
(1995) 03 AHC CK 0113
In the Allahabad High Court
Case No : F.A.F.O. No. 719 of 1988

Employees State Insurance Corporation	APPELLANT
Vs	
Tilak Dhari	RESPONDENT

Date of Decision : 21-03-1995

Acts Referred:

Employees State Insurance Act, 1948 — Section 74(1)

Citation : (1995) 71 FLR 296 : (1996) 1 LLJ 243

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : B.N. Asthana and P.K. Asthana, for the Appellant; S.K. Verma, M.C. Khandelpal and A.K. Sachan, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Sri B. N Asthana, learned Senior Advocate appearing for the appellant and Sri A. K. Sachan, learned counsel appearing for the contesting respondent, at length and in detail.

2. These appeals u/s 82 of the Employees" State Insurance Act, 1948, hereinafter called the Act, are directed against orders and judgments of the Addl. City Magistrate II, Kanpur constituted as Employees" Insurance Court under the Act.

3. The appellant contends that the impugned orders and judgments are void as on the dates of passing of the impugned orders and judgments the Addl. City Magistrate II, Kanpur had ceased to be the Employees" Insurance Court and in his place the Civil Judge, Kanpur had been constituted as the Employees" Insurance Court under the Act with effect from May 17, 1988, the date of notification u/s 74(1) of the Act.

4. Submission on behalf of the respondent is that the Addl. City Magistrate II, Kanpur was the Employees" Insurance Court under the Act on the dates on which the impugned orders and judgments were delivered by him. Constitution of the

Civil Judge, Kanpur as the Employees" Insurance Court became effective on October 15, 1988.

5. It is not disputed that the impugned orders and judgments were passed during the period between May 17, 1988 and June 6, 1988. This court is, therefore, called upon to decide as to whether the Addl. City Magistrate II, Kanpur had ceased to be the Employees" Insurance Court under the Act on the dates on which he rendered the impugned orders and judgments.

6. The Government of the State of Uttar Pradesh, exercising powers u/s 74 of the Act read with Section 21 of the General Clauses Act, 1897, issued a notification dated May 17, 1988 constituting the Civil Judge, Kanpur as the Employees" Insurance Court in place of the Addl. City Magistrate II, Kanpur. This notification was published in the Uttar Pradesh Gazette dated October 15, 1988 (Part I) (Khand 42) Sankhya 42.

7. Section 74 of the Act, whereunder the notification dated May 17, 1988 replacing the Addl. City Magistrate II, Kanpur by the Civil Judge, Kanpur as Employees" Insurance Court was issued, reads thus:

"74. Constitution of Employees" Insurance Court. - (1) The State Government shall, by Notification in the Official Gazette, constitute an Employees" Insurance Court for such local area as may be specified in the notification.

(2) The Court shall consist of such number of Judges as the State Government may think fit.

(3) Any person who is or has been a Judicial Officer or is a Legal Practitioner of five years" standing shall be qualified to be a Judge of the Employees" Insurance Court.

(4) The State Government may appoint the same court for two or more local areas or two or more courts for the same local area.

(5) Where more than one court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them."

8. Sub-section (1) of Section 74 of the Act confers upon the State Government power to constitute an Employees" Insurance Court for such local areas as may be specified in the notification. Sub-section (2) authorises the Government to fix the number of Judges of the Employees" Insurance Court. Sub-section (3) of Section 74 prescribes the qualification of the person for eligibility to be a Judge of the Employees" Insurance Court. Sub-section (4) entitles the Government to appoint same Employees" Insurance Court for two or more local areas or two or more Employees" Insurance Court for the same local area. Sub-section (5) of Section 74 envisages that where more than one court has been appointed for the same local area the State Government may by general or special order regulate the distribution of business between the two Employees" Insurance Courts

appointed under Sub-section (4) of Section 74 of the Act. For the purpose of deciding the controversy raised in these appeals Sub-section (1) of Section 74 of the Act, which prescribes the mode and manner of exercise of power of the State Government relating to the constitution of an Employees' Insurance Court, is relevant.

9. A simple reading of Sub-section (1) of Section 74 of the Act indicates that the power of the State Government regarding constitution of the Employees' Insurance Court has to be exercised by issuing a notification in the official Gazette, unless the notification is published in the Official Gazette the constitution of an Employees' Insurance Court cannot become effective. The mode and manner of notification constituting an Employees' Insurance Court prescribed by the Act is publication thereof in the Official Gazette. The language employed in Sub-section (1) of Section 74 of the Act leaves no room for doubt that requirement of publication of the notification constituting an Employees' Insurance Court in the Official Gazette is mandatory as is clear from the expression "the State Government shall, by notification in the Official Gazette, constitute an Employees Insurance Court...." The notification constituting an Employees' Insurance Court has to be made by publication in the Official Gazette. Except the mode of publication in the Official Gazette, no other mode of notification constituting an Employees' Insurance Court is permissible.

10. It cannot be gainsaid that the power of the State Government to constitute an Employees' Insurance Court includes the power to reconstitute it. Thus, the power of reconstitution of an Employees' Insurance Court also has to be exercised in the same manner as the power of constitution, namely, by notification in the Official Gazette. Neither constitution nor reconstitution of an Employees' Insurance Court can become effective before the date of the Publication of the notification under Sub-section (1) of Section 74 of the Act in the Official Gazette. The material date is the date of publication in the Official Gazette, not the date of notification as contended by the appellant.

11. It appears that initially the Addl. City Magistrate II, Kanpur was constituted as Employees' Insurance Court for the area of Kanpur, Kalyanpur, Magarwara and Unnao. But in the year 1988 the Government of the State of Uttar Pradesh decided to reconstitute the said Employees' Insurance Court and constituted Civil Judge, Kanpur as Employees' Insurance Court for the said area. It, therefore, issued the requisite notification dated May 17, 1988. This notification was published in the Official Gazette of Uttar Pradesh dated October 15, 1988. The notification dated May 17, 1988, reconstituting the Employees' Insurance Court of the area of Kanpur, Kalyanpur, Magarwara and Unnao and replacing the Addl. City Magistrate II, Kanpur by the Civil Judge, Kanpur having been published in the Official Gazette of the State of Uttar Pradesh on October 15, 1988 the Addl. City Magistrate II, Kanpur continued to be the Employees' Insurance Court until before October 15, 1988. The Addl. City Magistrate II, Kanpur would be deemed to have ceased to be an Employees' Insurance Court with effect from

October 15, 1988, and not with effect from May 17, 1988 as asserted by the appellant. The Addl. City Magistrate II, Kanpur did not lack competence or jurisdiction to decide the controversy giving rise to the appeals. Consequently, the impugned orders and judgments are not liable to be struck down as void on the ground that the Addl. City Magistrate II Kanpur had ceased to have jurisdiction to decide the controversy on the relevant dates. The contrary contention of the learned counsel appearing for the appellant cannot be sustained. It is, therefore, rejected.

12. In the result, the appeals fail and are hereby dismissed. However, there will be no order as to costs.