

(1999) 11 BOM CK 0030
In the Bombay High Court
Case No : A.S.S.A. No. 611 of 1981

Employees State Insurance Corporation	APPELLANT
Vs	
Sidram Narayan Madhur and Others	RESPONDENT

Date of Decision : 26-11-1999

Acts Referred:

Employees State Insurance Act, 1948 — Section 75

Citation : (2000) 85 FLR 346 : (2000) 1 LLJ 1300

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : R.V. Jaykar, instructed by M.V. Jayakar and Co, for the Appellant;
P.M. Shah, for the Respondent

Final Decision : Allowed

Judgement

Kochar, J.—The appellant is a statutory Corporation established under the provisions of the Employees State Insurance Act, 1948 for implementation and enforcement of the beneficial legislation which was enacted to provide for certain benefits to employees in case of sickness, employment injury and also to make provisions for certain other matters in relation thereto. The E.S.I. Act provides for applicability of the provisions of the Act to such establishments or factories as prescribed therein. A detailed procedure is also laid down in the Act as also in the rules and regulations framed thereunder. The Act is a self-contained Code in itself and it provides for adjudicating machinery and a forum in the form of Employees State Insurance Court which has all the trappings of a Civil Court and which functions as a Court of law to resolve the disputes between the employees-employers Corporation within the four corners of the Act.

2. The Respondents herein are the members of one family carrying on their business of processing works on winding and warping machines. They are engaged in what is known as Powerloom Industry. It appears from the record that as per the provisions of the Act the Corporation Inspector visited the premises of the Respondents and recorded the names of the employees, who

were found working on the premises and addressed a letter dated October 9, 1968 covering them as factory under the Act from October 27, 1966. It is an admitted position that on receipt of the said letter/notice covering the Respondents under the Act there was no reply given by the Respondents questioning the legality or validity of the said notice and demanding any hearing in the matter from the Corporation. Since the establishments of the Respondents were covered in accordance with the Act they became liable to pay the contribution to the Corporation, and therefore, the notice from Collector, Solapur for recovery of arrears under the Revenue Recoveries Act was issued on April 27, 1971, As soon as the Respondents received the notices they filed the present Suit before the Court of Joint Civil Judge, Senior Division Solapur. It appears that the said suit was decreed after recording of evidence and hearing the parties. The Corporation filed an appeal before the District Court, Solapur to challenge the Judgment and order of the Trial Court Before the District Court a law point was raised by the Corporation that the Civil Court had no jurisdiction to decide the subject matter of the suit as the Civil Court's jurisdiction is specifically barred under the Act. Though this point was not raised before the Trial Court the District Court heard the said point and decided against the Corporation. On referring to several authorities it came to a conclusion that the Civil Court had jurisdiction to decide the issues which were the subject matter of the Civil Suit. Being aggrieved by the said Judgment and Order of the Lower Appellate Court, the Corporation has filed the present Second Appeal for the substantial question of law whether jurisdiction of the Civil Court is barred by the Act.

3. The controversy in respect of the Civil Court's jurisdiction has been once and for all squarely dealt with and settled by the Supreme Court in its judgment reported in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, . After considering the whole legal position in that respect very exhaustively the Supreme Court has summed up the principles as under:

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as chapter V-A then the remedy for its enforcement is either Section 33-C or the raising of an industrial dispute, as the case may be.

The Supreme Court has dealt with the entire history and controversy which arise on this point from time to time. Thereafter all the Courts have followed these

principles. It is therefore, now well-settled that if the jurisdiction of the Civil Court is explicitly ousted by the special provisions of the special enactments in that case Civil Court will have no jurisdiction to deal with the issues which are left to be decided by the special Courts such as the E.S.I. Court in our present proceedings. On the very same point the Karnataka High Court has given a decision which is reported at 1993 (66) FLR . 1041. After referring exhaustively to the provisions of the E.S.I. Act the learned Judge observed as under:

"Thus the scheme under Chapter VI of the Act envisages that there is paramount intent to relegate all disputes of any kind to the cognizance of the Employees' Insurance Court, and u/s 75(3) it specifically excludes the jurisdiction of the civil Courts in that regard. It is not only the forum constituted but under Sections 76, 77 and 78, the Employees' Insurance Court is conferred with all the necessary powers of adjudication. The Employees' Insurance Court is further empowered to refer any question of law involved for decision of the High Court, and if any substantial question is involved an appeal to the High Court is provided u/s 82 of the Act. It is very clear, that it is a complete legislation with regard to the jurisdiction in favour of the special Court and the express exclusion of jurisdiction of Civil Court pertaining to the matters within the jurisdiction of such special Court."

The learned Judge finally concluded as under:

"From this, it follows that the dispute of the present kind, that respondent-plaintiff factory has less than 19 employees and the Act is not applicable, that was raised by filing the civil suit squarely could form the part of adjudication within Section 75(1) of the Act. I am of the view that when the question or dispute raised by the respondent-plaintiff expressly falls within the cognizance of the Employees' Insurance Court by reason of Section 75(1) of the Act, that would exclude the jurisdiction of Civil Court by virtue of Sub-section (3) of Section 75 as well as the provision of Section 9 of the Civil Procedure Code. I further hold that the Employees' State Insurance Act is a special Act which creates liability not existing in common law, which gives special forum of remedy different from the remedy which exist in common law, and the special Act contains provisions which expressly exclude the jurisdiction of Civil Court and the respondent-plaintiff cannot pursue the remedy by filing a suit in Civil Court."

According to me, this is the complete answer to the question raised by Shri P. M. Shah, the learned Advocate for the Respondents. The learned counsel for the Appellant has also drawn my attention to a Judgment of our High Court reported at Employees' State Insurance Corporation, Bombay v. R.P. Gundu and Anr. 1983 LIC 1634 in respect of the exclusive jurisdiction of the civil Court the learned Judge has observed in paragraph 15 as under:

"15. Much argument was advanced that there is no express clause in Sub-section (1) of Section 75 of the Act by which the question or dispute as to whether particular premises were a "factory" or not, would or would not be within the

exclusive jurisdiction of the Employees' Insurance Court. This argument overlooks the basic and express scheme of the Act with regard to the adjudication of disputes and claims, as is provided for by Chapter VI. The wordings of Clauses (a) to (g) of Sub-section (1) of Section 75 have reference to question or dispute with regard to matters as are specifically mentioned in Clause (a) to (ee) and residuary matters within Clause (g). The specific heads of the clauses, like Clause (a), would require an adjudication with regard to the question or dispute as to whether any person is an employee and is liable to pay employee's contribution. Clause (b) relates to the rate of wages or average daily wages of an employee, Clause (c) to the rate of contribution payable by a principal employer in respect of an employee and Clause (d) to the status of the person as to whether he is or was the principal employer of any employee. These clauses have reference to the definitions of "employee" and principal "employer". These definitions are available in Sub-sections (9) and (17) of Section 2 of the Act. By reason of these definitions, to find out an "employee", it must be found out whether a person was employed for wages in or in connection with the work of a "factory" or establishment to which the Act applies, and to find out the "principal employer", it would be necessary to find out the owner or occupier of the "factory" as far as Clause (i) of Sub-section (17) of Section 2 is concerned. These definitions therefore, necessarily take in the adjudication with regard to the finding of the "factory" and the adjudication necessarily, therefore, would center and would be resolved by finding out a "factory" within the meaning of Sub-section (12) of Section 2. It is implicit in these definitions that without finding the "factory" neither the "employee" nor the "principal employer" can be reached. It is only in relation to a factory or an establishment to which the Act applies that the question or dispute can be adjudicated, as is provided for in Clause (a) to (d) of Section 75(1) of the Act. In the light of these clauses, if a reference is made to Clause (g) it takes in any other matter that would be in dispute between a person and the Corporation in respect of any contribution or benefit or other dues payable or recoverable under the Act. Therefore, what could be done even without Clause (g) is made further clear that any other matter which is in dispute between a person and the Corporation in respect of the contribution or benefit or other dues payable or recoverable under the Act is exclusively within the jurisdiction of the Employees' Insurance Court. From this it follows that a dispute of the present kind that was raised by filing the civil suit could form part of the adjudication u/s 75(1) of the Act. Admittedly, the liability was raised by the Corporation by issue of the notices. Persons like the plaintiffs raised a dispute with regard to their liability on the footing that they were not the principal employers running a factory. Such dispute would squarely fall under Clause (c), (d) and (g) of Section 75(1) of the Act. If it is so covered, then by virtue of Sub-section (3) of Section 75 the Civil Court's jurisdiction to decide or deal with such dispute would be barred."

4. The learned Judge has also followed the principles laid down by the Supreme Court in the case of Premier Automobiles Ltd. (supra), Shri Jayakar for the

Appellant further relied on a Judgment of our High Court reported in 1980 LIC 100 delivered by the Division Bench to say that the applicability of the Act to an establishment is automatic if it satisfied the eligibility criteria and that no opportunity of hearing or show cause is necessary. The Division Bench has held that the Act applies automatically and before application of the Act the employer need not be heard.

5. The learned advocate for the respondents however contended that a grievance of the respondents was that the Corporation had not complied with the principles of natural justice and when there is violation of principles of natural justice the civil Court will have jurisdiction to entertain the grievance of the party in a suit and that the civil remedy in such a case is not barred. He further hastened to add that that may be a parallel remedy in addition to the remedy provided under the Act. I am afraid, I cannot accept the said submission of the learned advocate. As prescribed by the Supreme Court in the Premier Automobile's case and as followed by the Karnataka High Court and also by our High Court it is crystal clear that if the Civil Court's jurisdiction is specifically ousted in that case the civil Court will have no jurisdiction to entertain the dispute which is squarely covered by the provision of this Act. Section 75(3) of the Act reads as under:

75(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 a Medical Board, or by a medical appeal tribunal or by the Employees' Insurance Court. Section 75 of the Act has enumerated exhaustively the matters to be decided by the Employees' Insurance Court.

The dispute or the issues raised by the present respondent is squarely covered by the provisions of Section 75 of the Act. There is therefore no escape from the conclusion that the Civil Court had no jurisdiction at all to deal with the issues raised by the respondents before the Civil Court. According to me, the suit was not maintainable as the civil Court had no jurisdiction to entertain the said suit."

6. I, therefore, quash and set aside the judgments and orders of both the lower Courts and allow the Second appeal with no order as to costs.

7. It is however made clear that the respondents may resort to remedy under the E.S.I. Act and the same will be decided by the Employees' Insurance Court in accordance with law.