
(1972) 03 RAJ CK 0002

In the Rajasthan High Court

Case No : First Appeal No's. 53, 54 and 58 of 1965

Employees' State Insurance Corporation, Jaipur and Others APPELLANT
Vs

The Executive Engineer, P.W.D. Building and Road Workshop, RESPONDENT
Dist. Division, Jaipur and Others

Date of Decision : 08-03-1972

Acts Referred:

Constitution of India, 1950 — Article 141
Rajasthan High Court of Judicature Rules, 1952 — Rule 59

Citation : AIR 1972 Raj 317 : (1972) RLW 155 : (1972) WLN 176

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Advocate : U.R. Tatia and M.D. Purohit, in Appeal No. 58 of 1965, for the Appellant; U.R. Tatia in appeal No. 58 of 1965 and M.D. Purohit, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Kan Singh, J.—The three appeals before me were called on for hearing together as they raise common questions of law. Appeal No, 53 of 1965 is by the Employees' State Insurance Corporation, hereinafter to be referred as the "Corporation", and has been lodged u/s 82 of the Employees Insurance Act, 1948, hereinafter to be referred as the "Act", against the judgment of the Civil Judge. Jaipur City, dated 30-4-1965 disallowing certain claims for employees' contribution under the Act for a period anterior to 1-1-1959 namely, from 2-2-1956 to 31-12-1958. Appeal No. 54 of 1965 is again by the Corporation and is directed against the judgment of the learned Civil Judge dated 31-3-1965 disallowing certain claims. Appeal No. 58 of 1965 is by the Executive Engineer i.e., the employer awarding a decree in favour of the Corporation in respect of certain items of claim.

2. I may narrate the facts with reference to Appeal No. 53 of 1965.

3. The Corporation presented an application u/s 75(2) of the Act for the recovery

of employees" contribution amounting to Rs. 6,368/- against the Executive Engineer, Public Works Department (B & R) Workshop, District Division, Jaipur who was the opposite party. The corporation averred that it was a duly constituted Corporation under the Act and the P. W. D., B & R Workshop, District Division, Jaipur was a factory as defined in sub-section (12) of Section 2 of the Act, with the result that the Executive Engineer was liable to pay to the Corporation contribution for the benefit of the employees as required u/s 40(1) of the Act. It was further averred that the opposite party had become liable to pay employees" contribution to the Corporation with effect from 2-12-1956 from which date the scheme under the Act was implemented for the City of Jaipur. The Corporation proceeded to say that the amount of Rs. 6,368/- had been calculated on an ad hoc basis in respect of the total wage bill of the employees. As regards the opposite party it was submitted in this connection that it had failed to submit the accounts in spite of repeated requests made by the Corporation and consequently the account had been computed on the basis of the figures of the quarterly wage bills of the opposite party. Therefore, a decree for a sum of Rs. 6,368/- was prayed for. A request was also made for waiving the time limit provided under Rule 17(1) of the Employees" Insurance Court Rules, 1959. The reason mentioned for it was that the application could not be filed within the prescribed time before the Employees Insurance Court (Civil Judge), as the opposite party was a Government factory.

4. The opposite party denied its liability for the payment of the contribution. It was pleaded that the claim of the Corporation was time barred and consequently the Corporation was not entitled to any relief. It was further urged that no questions of varying the rule of limitation arose, as the claim of the Corporation was obviously time barred.

On the pleadings of the parties the following issues were framed:--

(1) Whether P. W. D. (B & R) Workshop is a factory as defined in sub-section (12) of Section 2 of the E. S. I. Act 7

(2) Whether non-applicant is liable to pay Employees" Contribution as required u/s 40(1) of the E. S. I, Act at the rates provided u/s 39 read with Schedule I of the Act ?

(3) Whether defendant has not paid employees" contribution and not produced the records and the corporation is entitled to recover the employees" contribution at ad hoc rates ?

(4) Whether the court is inclined to waive off the limitation as empowered under Rajasthan Employees Insurance Court Rules, 1959 as prayed by the applicant partially ?

(5) Whether the claim is partially time barred, and if so to what extent ?

(6) Relief?"

5. The Corporation produced 3 witnesses namely. P. W. 1 S.C. Jain, P. W. 2 Rajendra Nath and P. W. 3 Ramgopal. In rebuttal 2 witnesses were examined by the defendant. Some documents were also produced by the Corporation. Ex. 2 dated 21-5-1960 was the inspection report of an Inspector one Shri R.N. Sharma. This was about the running of the factory. Then Ex. 4/A and Ex.4/B which were dated 29-7-1960 were yet other two reports of inspection by Servashri Malik and Chug respectively. Ex. 5 was dated 11-11-1960 and Ex. 6 was dated 9-12-1960 and they were letters from the Regional Director to the Executive Engineer.

6. Shri S.C. Jain stated that he was in the service of the Corporation since 1959. He gave his evidence on the basis of the files relating to the factory in question in his Office. P. W. 2 Rajendra Nath was another Inspector serving under the Corporation. He, however, stated that he was in service since 1960. Both of them were thus of no assistance. The last witness P, W. 3 Ramgopal proved the document Ex. 1 which was the letter from the Chief Inspector of Factories and Boilers, Rajasthan, Jaipur to the Regional Director of the Corporation in forming him that the factory had been registered under the Factories Act, but Its renewal application for 1960 had not been received so far. Further according to this letter, the horse power used in the Workshop was 10 horse power and the maximum number of persons were 20. In the light of the evidence led by the parties the learned Judge came to the conclusion that the Corporation had failed to prove that the factory in question was a factory from 2-12-1956 to 2-12-1958 for which period a claim could have been made. Accordingly, the learned Civil Judge disallowed the claim for the period from 2-12-1956 to 2-12-1958. However, after looking to the documents produced in the case and in particular the document Ex. 1. he came to the conclusion that the workshop in dispute was a factory from 1-1-1959 when the same was registered by the Chief Inspector of Factories for the year 1959. Further, according to the learned Judge, there was an application for the renewal of the certificate for the year 1960 and that went to show that the workshop was registered for the year 1959. Consequently the learned Civil Judge declared that the workshop was a factory, for the period 1-1-1959 to 30-5-1961, but not for the previous period. Consequently he allowed the Corporation's claim for contribution only in part. Regarding issue No. 2, the learned Judge held that the Executive Engineer was bound to pay the contribution in accordance with the provisions of the Act. This amount was for the period the workshop had been found to be a factory. Regarding issue No. 3, the learned Judge observed that the Executive Engineer had not produced the records of his Office containing the attendance of the employees, their muster roll or the number of workers. Consequently the Corporation was held entitled to calculate contribution at the ordinary rates on an ad hoc basis as per the Government notification. Accordingly, the learned Judge found that the rate on ad hoc basis came to if and not 2 1/2 at which rate the Corporation was found entitled to calculate the contribution for the relevant period. Issue No. 4 was not pressed. Regarding issue No. 5, the learned Judge found that as the period of

limitation prescribed under the Rules made under the Act was only 3 years, the claim of the Corporation was time barred for the period 2-12-1956 to September, 1958. It may be observed that the claim was filed under the Act on 13-10-1961. The Corporation was thus held entitled to claim employees' contribution from 1-1-1959 to 30-6-1960 at the ordinary average rate. Thus, the total employees' contribution found due was Rs. 2,278/-. For the period 1-1-1960 to 31-5-1961 contribution was allowed on ad hoc basis. In the result, the learned Judge awarded a decree for Rs. 2,958/- with proportionate costs.

7. In the two other appeals the averments are identical. The only difference is that the workshop is a different one and then there is difference about the amounts of contribution, but the period for which contribution was claimed was the same. Also in the second case claim for the period 2-12-1956 to 31-12-1958 was held to be time barred and the claim relating to the period commencing from 1-1-1959 was allowed. The Corporation had filed the appeal to the extent the claim was disallowed and the Executive Engineer filed the appeal to the extent the claim was decreed against him.

8. In challenging the decrees the learned counsel for the Corporation raised the contention that there was no limitation for the claim, for contribution made on behalf of the Corporation under the Act. It was submitted that the Limitation Act did not apply and Rule 17 of the Rules was ultra vires. When these appeals came up for hearing before Chhangani, J. on 28-4-1967. he referred a question about the vires of Rule 17 of the Rules made under the Act to a larger Bench on account of the importance of the question raised. These appeals were then listed before a Division Bench under orders of the Chief Justice. They came before a Bench consisting of the Chief Justice and Beri, J. The learned Judges were of the opinion that Rule 17 of the Rules was ultra vires of the rule-making power conferred on the State Government u/s 96(1)(3) of the Act. The finding was accordingly returned to the learned Single Judge for deciding the above six cases accordingly. It is in these circumstances that the three appeals have been listed before this Bench.

9. Learned counsel for the appellant Corporation strenuously contended that the Supreme Court has held Rule 17 of the Rules to be ultra vires in a case reported as *Bharat Barrel & Drum Mfg. Co v. E. S. I. Corporation* 40 FJR 339 : (1972) Lab IC 753 (SC). The inevitable position, according to learned counsel, therefore, was that there would be no bar of limitation in the preferring of the claims by the Corporation against the Executive Engineer concerning the employees demanding contribution under the Act. In order to get round the decision of the Division Bench learned counsel maintained that the pronouncement of their Lordships of the Supreme Court was a declaration of law and by virtue of Article 141 of the Constitution that pronouncement was binding on this Court. In other words, according to learned counsel, the judgment of the Division Bench would not stand in his way in getting the relief. Learned Counsel took the position that what the Division Bench had purported to decide was the question about the vires of

Rule 17 of the Rules, but had not dealt with the question of limitation which was still open before this Bench.

10. The argument of the learned counsel is attractive indeed but it would not stand scrutiny. The pronouncement of their Lordships of the Supreme Court undoubtedly results in declaration of the law which would consequently be binding on all the Courts in India including a High Court, but there is a big snag here and it is that in this very case a Division Bench, to which the question of law was referred by a learned Single Judge, had answered it against the Corporation by holding that Rule 17 of the Rules was intra vires. In the very case in which a larger Bench has given a decision on a question of law that was referred to it, the Single Bench in my humble view, will not be entitled to go behind the decision of the larger Bench. Indeed, according to me, with the decision of that question it ceases to be a pending question or one which has yet to be decided. The decision of the Division Bench in the present case has finally determined the question about the vires of the R. 17 of the Rules. Even though that decision may not be in the keeping with the view taken by their Lordships in *Bharat Barrel & Drum Mfg. Company's case* 40 FJR 339 :1972 Lab IC 353 yet that does not cease to be a decision in the case in hand.

11. Here I may notice the relevant provisions of the Rajasthan High Court Rules. 1952. Chapter V of the Rules deals with the jurisdiction of Judges sitting alone or in Division Courts. Rule 54 occurring in this Chapter lays down that Judges shall sit alone or in such Division Courts as will be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his direction. Rule 55 provides for the jurisdiction of a single Judge. It specifies the matters that may be placed before a single Judge. According to this rule the present appeal was to be heard by a single Judge. There is, however, a proviso to this rule which lays down that (a) the Chief Justice may from time to time direct that any case or class of cases which may be heard by a Judge sitting alone shall be heard by a Bench of two or more judges; (b) a judge, may, if he thinks fit, refer a case which may be heard by a judge sitting alone on any question or questions of law arising therein for decision to a Bench of two judges; Rule 61 of these Rules lays down that save as otherwise provided by these Rules or other law or by any general or special order of the Chief Justice, every other case shall be heard and disposed of by a Bench of two Judges, provided that, on any day when there is only one Judge sitting on the Bench such Judge may exercise jurisdiction which may be exercised by a vacation Judge during the vacation. Rule 59 relates to reference of a case to a larger Bench. I may read this rule in full:--

"Rule 59. Reference of a case to a larger Bench -- The Chief Justice may constitute a Bench of two or more Judges to decide a case or any question or any questions of law formulated by a Bench hearing a case. In the later event the decision of such Bench on the question or questions so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision

on such question or questions and dispose of the case after deciding the remaining questions, if any, arising therein."

12. The present was a case of a learned Single Judge referring a question of law in accordance with proviso (b) to Rule 55 of the Rules and then it was a reference that was disposed of in accordance with Rule 59 of the Rules. The decision of the Division Bench on the question of law was returned to the single Bench hearing the case. In that event the rule contains a mandate that the Bench shall follow that decision on such question or questions and dispose of the case after deciding the remaining questions, if any, arising therein. Therefore, it is not open to this Bench to go behind the decision of the Division Bench about the vires of Rule 17 of the Rules notwithstanding the Supreme Court decision to the contrary. If that question were open, then Rule 17 of the Rules would have to be held to be ultra vires of the State Government.

13. In the present case, therefore, the resultant position is that of the "several questions that were posed, one such question namely, about the vires of R. 17 of the Rules has already been disposed of by this Court through the Division Bench and the single Bench can dispose of the case only after deciding the remaining question or questions. The single Bench has to follow the decision of the Division Bench on questions referred to and decided by it. The case has, therefore, to be disposed of in the light of the decision of the Division Bench. When the matter is so approached on the footing- that Rule 17 of the Rules was intra vires then the inevitable conclusion is that the claim preferred by the Corporation for the period anterior to 1-1-1959 was clearly time barred. As regards the period after 1-1-1959, the decision of the Civil Judge is founded on the registration certificate Ex. 1. according to which the workshop was a factory within the meaning of the Act.

14. Whatever I have said above regarding appeal No. 53 of 1965 mutatis mutandis applies to the other two appeals.

15. In the result. I hereby dismiss all the three appeals leaving the parties to bear their own costs.