**(1978) 08 KL CK 0041**

**In the High Court Of Kerala**

**Case No :** S.A. No. 725/76

Employees State Insurance Corporation APPELLANT

Vs

Sankaranarayana Transport RESPONDENT

**Date of Decision :** 09-08-1978

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 44, 45A, 45B, 75

**Citation :** (1978) 08 KL CK 0041

**Hon'ble Judges :** T. Kochu Thommen, J

**Bench :** Single Bench

**Advocate :** C. Sankaran Nair, for the Appellant; P.F. Thomas and M. Venugopal, for the Respondent

**Final Decision :** Dismissed

## Judgement

Kochu Thommen, J.—The Appellant is the Employees'' State Insurance Corporation (the ''Corporation'') which was the Defendant in a suit for injunction. The Plaintiff (''the employer'') sought an injunction to restrain the Corporation from enforcing an order made u/s 45A of the Employees'' State Insurance Act, 1948 (the ''Act''). The suit was decreed and the appeal against the decree was dismissed.

2. The employer contends that an order made by the Corporation u/s 45A, if questioned or disputed, cannot be enforced u/s 45B until the dispute is resolved by adjudication before the Employees'' Insurance Court (the ''Court''). The employer further contends that in the event of any such question or dispute arising, the responsibility for invoking the jurisdiction of the Court is placed by the statute solely upon the Corporation. An order u/s 45A, the employer contends, is unenforceable if it is questioned or disputed until it is confirmed by the Court on an application made to it by the Corporation.

3. It is not disputed before me by the Corporation that in the event of an order made u/s 45A being questioned or disputed, the Court is the appropriate forum

to resolve the dispute. The question, however, is who should approach the Court. According to the Corporation he who questions or disputes a determination u/s 45A has to approach the Court and have the questions in dispute resolved by it. Unless so questioned before the Court, an order u/s 45A, it is submitted, is final and enforceable.

4. I shall read the relevant provisions:

45A. (1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44 ... the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment.

(2) An order made by the Corporation under Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45B.

45B. Any contribution payable under this Act may be recovered as an arrear of land revenue.

75(1) If any question or dispute arises as to

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employees contribution, * * * *

such question or dispute ... shall be decided by the Employees'' Insurance Court in accordance with the provisions of this Act.

(2) * * * *

(2A) * - * * *

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided ... by the Employees'' Insurance Court."

5. These provisions show that the Corporation is a statutory authority empowered by means of an employer in respect of the employees working in a factory or establishment to which the Act applies. Admittedly the establishment in question comes within the purview of the Act. Some of its employees are admittedly persons in respect of whom contributions are regularly made by the employer. However, according to the employer, those employees working in the administrative section of the establishment are not persons in respect of whom contributions are payable.

6. The employer wrote to the Corporation, when called upon to submit the returns in respect of all the employees working in the establishment, that no contribution was payable in respect of those employees who were working in the administrative section. Rejecting this contention the Corporation made a determination by means of an order in respect of all the persons working in the

 

establishment. Consequently a dispute arose insofar as the persons in respect of whom, according to the employer, no contribution was payable.

7. Section 75 requires that any question or dispute shall be decided by the Court. From the scheme of the various provisions of the Act, it is clear that he who questions or raises a dispute as to the correctness or validity of an order made by the Corporation has to have it resolved by invoking the jurisdiction of the Court. It is however contended that an order u/s 45A is not a final order but only an order which is provisional or prima facie in character. According to the employer, such order is not enforceable until it is affirmed by the Court, and such affirmation has to be sought by the Corporation.

8. The question really is whether an order u/s 45A is a final order in the sense that it is enforceable or executable. If the answer is in the affirmative, the order is executable without the imprimatur of the court. As I stated earlier, power is vested in the Corporation to determine the amount of contributions payable under the Act. Such determination is by means of an order. Such order, unless challenged, is, in my view, final in the sense that it is executable. In the absence of challenge the order is executable in terms of Section 45B. If however, the order is questioned or its validity is disputed, such question or dispute has to be decided by the Court which is the competent authority under the statute. It is the responsibility of the person who questions the validity of the order to invoke the jurisdiction of the Court if he seeks an adjudication of the dispute. In the absence of any such invocation of the jurisdiction of the Court, the order retains its finality for the purpose of enforcement and Section 45B is attracted.

9. In the present case the employer who questions the validity of the order did not invoke the jurisdiction of the Court. Consequently the order was in terms executable and the revenue recovery proceedings were rightly initiated. In the circumstances the suit for injunction to restrain the Corporation from discharging its statutory functions is clearly unsustainable.

10. Certain decisions were cited at the bar in support of the respective contentions of the parties. With great respect I am in complete agreement with the observation of Palaniswami J. in M.S. Dhawanjayan v. The Regional Director, Employees'' State Insurance Corporation, Madras (1972) II L.L.J. 338 (Mad); and with equal respect I disagree with the opinions expressed to the contrary in M/s. Sri Krishna Mills Co. v. The Regional Director, Employees'' State Insurance Corporation 1973 Lab. I.C. 408 (Mysore) and Delhi Administration, Delhi Vs. Workmen of Edward Keventers and Another, .

The appeal is accordingly allowed; the judgments and decrees of the courts below are set aside; and, the suit is dismissed. In the circumstances of this case the parties are directed to bear their respective costs.

 