. The respondents also remained satisfied with what they had done in the matter earlier. The Insurance Court after hearing arguments of the parties, held that the appellants have failed to furnish information to facilitate calculation of contribution amount and therefore, dismissed these applications.

The upshot of the aforesaid narration of events is that in spite of the concluding finding of all Courts that the employees are covered by the Act and the respondents are under legal obligation to submit returns and pay the contribution, the respondents have successfully failed the attempt of the appellants by simply not filing return and disclosing information. Can a welfare

legislation like the present one, be permitted to be left at the mercy of the respondents ? in *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another*, and *Royal Talkies v. Employees State Insurance Corporation* AIR 1979 SC 1478. it has been held that the Act is a welfare legislation and therefore Courts should give it such an interpretation as advances its object and purpose. The observation of Shri Justice Krishna Iyer in *Royal Talkies* case (supra) that, "to decide the meaning of a welfare measure a feeling for the soul of measure is a surer guide than meticulous dissection with, lexical tools alone." (Para 1). Further observations that, "We are in the field of labour jurisprudence, welfare legislation and statutory construction which must have due regard to Part IV of the Constitution. A teleological approach and social perspective must play upon the interpretative process." (Para 13). Under the circumstances, it would be the responsibility of this Court to bring in some legal philosophy into this Act and hence every interpretation of its provisions will have to look for light to the provisions of the Part IV of the Constitution. This approach is not a new approach but has been followed by the Supreme Court in *Sant Ram Vs. Rajinder Lal and Others*, ; *B. Shah Vs. Presiding Officer, Labour Court, Coimbatore and Others*, ; *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, ; *Sanjit Roy v. State of Rajasthan*, AIR 1983 SC 326; *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, ; *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, and *Sadhuram Bansal Vs. Pulin Behari Sarkar and Others*,

We may therefore, examine the provisions of the Act% ascertain its object, purpose and methodology. The object of this Act is to provide benefits to employees in cases of sickness, maternity and employment injury as would be clear from its preamble and hence it must be accepted that it is a piece of social security legislation intended to provide remedy against widespread social evils. In the context of prevalent poverty of the working masses, the Act not only extends to the whole country but brings within its fold persons employed for wages in or in connection with the work of a factory or establishment directly by the principal employer or through an intermediate agency. Its ambit and scope have been determined by the Supreme Court in *Royal Talkies* case (supra), leaving no doubt in the mind of this Court that the legislature intended to provide protective umbrella to all employees. In order to facilitate working of the Act, Chapter IV provides for compulsory insurance of all employees. Section 39 requires that contribution payable under the Act in respect of an employee shall comprise of the contribution payable by the employer, commonly known as "employers' contribution" and contribution payable by employees known as "employees' contribution." Section 40 imposes an obligation on the employer to pay both these contributions not only in respect of employees directly employed by him but also for employees employed or through an immediate employer. Section 41 provides that where a principal employer has paid the contribution for employees employed by or through an immediate employer, he shall be entitled to recover the amount from the said immediate employer. Section 44 obliges the

principal and immediate employer to submit return to the appellant Corporation in such form and containing such particulars relating to persons employed by him as may be specified in regulations made in this behalf. Section 45A which has been added by Amending Act, 1966 empowers the appellant Corporation to determine the amount of contribution payable in respect of a factory or establishment if no returns, particulars, registers or records are submitted, furnished or maintained as required by the Act. Sub-section (2) of this provision provides that an order determining the amount of contribution as aforesaid, shall be sufficient proof of the claim of the Corporation u/s 75 of the Act or for recovery of the amount determined as arrears of land revenue u/s 45B. A Full Bench of Karnataka High Court in *E. S. I. Corporation v. Fibre Bangalore* AIR 1980 Kar. 86 has considered these provisions and has held that if the amount of contribution has been determined by the Corporation u/s 45A of the Act, it is for the employer to move the Insurance Court u/s 75 of the Act if the amount is disputed by the employer. The Corporation need not seek adjudication before Insurance Court in such a case. Even the Supreme Court in *Royal Talkies case* (supra) seems to be approving the aforesaid view as would be clear from the following passage : -

"The assessment of the quantum of the employers' contribution has now been made on an ad hoc basis because, they merely pleaded non-liability and made no returns. On the strength of Section 45A the contribution was determined without hearing. In the circumstances of the case, and the learned Attorney General has no objection we think it right to direct the relevant Corporation authorities to give a fresh hearing to the principal employers concerned, if sought within 2 months from today, to prove any errors or infirmities in the physical determination of the contribution. Such a hearing, in tune with the ruling, of this Court in *The Employees State Insurance Corporation, Bhopal Vs. The Central Press and Another*, is fair and so we order that the assessment shall be reconsidered in the light of a de novo hearing to the appellants and the quantum of contribution affirmed or modified by fresh orders." (Para 22 at page 1484)

It would thus be clear that it is primarily the obligation of the principal employer and immediate employer to file returns and give information about the employees who are required to be compulsorily insured under this Act. On failure of the employers to file such returns or give information, the Employees State Insurance Corporation is entitled to determine the quantum of contribution payable by the employer" u/s 45A of the Act by giving an opportunity to the said employer to be heard. Once amount of contribution is so determined, the Corporation becomes entitled to recover as arrears of land revenue u/s 45B of the Act. If an employer disputes the determination of the amount, as aforesaid, he is free to move the Insurance Court u/s 75 of the Act. This scheme of the Act would sufficiently indicate that the legislature did not intend to leave the successful working of the Act to the goodwill of the employer nor it envisages the situation where insurance coverage would be refused to employees only because employer chooses not to furnish return or supply information. Considered in this

context, provisions of Section 45A would permit the appellant Corporation to determine the amount of contribution on the basis of what is known as the "best judgment assessment method". Such a method, in the absence of necessary information which is available only with the employer, has necessarily to involve some amount of guess work. Inspection reports of earlier and subsequent periods, nature of work and information collected by Inspector from workers about the wages and minimum wage fixed for the occupation under the Minimum Wages Act would be relevant for the best judgment assessment. There is no other method by which Section 45A of the Act can be worked out.

The facts of the present case may now be examined. There is no dispute that the respondents did not submit any return nor furnish particulars about employees employed by them. From survey report (Ex. P-4) it appears that they maintain account books, cash books etc. containing necessary details about the Central Press and Dainik Bhaskar, at their Head Office at Jhansi. The respondent No. 1 who had supplied this information has also stated that no register is maintained either under the Shops and Establishments Act or Factories Act. Clearly, therefore, it is a case where no return, information etc., as required under the Act have been furnished and hence provisions of Section 45A would be attracted. From the application filed u/s 75 of the Act it appears that officers of the Corporation had not only visited establishment several times but had also asked for information of record from the respondent No. 1 from time to time. On the failure of the respondents to furnish information in spite of notice and reminders, the appellant Corporation calculated the amount of contribution on ad hoc basis, details of which are given in Schedule "A" annexed to the application. Schedule would indicate that the appellant Corporation knew the number of employees but did not know the wages paid by the respondents to these employees. The appellant, therefore, calculated their , wages at the rate of Rs. 100 per month which was considered to be the minimum. The reply of the respondents to para 4 of the application where these facts were stated, only was that the appellants have no right to claim the amount "worked on ad hoc basis." It was denied that registers were not shown to the appellant. This would indicate that the respondents in their written statement had claimed that registers were in their possession and wanted the calculation to be made on the said basis. That is why they denied the correctness of calculations made on ad hoc basis. Since this was the only dispute, the quantum could have been determined in a just and fair manner in case the register referred to in the written-statement was made available to the Insurance Court for calculation of employees' contribution. One would like to ask the respondents, why the register mentioned in para 6 of the written-statement was not produced? As already brought out earlier that a welfare legislation like the present one cannot be defeated or frustrated only because the respondents do not choose to co-operate either with the appellant Corporation or with the Court. Since not only the register but also the accounts were admittedly in possession of the respondents, it would be reasonable to infer that if the register and accounts had been produced, they would have gone

against the respondents. Such an adverse inference is permissible even in a Civil Court, which is bound to observe technicalities of the Evidence Act and other corresponding laws and would be more than justified in an adjudication like the present one.

The aforesaid, however, does not satisfy the order of the Supreme Court. The Supreme Court had clearly held that the appellant Corporation should have gathered information u/s 45A and apprised of this information to the Insurance Court who is under a duty to determine the basis of, the calculation itself together with the amount. The matter was remanded to the Insurance Court with this clear direction and hence it may be examined if the Corporation placed information gathered by it u/s 45A of the Act and whether the said information was sufficient for the Insurance Court to determine the amount. According to the learned Judge of the Insurance Court, the appellant Corporation failed to furnish information or adduce any evidence in the Court and hence there was no material on record of the Court to calculate the amount. In so holding the Court seems to be of the opinion that the material placed before it earlier to the Supreme Court order, is obliterated and fresh material should have been placed. This clearly amounts to misreading the judgment of the Supreme Court. The Supreme Court has not said that whatever material had already been placed on record to justify calculation made by the appellant Corporation u/s 45A, should be ignored. Indeed a fair reading of the Supreme Court judgment would be that the Insurance Court was first required to consider whether the basis adopted by the Corporation for determining the quantum was justified on basis of material on record. In case the Court felt that the basis was not satisfactory, it was obliged to decide a more satisfactory basis and thereby calculate the amount. This meaning would be clear in case we consider the directions of the Supreme Court in the context of refusal of the employer to place any material on record but help the calculation. The search for a satisfactory basis, as desired by the Supreme Court is not the search for the real basis, as real basis cannot be ascertained in the absence of information and record which are available only with the respondents. Indeed, what the Supreme Court desired was that Insurance Court should first ascertain whether the ad hoc basis founded on the Government of India's notification was the satisfactory basis. If that basis was held as not satisfactory, then it was the obligation of the Insurance Court to provide a satisfactory basis. The Insurance Court was, therefore, not justified in refusing to undertake this exercise only because no fresh material was placed before it by the parties. The approach of the Insurance Court, to say the least, is the approach of a shirker and of a person who is wholly oblivious of the welfare intents of the statute.

What then is the material placed on record by the appellant Corporation ? The material contains not only of oral evidence but also of documentary evidence. Oral evidence consists of local Manager of the Corporation, Shri Goel (P.W.1) Vinayak (P.W.2) and Ramesh Chandra (P.W.3). Shri Goel (P.W.1) was Incharge of Bhopal Office of the Corporation at the relevant time and had gone to inspect the

establishment of the respondents. According to him, he was shown attendance register, and had prepared Inspection Notes (Ex. P-2 and Ex. P-3) which were proved by him, as those very inspection notes. According to him, information given in these notes was given by Shri D. P. Agarwal, the Proprietor and Dharamdas, Manager. He has also proved that he had noted the actual number of workers employed in the establishment from the attendance register. In cross-examination he has further stated that he had even signed the register. There is nothing in his cross-examination to hold that he either did not make the inspection or collected material which was not correct. His evidence about the number of workers working in the establishment, would therefore, be good evidence, Vinayak (P.W.2) was only examined to prove the quantum of business and Ramesh Chandra (P.W.3) to establish the fact that Central Press and Dainik Bhaskar were one and the same establishment. Inspection report (Ex. P-2) indicates that 26 workers were working on the establishment on the date of inspection and were engaged in the printing of Dainik Bhaskar and commercial printing. Ex. P-3 also mentions the names of the workers and is signed by someone on behalf of Dainik Bhaskar. Ex. P-4 is a similar report submitted by Shri Goel. It is, therefore, clear that the appellant Corporation has placed on record the information about the number of employees, their names and the jobs done by them at the establishment of the respondents. Once the numbers and names of the employees are available, it can be ascertained whether the Act would be applicable or not. The names of employees, however, by itself may not be sufficient to calculate the amount of contribution which is determined on the basis of the salaries drawn by the employees. The salaries etc. would be within the special knowledge of the respondents who had maintained account books etc. It is rather surprising that in spite of their averments in para 7 of their written-statement regarding registers shown by them and affidavit by D. P. Agarwal dated 1-2-1966 available at page 58 of Part "C of the record, the respondents submitted an affidavit in the Insurance Court on 20-11-1978 informing the Court that the documents were not available with them. This affidavit had been filed by the Manager of the respondent Central Press and D. P. Agarwal the respondent No. 1 in reply to application of the appellant Corporation for discovery of the documents. This affidavit dated 20-11-1978 only stated that the documents are old and are not traceable. There is no allegation that these documents had been destroyed. In the context of their clear statement contained in Exs. P-2 and P-3, their averment in their written statement and affidavit dated 1-2-1966, this affidavit must be adjudged as false and submitted with an intention to defeat the adjudication. Submitting false affidavit is likely to expose Shri D. P. Agarwal to prosecution for perjury. This Court is however reluctant to take such a step as it is not considered to be advancing the purpose of the proceedings. In spite of it, this Court condemns such an attempt on the part of Shri D. P. Agarwal. What has not been appreciated by him is that this litigation concerned a prestigious newspaper of which he is the proprietor. A newspaper is considered to be the fourth organ of our Democratic Republic and expected to work in a manner as to further the purpose and policies of the State. The

conduct of Shri D. P. Agarwal in filing this affidavit, to say the least, is regrettable. Such an unfair attempt should not have been permitted by the Insurance Court to succeed and thereby defeat the object of the adjudication. Apparently, the Presiding Officer of the Insurance Court lacks not only the missionary spirit but also the understanding of our welfare statutes. The approach of the Presiding Officer of Insurance Court must therefore be held to be unjust. Because of the aforesaid attitude, this Court is faced with the above-mentioned oral and documentary evidence on record. The question for consideration therefore is whether a satisfactory and acceptable "best judgment assessment" of respondent's liability can be made on the basis of this evidence available on record. A perusal of the para 6 of the impugned order itself indicates that the learned Insurance Court was willing to accept Rs. 100/- per month as wages, as they are fixed under the Minimum Wages Act and calculate the contribution on the said basis. He, however, found difficulty in so assessing it because the number of employees and the days on which they worked was, according to him, not available. This approach is also perverse and not supported by the material on record. The material on record indicates not only the number of employees but also the names of employees. This information was gathered in the course of official visit and must therefore be assumed to be correct. There was, therefore, no justification for the Insurance Court to hold that number of employees for which the contribution has to be calculated being not available, the calculation cannot be made. Since this number is available, the calculation can certainly be made on the basis of Rs. 100/- per month which is the minimum fixed under the Minimum Wages Act. This method, according to this Court, would be the satisfactory method based on "best judgment assessment". It however appears that the appellant Corporation treated their calculation to be ad hoc calculation, in the hope that necessary record would be made available to the Insurance Court to make correct calculations. This however does not mean that if real calculations cannot be made, even the assessment by best judgment assessment method should not be attempted. Since such an assessment was not only permissible but also possible, Insurance Court should have done so. However, since result of their ad hoc calculation is also the result of "best judgment assessment" made by this Court on the basis of information available on record the order of the Corporation can certainly be upheld. Under the circumstances, the entire claim of the appellant deserves to be decreed and is hereby so decreed.

At this stage the legal submission of the respondents that the present appeal was not maintainable may also be considered. The submission of the learned Counsel is that no substantial question of law is involved in this appeal and therefore Section 82 of the Act will not be attracted. It is no doubt true that an appeal against the order of an Insurance Court lies to this Court if it involves a substantial question of law and not otherwise. In the instant case, a substantial question of law does arise. The Insurance Court without looking at the material on record has rejected the claim and thereby refused to exercise not only the

jurisdiction vested in it but also refused to comply with the order of the Supreme Court. There could therefore not be a better case for entertaining and deciding the appeal as the present one.

A faint attempt was also made to get the matter remanded in case this Court did not confirm the order of the Insurance Court. This is usually the attitude of this Court. This is usually the attitude of this Court because of the large pendency of cases and its pre-occupations with other important matters. This Court, however, considers implementation of a welfare legislation like the present one, as important as any other important case pending before it and since it has found necessary basis to undertake "best judgment assessment" of respondents' liability, it has undertaken the exercise itself in its anxiety to curtail the litigative length and provide necessary coverage to the workers.

While allowing these appeals and decreeing the entire claim as contained in the application, with interest and costs this Court cannot resist the temptation of condemning the litigative attitude of the respondents. The appellant Corporation would be fully justified in prosecuting them for breaches of the Act consisting of not furnishing the return etc. in accordance with law. The Court trying the respondents, would be fully justified in taking cognizance of the matter as the contravention is a continuing offence and therefore cause of action continued to exist.

The appeal consequently succeeds and is allowed. The claim of the appellant as contained in the application together with interest at the rate of 6 per cent per annum from the date the amount became due till the date of this order is decreed with costs. Counsel's fee Rs. 250/-. In case the amount is not paid within 60 days of the date of this order it will carry interest at the rate of 12 per cent per annum from the date of this order till realization. The appellant shall be entitled to recover the amount in accordance with law including as arrears of land revenue u/s 45A of the Act.