(1998) 12 MAD CK 0009

In the Madras High Court

Case No : Cr.A. No. 536 of 1992

Employees' State Insurance Corporation APPELLANT

Vs

General Engineering Works and Others RESPONDENT

Date of Decision : 14-12-1998

Acts Referred:
Employees State Insurance Act, 1948 — Section 39, 40, 85

Citation : (2000) 3 LLJ 665

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—The Employees'' State Insurance Corporation had filed an appeal aggrieved against the order of acquittal passed by the

learned Judicial Magistrate No. VII, Tiruchirapalli, in C.C. No. 1214 of 1991, dated March 30, 1992.

The case in brief is as follows:

2. The Employees'' State Insurance Corporation filed a complaint against the respondents/accused that they have committed an offence u/s 85(a)

punishable u/s 85(i) of the Employees'' State Insurance Act (hereinafter referred to as ""the ESI Act""). The first accused is the company, the second

accused is the managing partner of the company and the third accused is the manager. They have collected the contribution amount from the

employees working in the company for the period October, 1989 to December, 1989 amounting to Rs. 895.90 and they have not remitted the

same in accordance with the rules. P.W. 1, Varadharajan, was then working as ESI Inspector and he inspected the first accused-company on

August 30, 1990, in the presence of the third accused. He also perused the records for the period February 1, 1988 to July 31, 1990 and on

inspection, came to know that the company was covered under the Employees'' State Insurance Act since October, 1989, as the persons

employed were more than ten. They have failed to remit the contribution amount and the Employees'' State Insurance code number was also

allotted to them. The accused are principal employers, liable to pay contribution u/s 40 of Employees'' State Insurance Act.

3. P.W. 2 was then working as a Superintendent in the Regional Office of the Employees'' State Insurance Corporation and he was examined to

prove that there was no entry in the ledgers showing the deposit of contribution by the accused. He further stated that the amount recovered from

the employees in a particular month has to be remitted in the succeeding month before the 21st day. If the amounts are remitted, the receipt of the

challan entries will be made in the register and so far as the accused are concerned, the amounts were not remitted by them. P.W. 3, Balakrishnan,

was examined to show that the Regional Director gave the necessary authorisation to prosecute the accused concerned, in the case of the

aforesaid offences. He had also produced the letter said to have been given by the third accused dated October 11, 1991, admitting the coverage

and they also pleaded ignorance.

4. The accused were examined u/s 313 of the Code of Criminal Procedure and they denied the offence. On behalf of the complainant, P.Ws. 1 to

3 were examined and exhibits A-1 to A-4 were marked. On the side of the defence, exhibit D-1 alone was marked. The trial Court found the

respondent not guilty of the offence u/s 85(a) read with Section 85(i) of the Employees'' State Insurance Act and acquitted them u/s 255(1) of the

Code of Criminal Procedure and aggrieved against this, the complainant has come forward with the present appeal.

5. Learned counsel for the appellant contended that the Court below was not justified in acquitting the respondents. The respondents being the

principal employers are liable to pay contribution in terms of Sub-section (1) of Section 40 of the Employees'' State Insurance Act. Notification

dated October 20, 1989, was published in the Gazette and ignorance of the same cannot be an excuse for non-payment of the statutory contribution. It is the duty of the respondents to calculate and pay the contribution as defined u/s 39 of the Act. The wages for each month is

bound to differ as the same depends upon the number of persons employed for wages and amount of wages paid by the respondents. Failure to

make payment within the time stipulated, results in default of payment of contribution and, as such, they should be found guilty and punished

according to law.

6. Learned counsel for the respondents contended that no communication was sent to the company before inspection and the copy of the report

was also not given to them. They were aware of the coverage only in the year 1991 and thereafter they have remitted the contribution amount.

Natural justice was not given to the respondents and reasonable opportunity was also not given to enable them to pay the contribution and the

launching of prosecution was not proper and correct. Under the circumstances, the Court below was justified in passing an order of acquittal. :

7. The points that arise for consideration are : (I) Whether the accused have committed an offence u/s 85(a) read with Section 85(i) of the

Employees'' State Insurance Act ? and (2) Whether there are any valid and justifiable cause to interfere in the order of the trial Court?

Points.- It is admitted that the first respondent is an engineering company and the second respondent is the managing partner and the third

respondent is the manager of the company. P.W. 1, E.S.I. Inspector had visited the company on August 30, 1990, and perused the records

relating to the period February 1, 1988 to July 31, 1990. He came to know that the company is covered under the provisions of the Employees''

State Insurance Act since October, 1989, as the number of employees was more than ten. They have not paid the contribution for the period

October, 1989 to December, 1989. The Employees'' State Insurance code number was also allotted to them.

8. The evidence of P.W. 2 disclosed that no amount has been remitted by way of contribution in accordance with the provisions of the Employees''

State Insurance Act. P.W. 3 categorically stated that the Regional Director had authorised the filing of a complaint against the accused. Learned

counsel for the respondents mainly contended that no notice was served at the time of inspection of the company and thereafter also, the inspection report was not given to them. They were not called upon to pay any particular amount by way of contribution and reasonable opportunity was also

not given to them. They came to know about the coverage only in October, 1991, and thereafter they have remitted the amount. The letter exhibit

A-3 dated October 11, 1991, is admitted by them. They have also furnished the names of 11 employees with the nature of work and also the

salary received by them. The trial Court unfortunately misdirected itself and passed an order of acquittal. There is a statutory duty on the part of the

principal employer to pay the contribution as and when the coverage is there. Sections 39 and 40 of the Employees'' State Insurance Act have

been lost sight of by the trial Court. The finding of the trial Court that the burden is upon the Corporation to show that the company is covered

under the Employees'' State Insurance Act, is not proper and correct. Moreover, the company has not chosen to dispute the number of employees

and the coverage is also not disputed. It is only when there is a dispute about the coverage or the quantum of amount it has to be decided and

thereafter only, the employer can be called upon to pay the amount. In the present case, when once the coverage is admitted and as there is no

dispute about the number of employees as well as wages paid to them, there is a statutory duty on their part to remit the same and they cannot

remit the amount as and when they deem it necessary.

9. Section 39 of the Employees'' State Insurance Act relates to contributions. Section 39(4) of the Act reads as follows:

The contributions payable in respect of each (wage period) shall ordinarily fall due on the last day of the wage period, and where an employee is

employed for a part of the wage period, or is employed under two or more employers during the same wage period, the contributions shall fall due

on such days as may be specified in the regulations.

10. Section 39(5) of the Act reads as follows:

If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall

be liable to pay simple interest at the rate of 12% per annum or at such higher rate, as may be specified in the regulations, till the date of its actual

payment.

11. Section 40 discloses that principal employer to pay contributions in the first

instance. Section 40(2) reads as follows:

Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the regulations, if any, made thereunder,

the principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from

the employee the employee''s contribution by deduction from his wages and not otherwise.

12. Section 40(4) reads as follows:

Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the

purpose of paying the contribution in respect of which it was deducted.

13. Regulation 31 reads as follows:

Time for payment of contribution.--An employer who is liable to pay contributions in respect of any employee shall pay those contributions within

21 days of the last day of the calendar month in which the contributions fall due.

14. Section 85 of the Act deals with punishment for failure to pay contributions and Sub-section (a) deals with failure to pay contribution he is

liable to pay. The punishment is provided u/s 85(1) of the said Act. In the present case also, the respondents are liable to pay contribution since

there is no dispute about the coverage as well as the number of persons employed and their Wages. The reasoning given by the trial Court that

they should be informed of the amount payable is not the correct approach. Learned counsel for the respondents also relied on the decision in Free

India Private Ltd. Vs. Regional Director, Employees'' State Insurance Corporation, and this decision has no application to the facts on hand for the

simple reason that revenue recovery proceedings were taken in a case where the quantum of amount was in dispute. When once there is material

to come to the conclusion that the coverage is not disputed and the contribution was also to be paid in accordance with Regulation 31 and u/s 40

of the Employees'' State Insurance Act, failure to pay the contribution is an act punishable u/s 85 of the Employees'' State Insurance Act. The

complainant has positively established that the respondents have committed the offence u/s 85(a) of the Employees'' State Insurance Act and they

are found guilty and convicted.

15. The second respondent, managing partner, is present today (December 14, 1998) and heard about the sentence. The third respondent is

absent. The first respondent is represented by the second respondent. The second respondent stated that he is an aged person and he has recently

undergone operation for brain tumour and still taking treatment from the doctor. Considering these aspects, the second respondent is sentenced to

suffer imprisonment till the rising, of the Court and to pay a fine of Rs. 1,500 (rupees one thousand five hundred only) in default, to suffer rigorous

imprisonment, for three months. So far as, the first respondent is concerned, a fine of Rs. 1,000 (rupees one thousand only) is imposed. In respect

of the third respondent, he is sentenced to suffer rigorous imprisonment for one month and to pay a fine of Rs. 1,000 (rupees one thousand only) in

default, to suffer rigorous, imprisonment for three months.