

(1990) 10 KAR CK 0046
In the Karnataka High Court
Case No : Criminal R.P. No. 247 of 1990

Employees" State Insurance Corporation	APPELLANT
Vs	
Krishna Dass	RESPONDENT

Date of Decision : 08-10-1990

Acts Referred:

Employees State Insurance Act, 1948 — Section 44, 45 (2), 85

Citation : (1991) ILR (Kar) 233

Hon'ble Judges : Ramachandriah, J

Bench : Single Bench

Advocate : M. Papanna, for the Appellant; M. Ravi Prakash, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandriah, J.—Petitioner was the complainant and respondents 1 to 3 were accused Nos. 1 to 3 respectively in C.S.No. 2010/1987 on the file of the Special Court for Economic Offences, Bangalore City, (for short "the Special Court") C.C.No. 2010/1987 arose out of a private complaint filed by the petitioner Corporation (hereinafter referred to as "the complainant") against the respondents (hereinafter referred to as "the accused") on 30-11-1987 alleging that the accused have violated the provisions of Sections 44 and 45(2) of the Employees State Insurance Act, 1948 (for short "the Act") for which they are liable to be prosecuted for commission of an offence under Clauses (f) and (g) of Section 85 of the Act for non-production of the documents mentioned against Sl.Nos. 1 to 8 of paragraph-7(b) of the complaint for scrutiny by the Inspector of the Corporation as called Upon in the notices dated 7-1-1987, 7-5-1987 and 20-8-1987 issued to the accused after he visited M/s. Gera Auto Industries (P) Ltd., Peenya Industrial Area, Bangalore-58 (hereinafter referred to as "the Factory") on 3-1-1986. 28-11-1986, 7-5-1987 and 1-6-1987. The documents referred to in paragraph-7(b) of the complaint are:

SI.No. Description of documents Period

1. Attendance Register 28-6-1974 to 30-6-77
2. Wage Register 1-7-75 to 30-6-77
3. Register of employees under Regulation 32 1-10-76 to 30-6-77
4. Accounts Books, Vouchers & Cash Books 29-6-74 to 30-6-77
- b. Ledger 29-6-74 to 15-10-74 1-7-83 to 31-10-86
6. Return of contribution on Form-6 1-10-76 to 30-6-77
7. Challans in respect of contributions paid 1-10-76 to 30-6-77
8. Accident Books 1-10-76 to 30-6-77

2. In response to the summons issued to the accused, who are described as the Managing Director, Works Manager and Officer-in-charge respectively of the Factory, they appeared before the Special Court and filed an application u/s 468 Cr.P.C. praying for the dismissal of the complaint as it was barred by time inasmuch as, the complainant had previously issued a notice dated 28-8-1982 to the accused for the production of the same records mentioned in paragraph-7(b) of the complaint and, therefore, the complaint filed on 30-11-1987 was barred by time. It was contended by the complainant that the limitation starts from the last visit of the Inspector to the Factory on 1-6-1987 and, therefore, the complaint filed on 30-11-1987 was not barred by limitation.

3. The Presiding Officer of the Special Court by order dated 26-3-1990 came to the conclusion that the correct provision of law applicable to the plea of limitation taken by the accused is Sub-section (3) of Section 86 of the Act which provides that "no Court shall take cognizance of any offence under this Act except on a complaint made in writing in respect thereof, within six months from the date on which the offence is alleged to have been committed" and not Section 468 Cr.P.C. under which the accused had filed the application; that in the case on hand, the complainant had issued a notice in 1982 itself calling upon the accused to produce the very same records mentioned in the complaint for inspection, and, therefore, the cause of action to file the complaint had arisen in the year 1982 itself and, as such, the complaint should have been filed within six months from the date of the notice issued in 1982 and, therefore, the complaint filed on 30-11-1987 was clearly barred by limitation. Consequently, the Presiding Officer dismissed the complaint as barred by limitation.

4. It is that order that is challenged in this Revision Petition filed by the Corporation u/s 397 Cr.P.C. contending that the interpretation placed by the Court below on the relevant provisions of the Act is erroneous as the said interpretation has had the effect of defeating the provisions of the beneficial legislation like the Act; that the Court below had failed to notice that the offences alleged against the accused is a continuing offence and the complaint filed on 30-11-1987 is within six months from the last visit of the Inspector to the Factory on 1-6-1987 and, therefore, it is in time.

5. At the time of arguments, Sri M. Papanna, learned Counsel for the petitioner-complainant, urged the following two points:

(i) that there is no limitation so far as claims arising under the Act are concerned; and

(ii) that even otherwise, complaint filed on 30-11-1987 in respect of the default on the part of the accused to produce documents relating to the period from 1-7-1983 to 31-10-1986 as called upon in the notice dated 7-5-1987 is in time.

6. Sri M. Papanna placed reliance in support of his said contentions on the following decisions:

(1) AIR 1972 1935 (SC)

(2) PREM SUKH AND ORS. v. MANAGER, EMPLOYEES' STATE INSURANCE CORPORATION AND ORS. 1981 LAB IC 939 (Rajasthan High Court)

(3) BHAGIRATH KANORIA AND ORS. v. STATE OF M.P. (1983) 4 SCC 222 : AIR 1984 SC 1628 and

(4) Mst. Rukhmabai Vs. Lala Laxminarayan and Others,

7. On the other hand, Sri M. Ravi Prakash, learned Counsel for the respondents-accused, argued that the factory is covered under the Act from 1976 and this is not a case of continuing offence as the complaint is filed for non-production of documents. He further submitted that in the absence of any provision enjoining on the Management of the Factory to preserve Books and records of the nature mentioned in paragraph-7(b) of the complaint for all time to come, accused cannot be expected to preserve those records for being produced whenever demanded by the Corporation and, therefore, the complaint filed on 30-11-1987 is hopelessly barred by limitation. He also submitted that the decisions cited by the learned Counsel for the complainant have no bearing to the facts of the case on hand as they are not rendered under the provisions of the Act. He placed reliance on a decision of the Supreme Court in State of Bihar Vs. Deokaran Nenshi and Another, in which the meaning of the expression the "continuing offence" within the meaning of Section 66 of the Mines Act, 1952 is expounded. He also placed reliance on a decision of this Court in Chandra Spinning and Weaving Mills Pvt. Ltd. Vs. Registrar of Companies, in which the meaning of the words "continuing offence" used in Section 472 Cr.P.C. are considered in the context of determining the question whether the contravention of the provisions contained in Section 220(1)(a) of the Companies Act is a continuing contravention or not has been considered.

8. By way of reply, Sri (VI. Papanna submitted that in the event of the Court not accepting his first contention mentioned above, the matter may be remitted back to the Special Court for dealing with the complaint in accordance with law in respect of the documents for the period from 1-7-1983 to 31-10-1986 as the complaint filed on 30-11-1987 with reference to those documents is in time as

the accused were called upon in the notice dated 7-5-1987 to produce the said documents before the Inspector on 1-6-1987 and they had failed to produce the same.

9. POINT No. (i): The offence alleged against the accused is one of non-production of the documents referred to above as demanded in the notice dated 7-5-1987. In my opinion there is no scope for contending that the said offence is a "continuing offence". The meaning of expression "continuing offence" used in Section 66 of the Mines Act, 1962 has been considered by the Supreme Court in the case of State of Bihar v. Deokaran Nensi and Anr. and it is observed in paragraph-5 as under:

"5. Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and, therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is this the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

In the light of the illustrative cases set out in paragraph-7 of the said decision, I am of the view that there is no scope for contending in the instant case that the offence alleged to have been committed by the accused in not producing the documents referred to above can be construed as a "continuing offence". Therefore, I do not consider it necessary to refer to the other decisions relied upon by Sri M. Papanna in support of his contention that this is a case of "continuing offence" and, therefore, the complaint filed on 30-11-1987 is in time. In my opinion, there is also no force in the argument of Sri M. Papanna that there is no limitation so far as the claims arising under the Act are concerned inasmuch as, Sub-section (3) of Section 86 of the Act clearly and specifically provides that no Court shall take cognizance of any offence under the Act except on a complaint made in writing in respect thereof within six months from the date on which the offence is alleged to have been committed. Therefore, the first of the above mentioned two contentions urged by Sri Papanna is rejected as meritless.

10. POINT No. (ii); In my opinion, the period of six months referred to in Sub-section (3) of Section 86 of the Act will have to be reckoned from the date the offence is committed.

11. Section 44 of the Act provides that every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may

direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf. u/s 45(2) of the Act, any Inspector appointed by the Corporation under Sub-section (1) or other official of the Corporation authorised in this behalf by it, may for the purposes of enquiring into the correctness of any of the particulars stated in any return referred to in Section 44 or for the purpose of ascertaining whether any of the provisions of the Act has been complied with require any principal or immediate employer to furnish to him such information as he may consider necessary for the purpose of the Act and he is also entitled at any reasonable time to enter any office, establishment, factory or other premises and call upon the persons-in-charge thereof to produce such accounts books and other documents relating to the employment of persons and payment of wages. A combined reading of the provisions of Sections 44 and 45 in my opinion would indicate that an employer is expected to produce before the Inspector only such documents or books or other records which are specified in the Regulations made in that behalf. Learned Counsel on both sides submitted that the Employees' State Insurance (General) Regulations, 1950 (for short the "Regulations") are the only regulations made in exercise of the powers conferred u/s 97 of the Act. Regulation-32 provides that every employer shall maintain a register in Form No. 7 in respect of every employee of his factory or establishment, that every employer shall preserve every register maintained under the Regulation after it is filled for a period of five years from the date of last entry therein and the employer shall give a reasonable opportunity to any of his employees if he so desires to see entries in respect of such employee in that register once a month. It is provided in Regulation No. 102-A that every principal employer shall maintain a bound inspection book and shall be responsible for its production on demand by an Inspector or any other Officer of the Corporation duly authorised to exercise the powers of an Inspector.

12. Sri M. Papanna did not point out any other provision in the Regulation which enjoins the principal employer of a factory to maintain and preserve the documents referred to in paragraph-7(b) of the complaint. But, he contended that in order to enable the Inspector to find out whether or not the entries made in Form No.7 referred to in Regulation No. 32 are correct, it is necessary to maintain and observe the documents referred to in paragraph-7(b) of the complaint. In this connection, I consider it necessary to refer to a decision of the Calcutta High Court in Employee's State Insurance Corporation Vs. Malhoutra (K.L.) and Another, in which it is held that in the absence of any statutory rule or provisions in the Act requiring the employer to preserve such records for a particular number of years or from the inception of the factory, the prosecution against the accused for the offence u/s 86(g) read with Section 45(b) of the Act could not be maintained," Under Regulation No,32 of the Regulations, every employer shall preserve every register maintained under the Regulation for a period of five years from the date of last entry therein. Therefore, the accused in

the instant case cannot be expected to preserve and produce before the Inspector in the year 1987 any of the documents for the period prior to the end of May 1982 as in the notice dated 7-5-1987 the accused are called upon to produce the documents mentioned in paragraph-7(b) of the complaint before the Inspector on 1-6-1987. Therefore, the only document which the accused can be said to have not produced before the Inspector in response to the notice dated 7-5-1987 is the ledger for the period from 1-7-1988 to 31-10-1986 and not any of the other documents mentioned against Sl.Nos. 1 to 8 in paragraph-7(b) of the complaint. It is not the case of the accused that they are not obliged to maintain the ledger mentioned against Sl.Nos. 1 to 3 in paragraph-7(b) of the complaint. It is not the case of the accused that they are not obliged to maintain the ledger mentioned against Sl.Nos. 5 of paragraph-7(b) of the complaint. As a matter of fact, the Manager of Factory has stated in his letter dated 3-1-1986 addressed to the Inspector (vide page 31 of the records in C.C.2010/1987) that he may be given some more time to produce ledgers for his inspection since they were with their Auditors. It is again stated in the letter dated 2-4-1987 found at page 32, addressed on behalf of the Factory to the Regional Director of the Corporation that the Inspector of the Corporation may be advised to visit the factory with sufficient advance prior intimation to the inspect the ledger books since they have been withdrawn from their Auditors. Therefore, I hold on point No. (ii) that the learned Presiding Officer of the Special Court was not justified in dismissing the complaint as barred by limitation as it is filed in time with reference to the ledgers for the period from 1-7-1983 to 31-10-1986.

13. Consequent upon my above finding on Point No. (ii), I hold that alternative prayer made by Sri M. Papanna for remanding the matter to the Special Court for consideration of the complaint in respect of the alleged offence of non-production of the ledger for the period from 1-7-1983 to 31-10-1986 deserves to be granted as I do not find any force in the argument of Sri Ravi Prakash that there is no need to remand the matter to the Special Court for considering the complaint in respect of the ledger books only.

14. In the result, for the foregoing reasons, the Revision Petition is allowed in part, the impugned order of the Presiding Officer of the Special Court is set aside in so far as it relates to dismissal of the complaint as barred by time in respect of the alleged offence of non-production of the ledger for the period from 1-7-1983 to 31-10-1986 and the complaint is remitted back to the Presiding Officer, Special Court for Economic Offences, Bangalore City for consideration of the complaint only in respect of the offence of non--production of the ledger of the Factory for the period from 1-7-1983 to 31-10-1986 and not with reference to the other documents mentioned in paragraph-7(b) of the complaint.