
(1996) 04 KL CK 0023
In the High Court Of Kerala
Case No : M.F.A. No. 903 of 1995

E.S.I. Corporation

APPELLANT

Vs

Radhas Printers

RESPONDENT

Date of Decision : 09-04-1996

Acts Referred:

Employees State Insurance Act, 1948 — Section 82(2)

Citation : (1996) 3 ILR (Ker) 160 : (1996) 2 LLJ 1105

Hon'ble Judges : T.V. Ramakrishnan, J;K.A. Mohamed Shafi, J

Bench : Division Bench

Advocate : C.S. Rajan, for the Appellant; N. Dharmadan and Renu D.P., for the Respondent

Final Decision : Dismissed

Judgement

Ramakrishnan, J.—Does the order under challenge in this appeal involve a substantial question of law for the purpose of Section 82(2) of the Employees' State Insurance Act, 1948 (for short "the Act") is the main question arising for consideration in this appeal.

2. Appellant is the Regional Director, E.S.I. Corporation, Thrissur. Appeal is one filed u/s 82 of the Act challenging the order passed by the Employees' Insurance Court, Kollam in I.C. No. 39 of 1991 on its file. As per the impugned order, the E.I. Court has quashed the criminal prosecution launched against the respondent-applicant for the offences alleged to have been committed u/s 85 (a) & (e) of the Act by filing C.C.No. 60 of 1991 before the Chief Judicial Magistrate, Thrissur, as illegal. Further, the E.I. Court has found that the respondent is entitled to get the benefits under the one time amnesty Scheme (for short "the Scheme") announced by the Corporation as per a press release dated March 5, 1992. As such, the E.I. Court has directed the appellant to pass appropriate order in the representation submitted by the respondent claiming the benefits under the Scheme. The above findings of the E.I. Court are under challenge in this appeal.

3. Brief facts of the case are thus: The factory of the respondent is admittedly one covered under the Act and as such liable to submit returns in Form 6 as per the provisions of Section 44(1) of the Act within the time stipulated under Regulation 26 of the Employees' State Insurance (General) Regulations, 1950 (for short "the Regulations"). Similarly, there is no dispute about the liability of the respondent to pay contribution amounts under the Act as provided in Section 40 of the Act read with regulations 29 and 31 of the Regulations. There is also no dispute about the fact that the respondent has not submitted the returns in Form 6 in respect of the employees for the period from 10/89 and ending on September 30, 1990 on or before November 11, 1990, the prescribed time within which the returns ought to have been filed under the Act and Regulations. Similarly, there is no dispute about the fact the respondent has failed to pay the contribution amounts in time for the period from October 10, 1989 to October 31, 1990. However, the respondent has admittedly filed the prescribed returns and paid the contribution amounts in response to Ext. A2 show cause notice issued by the appellant dated November 26, 1990 as evidenced by Exts A3 to A6 documents produced in the case. It is relevant to note that Ext. A2 is a show cause notice issued after the commission of the defaults but prior to the initiation of criminal prosecution, expressly making it clear that the same is being issued without prejudice to the right of the Corporation to take criminal prosecution for the default already committed. Ext. A1 is a photocopy of the letter dated December 5, 1990 addressed to the appellant by the respondent forwarding Exts. A3 to A6 to the appellant. In spite of the submission of the returns and the payment of contribution amounts as evidenced by Exts. A3 to A6 by December 5, 1990, the appellant has launched criminal prosecution, C.C.No. 60 of 1991, against the respondent by filing Ext. A14 complaint u/s 85(a) & (e) of the Act on February 1, 1991 before the Chief Judicial Magistrate, Thrissur. On filing the complaint, the respondent has filed I.C.No. 39 of 1991 u/s 75(g) of the Act before the S.I. Court, Kollam on November 1, 1991 praying for quashing the complaint. The main ground alleged in the application was that at the time of initiating the criminal prosecution, the respondent was not a defaulter since the respondent has already submitted the returns and remitted the contribution amounts as evidenced by Exts. A3 to A6. During the pendency of the application before the E.I. Court, the appellant as per Ext. A7 press release dated March 5, 1992 announced a Scheme whereby the defaulter under the Act were assured certain benefits on satisfying the conditions mentioned in the Scheme including the withdrawal of criminal prosecution already launched. As per the relevant provisions of the Scheme, the respondents were entitled to the benefits of the scheme only on payment of the entire arrears of contribution amounts together with interest and damages, within 30 days from the date of publication of the press release as the default in respect of which the prosecution was launched against the respondent related to a period prior to March, 1991. The respondent on coming to know about the Scheme has submitted Ext. A8 letter to the appellant requesting him to issue necessary direction to the officers concerned to withdraw the criminal complaint, C.C. No. 60 of 1991. In reply to Ext. P8 letter,

the appellant has informed the respondent as per Ex. A9 dated June 21, 1993 that the respondent is not entitled to claim the benefits under the scheme since the respondent has not remitted the interest due on the contribution amounts for the period ending 3/90, 9/90 and 3/91 and damage for contribution amounts ending 3/90 and 3/91. Later, as per Ext. A10 letter dated July 27, 1993 the respondent requested the appellant to intimate the amount of interest and damages, if any, payable in respect of the contribution amounts already paid by him probably to comply with the requirements of the Scheme to claim the benefits thereunder. In the meantime on February 11, 1994 the respondent has filed an application incorporating a prayer for a declaration that the respondent is entitled to get the benefit of the Scheme and to direct the appellant to pass appropriate orders in Ext. A8 representation. The E.I. Court has allowed the amendment and has granted the prayers as per the impugned order.

4. The appellant as respondent in the application before the E.I. Court has denied the various allegations contained in the application and has contended that the respondent is not entitled to get any of the reliefs prayed for in the application. It was submitted that even though, the respondent as per the returns submitted, remitted the contribution amounts as evidenced by Exts. A3 to A6, the prosecution launched against the respondent is perfectly maintainable as the respondent has already committed default and that default continued at least till December 5, 1990. The mere fact that the respondent has submitted the returns and remitted the contribution amounts on a later date, after the expiry of the statutory period but before the initiation of the criminal prosecution, may not be a sufficient reason in law to hold that the criminal prosecution launched against the respondent is illegal and to quash the same on that basis. As regards the benefits claimed under the Scheme, it was contended that the respondent has not remitted the interest and damages statutory due on the defaulted contribution amounts within the time allowed under the Scheme, namely, 30 days from the date of publication of the press release and as such the respondent is not entitled to claim the benefits of the scheme. It is relevant to note that even though a written objection and an additional written objection was filed on May 21, 1992 and December 7, 1994 respectively by the appellant, no specific contention was raised to the effect that the E.I. Court has no jurisdiction to entertain an application to quash the criminal prosecution against the respondent after obtaining necessary sanction in terms of Section 86 of the Act.

5. In the appeal the learned counsel for the appellant Shri C.S. Rajan has challenged the findings of the E.I. Court as without jurisdiction and illegal. It was submitted that the E.I. Court has no jurisdiction to quash the criminal prosecution launched under the provisions of the Act. The jurisdiction of the E.I. Court extends only to matters specified in Section 75 of the Act. The dispute as to whether the prosecution initiated against the respondent under the provisions of the Act is one liable to be quashed or not is not a dispute which could have been entertained and decided by the E.I. Court u/s 75(1) of the Act. It is not a dispute which comes within the enumerated types of disputes under the various

clauses in Sub-section (1) of Section 75. It was strongly submitted that the provisions contained in Section 75(3) of the Act excluding the jurisdiction of the civil court to decide or deal with any question or dispute referred to in Sub-section (1) of Section 75 would clearly indicate that only disputes of a civil nature are brought within the jurisdiction of the E.I. Court. The E.I. Court is thus not entitled to adjudicate upon the legality or otherwise of a criminal prosecution initiated by the appellant under the Act before the criminal court having jurisdiction to try the same. If the respondent has any objection regarding the legality and maintainability of the criminal prosecution, it is legally obliged to raise such objections before the court where such proceedings are pending or before other appropriate courts and not before the E.I. Court having only limited jurisdiction to adjudicate the dispute specifically enumerated in Section 75(1) of the Act. On the basis of the above contention it was submitted that the order passed by the E.I. Court quashing the complaint is totally without jurisdiction, illegal and as such liable to be interfered with by this court in this appeal.

6. In answer to the above contentions, learned counsel Shri N. Dharmadan ably assisted by Smt. Renu D.P. appearing for the respondent has submitted that the appeal itself is not maintainable since no substantial question of law is involved in the order under challenge. No objection regarding the jurisdiction of the E.I. Court to entertain and adjudicate the dispute raised in the application was taken before the E.I. Court. Since no question of jurisdiction was raised before the E.I. Court, it had no occasion to consider and enter a finding regarding the same in the impugned order. As such it cannot be said that the order impugned in the appeal involves a substantial question of law. If only an order involves a substantial question of law and that question is raised in the appeal, an appeal u/s 85(2) of the Act will lie against the order passed by the E.I. Court. As the order does not involve any substantial question of law relating to the jurisdiction, the appeal is liable to be rejected as not maintainable. The Division Bench Decision of this Court reported in *Parli Tile Works (P) Ltd. v. E.S.I. Court* 1973 II LLJ 579 was strongly relied upon by the learned counsel in support of the above submission.

7. The relevant provision prescribing the conditions subject to which appeals can be entertained against orders passed by the E.I. Court u/s 75 of the Act is Section 82 of the Act which reads thus:

"82. Appeal - (1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law."

The above provisions clearly prescribe that no appeal shall lie from an order of a E.I. Court unless the order of the E.I. Court involves a substantial question of law. In the light of the above provision unless the order challenged in the appeal involves a substantial question of law and that question of law is raised in the

appeal, no appeal can be legally entertained u/s 82 of the Act. In other words, the mere fact that a question of law or a substantial question of law is raised in the appeal may not be sufficient to hold that the appeal is maintainable u/s 82 of the Act. As such the relevant question to be considered is whether the order challenged in the appeal involves a substantial question of law?

8. On going through the written objections, original as well as additional, filed by the appellant it is clear that no objection regarding the jurisdiction of the E.I. Court to entertain an application with a prayer to quash the criminal prosecution was expressly taken therein. There is also nothing on record that such a contention was pressed before the E.I. Court at the time of arguments also. It is also evident from the order challenged in the appeal that the E.I. Court has not considered any such question. No finding has also been recorded by the E.I. Court in its order regarding its jurisdiction. As such it is difficult to say that the order under challenge involves a question of law regarding the jurisdiction of the E.I. Court to entertain the dispute raised in the application before it. We find that the Division Bench of this Court has taken the same view in *Parli Tile Works (P) Ltd. v. E.S.I. Court* (supra). Govindan Nair, J. (as he then was) speaking for the Bench has pithily stated the legal position as follows:

".... In order that it may be said that the order involves a substantial question of law, we think that the order must comprise a decision regarding the question of law. If a question of law had been raised but had not been dealt with by the Insurance Court, the decision being rested on other grounds, it cannot be said that the order of Insurance Court involves a question of law. It must be more so where the question itself had not been raised before the Insurance Court and had not been considered or determined by the Insurance Court, as in this case"

We are in respectful agreement with the above view. We would accordingly hold that since no question regarding the jurisdiction of the E.I. Court to deal with the application was raised before it and since the E.I. Court has neither considered the question nor entered a finding thereon in the impugned order, the order under challenge in the appeal does not involve a substantial question of law regarding jurisdiction of the E.I. Court as raised in the appeal. As such the appeal filed against that part of the order has to be rejected as not maintainable. The direct result of the above finding is that the quashing of the criminal prosecution by the impugned order would stand.

9. However, we would make it clear that we would have entertained the appeal and set aside the order of the E.I. Court quashing the criminal prosecution if only the appellant has raised objection regarding the jurisdiction of the E.I. Court to entertain the application praying for quashing the criminal prosecution and the E.I. Court has considered and decided the said question one way or other. We have no doubt in our mind that in the scheme of the provisions contained in Section 75 of the Act, a dispute like the one raised by the respondent in this case will not fall within any of the enumerated types of disputes mentioned in Section 75 of the Act and brought within the jurisdiction of the E.I. Court. As such we are

not referring in detail to the various contentions forcefully raised before us by the learned counsel for the appellant in support of his contention that the E.I. Court has no jurisdiction to entertain the main dispute raised in the application and that the quashing of the criminal prosecution by the E.I. Court is without jurisdiction and illegal. We would also make it clear that we are upholding the order of the E.I. Court only on account of the absence of a substantial question of law in the order appealed against relating to the jurisdiction and not on the ground that the E.I. Court has jurisdiction to quash the criminal prosecution initiated under the Act. If the question of law raised in the appeal which is definitely a substantial question of law, was involved in the order appealed against, we would have set aside the order unhesitatingly on entertaining the appeal holding that the E.I. Court has no jurisdiction to quash a criminal prosecution initiated under the Act accepting the contention of the appellant.

10. As regards the claim for the benefit of the Scheme, we find that the E.I. Court has approached the entire question in a wrong perspective contrary to the specific provisions of the Act and Regulations. From the admitted facts and the documents available on record, it is clear that the respondent has paid the contribution amounts only long after the due dates. When default is made in payment of the contribution amounts, the defaulter incurs a statutory liability to pay interest and damages as provided under the relevant regulations. The fact that in response to Ext.A2 show cause notice issued prior to the initiation of the criminal prosecution the default was made and may not absolve the respondent from the statutory liability to pay interest and damages on the defaulted amounts. Respondent has not taken any attempt within one month from the date of notification to comply with the requirements of the scheme, namely paying of interest and damages statutorily payable on account of default already committed. The first representation claiming the benefits of the scheme was submitted by the respondent only as per Ext. A8 letter dated August 19, 1992, long after the expiry of one month from the date of Ext.A7 press release dated March 5, 1992, long after the expiry of one month from the date of Ext.A7 press release dated March 5, 1992. As such with the evidentiary materials on records, it will be perverse and totally illegal to find that the respondent is entitled to any of the benefits under the scheme. In fact the stand taken by the Corporation is precisely that. The fact that long after the expiry of 30 days from the announcement of the Scheme, the respondent as per Ext.A10 dated July 27, 1993 has requested the appellant to inform the quantum of interest and damages payable would also indicate that the respondent was also aware of the liability to pay interest and damages. As such, we find that the declaration granted to the effect that the respondent is entitled to the benefits under the scheme and the consequential direction issued to the appellant to pass appropriate orders in Ext.A8 representation are unwarranted and illegal. We would set aside the same. Accordingly we would uphold the order to the extent it has quashed the criminal prosecution since we have found the appeal against that portion of the order as not maintainable and would set aside the order in so

far as it has found the respondent entitled to the benefits under the scheme.

11. We would accordingly dismiss the appeal to the above extent. As regards the relief claimed in respect of the benefits under the scheme, we would allow the appeal and set aside the order granting the benefits under the scheme to the respondent.

Appeal is disposed of as indicated above. No costs.