

(1996) 11 MAD CK 0017

In the Madras High Court

Case No : Appeal Against Order No. 215 of 1987

Employees State Insurance Corporation

APPELLANT

Vs

Madras Auto Service owned by Messers T.V. Sundaram
Iyengar and Sons Ltd.

RESPONDENT

Date of Decision : 29-11-1996

Acts Referred:

Employees State Insurance Act, 1948 — Section 26, 40, 82

Citation : (1996) 11 MAD CK 0017

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : G. Desappan, for the Appellant; S. Sampathkumar, for the Respondent

Judgement

Raju, J.—The above appeal has been filed u/s 82 of the Employees' State Insurance Act, 1948 by the Employees State Insurance

Corporation. Aggrieved against the orders of the Employees' Insurance Court, Madras (First Additional District Judge, City Civil Court, Madras),

dated 18.12.1985 in E.I.O.P. 4 of 1985, whereunder the Court below has held that the Corporation is not entitled to demand the contribution in

respect of certain employees for the period between 7.1.1977 upto the end of August under the demand dated 11.9.1978 marked as Exhibit P.5

in the court below. The court below sustained the objection on the ground that earlier the Authorities of the Corporation, Viz., the Inspector of the

Employees' State Insurance has opined that the employees in question in respect of whom the demand has since been made, which is the subject

matter of the challenge, are not covered by the provisions of the Act to justify the remittance of the contribution under the Act. The Court below

was also prepared to countenance the objection that the Corporation was estopped by the application of the principle of promissory estoppel as

laid down in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, from going back and demanding the same at a late

stage. The Corporation not satisfied with the decision of the Court below, has come up before this Court. Heard Mr. G. Desappan, learned

counsel appearing for the appellant-Corporation and S. Sampathkkuar, learned counsel for the respondent Management. The learned counsel for

the appellant contended that the statutory liability under the Act cannot be avoided by the mere expression of some opinion by an Inspector and at

any rate, there can be no estoppel against statute and the reasons assigned by the court below to set aside the demand are not in conformity with

law and consequently, the order of the court below is liable to be set aside.

2. Per centre, the learned counsel for the respondent- management contended that having regard to the view expressed by the Inspector, the

employees concerned were extended the benefits of medical facilities by the management at their expense and that they have also since left the

services of the Corporation on account of attaining the age of superannuation and it will be difficult for the Corporation at this point of time to

recover the contribution and remit the same to the Corporation and consequently, no interference is called for with the order of the court below,

which according to the learned counsel for the respondent, is just and equitable and also in accordance with law.

3. I have carefully considered the submissions of the learned counsel appearing on either side. In my view, the court below committed a serious

error in applying the principle of promissory estoppel in a case involving a statutory liability, since it is a well accepted principle of law that there

can be no estoppel against statute and the statutory liability cannot be avoided on account of the ipse-dixit act of any individual officer, who cannot

either exempt an establishment from the payment of the statutory duty or waive the same. As for the plea that it is beyond the reach of the

respondent-management at the belated point of time when the demand was made to collect the employees' contribution and remit the same, I am

of the view that the management cannot be allowed to take such a stand in the teeth of more than one decision of the Apex Court on the very

subject.

4. u/s 40 of the Employees' State Insurance Act, 1948, statutory liability is cast upon the principal employer to pay both the employer's

contribution and the employees' contribution. In Employees State Insurance Corporation Vs. M/s. Hotel Kalpaka International, the Apex Court

held as follows:

23. From the above provisions it is clear that from the date of the commencement of business, namely, 11.7.1985, there was a liability to

contribute. It has already been seen u/s 40 of the primary liability is his, to pay, not only the employer's contribution but also the employee's

contribution. Therefore, he cannot be heard to contend that since he had not deducted the employee's contribution on the wages of the employees,

he could not be made liable for the same. The object of making a deeming entrustment under sub-section (4) of Section 40 will be altogether

rendered nugatory if such a contention were to be accepted. After all, when he makes employee's contribution he is entitled to deduct from the

wages....

24. From the above statutory provisions, it would be clear that from out of the common fund maintained u/s 26, the employees derive various

benefits like sickness, maternity, disablement, injury, medical treatment for and attendance on insured persons. Therefore, it is a beneficial piece of

social security legislation. As a matter of fact, this court had occasion to consider the same in B.M. Lakshmanamurthy Vs. The Employees' State

Insurance Corporation, Bangalore, ; At page 370, paragraph 16 of SCC at p.762, para 19 of AIR), it was held: ""The Act is thus a beneficial piece

of social security legislation in the interest of labour in factories at the first instance and with power to extend to other establishments. Provisions of

the Act will have to be construed with that end in view to promote the scheme and avoid the mischief 26. The Insurance Court as well as the High

Court have correctly upheld the demand for contribution. But it is rather strange to conclude that the demand could not be enforced against a

closed business. If this finding were to be accepted it would not promote the scheme and avoid the mischief. On the contrary, it would perpetrate

the mischief. Any employer can easily avoid his statutory liability and deny the beneficial piece of social security legislation to the employees, by

closing down the business before recovery. That certainly is not the intendment of the Act. To hold as the High court has done, would set at naught

all these beneficial provisions.

27. It is equally fallacious to conclude that because the employees had gone away there is no liability to contribute. It has to be carefully

remembered that the liability to contribute arose from the date of commencement of the establishment and is a continuing liability till the closure.

The very object of establishing a common fund u/s 26 for the benefit of all the employees will again be thwarted if such a construction is put.

5. In Employees' State Insurance Corpn. Vs. M/s. Harrison Malayalam Pvt. Ltd., the Apex Court once again held while reversing the decision of

the Kerala High Court as follows:

3. We are afraid that the ground given by both the courts is not justified Under the Act, it was the duty of the respondent-Company to get the

necessary details of the workmen employed by the contractor at the commencement of the contract since the primary responsibility of payment of

the contribution is on the principal employer. On the admitted fact that the respondent-Company had engaged the contractor to execute the work,

it was also the duty of the respondent-company to get the temporary identity certificates issued to the workmen as per the provisions of the

Regulations 12, 14 and 15 of the Employees' State Insurance (General) Regulations, 1950 and to pay the contribution as required by Section 40

of the Act. Since the respondent-company failed in its obligation, it cannot be heard to say that the workers are unidentifiable. It was within the

exclusive knowledge of the respondent company as to how many workers were employed by its contractor. If the respondent-company failed to

get the details of the workmen employed by the contractor, it has only itself to thank for its default. Since, the workmen in fact were engaged by

the contractor to execute the work in question and the respondent-company had failed to pay the contribution, the appellant-Corporation was

entitled to demand the contribution although both the contribution period and the corresponding benefit period had expired. The scheme under the

Act for insuring the workmen for conferring on them benefits in case of accident, disablement, sickness, maternity etc., is distinct from the contract

of insurance in general. Under the act, the scheme is more akin to group

insurance. The contribution paid entitles the workmen insured to the benefit under the Act. However, he does not get any part of the contribution back if during the benefit period, he does not qualify for any of the benefits. The contribution made by him and by his employer is credited to the Insurance Fund created under the Act and it becomes available for others or for himself, during other benefit periods, if he continues in employment. What is more, there is no relation between contribution made and the benefit availed of. The contribution is uniform for all workmen and is a percentage of the wages earned by them. It has no relation to the risks against which the workmen stand statutorily insured. It is for this reason that the Act envisages automatic obligation to pay the contribution once the factory of the establishment is covered by the Act, and the obligation to pay the contribution commences from the date of the application of the Act to such factory or establishment. The obligation ceases only when the Act ceases to apply to the factory establishment. The obligation to make contribution does not depend upon whether the particular employee or employees cease to be employee/employees after the contribution period and the benefit period expire.

6. Considering the contentions raised by the respondent- management, in the light of the above principles laid down by the Apex Court, there can be only one answer that the plea of the nature projected on behalf of the respondent cannot be countenanced by this Court, and the order of the court below cannot be sustained at all. The order of the court below is hereby set aside. The appeal is allowed. No costs. The learned counsel for the respondent submitted that the long lapse of time subsequent to the demand raised on account of the pendency of the proceedings at various stages could not be attributed to the respondent for the purpose of computing the interest on the amount of contribution. This is a matter which the management has to appeal to and address the authorities below and as and when a representation is made, it is for them to consider and take into account the reasonableness or otherwise, of that claim and it is not for this Court to exempt the petitioner from any such liability.