

(1993) 02 KAR CK 0018
In the Karnataka High Court
Case No : C.R.P. No. 630 of 1992

E.S.I.C

APPELLANT

Vs

Nirmala Chemical Industries and others

RESPONDENT

Date of Decision : 18-02-1993

Acts Referred:

Employees State Insurance Act, 1948 — Section 74 (1), 74 (3), 75, 75 (3)

Citation : (1993) 1 ACC 614 : (1993) ILR (Kar) 1244 : (1993) 1 KarLJ 451 :
(1993) 2 LLJ 308

Hon'ble Judges : Jagannatha Shetty, J

Bench : Single Bench

Advocate : M. Papanna, for the Appellant; Muralidhar, G.A. and Jayakumar S. Patil, for the Respondent

Judgement

1. This revision petition is directed against the order, dated January 22, 1992, passed on Issue No. 4 in O.S. No. 679 of 1988 by the Third Additional Munsiff at Hubli, as to civil court's jurisdiction to entertain the suit, which will have to be decided on adducing evidence, along with other issues but not as a preliminary issue.

2. Facts in brief are that the petitioner is the Employee's State Insurance Corporation. The respondent-plaintiff filed a suite against the Employee's State Insurance Corporation- defendant praying that the Employees' State Insurance Act is no applicable to their factory and sought a relief of injunction against the E.S.I. Corporation restraining them from taking any action against the plaintiff. It is contended by the plaintiff that only 19 employees are working from the starting of the factory and the Employees' State Insurance Act will be made applicable only when 20 or more persons are employed. The petitioner-defendant filed the written statement and they have specifically contended that in view of Section 74(3) of the Employees' State Insurance Act, the civil court has no jurisdiction to entertain the suit. The Court has framed issue No. 4 as to whether the Court has jurisdiction to entertain the suit or not. The petitioner has

requested the Court to try issue No. 4 as a preliminary issue. The Court, after hearing the parties and on considering the material on record, has held that since the plaintiff has challenged the applicability of the Act to his factory, i.e., whether the Act is applicable or not requires evidence, "therefore, on mere pleadings of the parties, it cannot be said that this Court had no jurisdiction to entertain the suit and this issue will be considered along with other issues after recording the evidence of both parties", and rejected the request of the petitioner to decide issue No. 4 as preliminary issue. Hence, this revision petition by the petitioner-defendant-Employees' State Insurance Corporation.

3. Both the counsel appearing for the parties have submitted that the question whether the civil court has jurisdiction or not may be decided by this Court instead of remanding the matter to the lower Court to decide it, in order to avoid prolongation of the litigation and to give quietus to the vexed question which often arises.

4. Facts are few and simple. The plaintiff has challenged the action of the Employees' State Insurance Corporation as if the Act is not applicable to its factory by filing a suit seeking an order of injunction restraining the defendant-Corporation from taking any action against them under the Act. It is the further case of the plaintiff that at no time they had engaged more than 19 persons in the factory, as such, the Act is not applicable and it cannot be made applicable and it cannot be made applicable to them. The petitioner-Corporation has contended that the civil court has no jurisdiction to entertain the suit, for, these matters, viz., the applicability of the Act or otherwise, can be agitated under the forum constituted by the Act, which has created the liability and it gives special remedy which will have to be pursued. It is further argued by the learned counsel for the petitioner, that where the liability not existing in common law is created by the special statute which at the same time gives the special and particular remedy for enforcing it, the remedy provided by the statute is to be followed and, it is not open to the party to pursue any other remedy much less the suit in civil court.

5. Learned counsel for the respondent-plaintiff referring to Section 9 of the CPC contended that the civil court shall have jurisdiction to try all suits which are of civil nature. The mere conferment of special jurisdiction on a Tribunal in respect of the said matter does not in itself exclude the jurisdiction of the civil court. In support of his submission, he has relied on the following decisions : Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , and The Pabbojan Tea Co. Ltd., etc. Vs. The Deputy Commissioner, Lakhimpur, etc.,

6. I have gone through the judgments cited by the respondent's counsel. The principles laid down in the above cases I do adhere, but it is inapplicable to the facts of this case. A suit in civil court will always lie to question the order of a Tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said Tribunal abuses its power or does not act under the Act, but in violation of the provisions. (Refer Firm Seth Radha Kishan

(Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana, . In the instant case, it is not questioning the order of the tribunal constituted for the purpose to resolve the dispute, but the question of taking cognizance to determine the given cause.

7. u/s 9 of the Civil Procedure Code, no doubt, the Court shall have jurisdiction to try all kinds of suits of civil nature excepting the suits of which cognizance is either expressly or impliedly barred. It is necessary to look into the scheme of Chapter VI of the Act. The relevant provisions of the Act are sections 75, 76, 77 and 78. It is proper and necessary to refer to Section 75 of the Act :

"75, Matters to be decided by Employees" Insurance Court. (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 employee's contribution, or

(b) the rate of wages or average daily wages of an employee for the purpose of this Act, or

(c) the rate of contribution payable by the principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

(ee) any direction issued by the Corporation u/s 55A on a review of any payment of dependent's benefits, or

(f) omitted,

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act or any other matter required to be or which may be decided by the Employees" Insurance Court under this Act,

such question or dispute subject to the provisions of sub-section (2-A) shall be decided by the Employees" Insurance Court in accordance with the provision of this Act.

(2) Subject to the provisions of sub-section (2-A), the following claims shall be decided by the Employees" Insurance Court, namely :-

(a) claim for the recovery of contributions from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate

employer;

(c) omitted;

(d) claim against a principal employer u/s 68;

(e) claim u/s 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and

(f) any claim for the recovery of any benefit admissible under this Act.

(2-A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of Section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

(2-B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless she has deposited with the Court fifty per cent. of the amount due from him as claimed by the Corporation :

Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(3) No civil court shall have jurisdiction to decide or deal with any question 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."

8. 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 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.

9. Learned counsel for the respondent, however, has contended that the number of employees employed in his factory are less than 19 and, as such, the Employees' State Insurance Act is not applicable. Whether the Act is applicable or not cannot be construed as a subject matter of dispute between the parties, viz., the employer and Employees' State Insurance Corporation, and as such it does not fall within the cognizance of the Employees' Insurance Court. This contention, in my opinion, is devoid of any merits and it is to be rejected for the following reasons :

It is found that the wording of clauses (a) to (g) of sub-section (1) of Section 75 have reference to the question or dispute with regard to the matters specifically mentioned therein and residuary matters within clause (g). These clauses have reference to the definitions of employer and principal employer. These definitions are found in sub-sections (9) and (17) of Section 2 of the Act which necessarily therefore take in the adjudication with regard to the finding of the "factory" which would centre round the meaning of "factory" defined under sub-section (12) of Section 2. Thus, it is only in relation to a factory or an establishment to which the Act applies, that question or dispute can be adjudicated, as is provided for in clauses (a) to (d) of sub-section (1) of Section 75 of the Act. In the light of these clauses if a reference is made to clause (g), it would be clear that it takes in any other principal employer and the Corporation in respect of any contribution or benefit due or recoverable under the Act and the applicability of the Act. In other words, could be done even without clause (g) is made further clear that any "other matter" obviously meaning thereby that dispute between a person and Corporation as the application of the Act, pertaining to the contribution or benefit or other dues payable is exclusively within the jurisdiction of Employees' Insurance Court. In the decision in *Employee's State Insurance Corporation v. P. R. Gundu* (1984) 64 FJR 120 , it is observed thus (at page 129 of FJR) :

"In the context of the provision of the Industrial Disputes Act, the Supreme Court in the case of *Premier Automobiles Ltd. v. K. S. Wadke* (1975) 48 FJR 251, restated the position that if the industrial dispute relates to the enforcement of a right or an obligation created under that Act, then the only remedy available to the suitor was to get an adjudication under the Act. The principle that applies to the industrial dispute would squarely govern the dispute with regard to the liability of the principal employer to pay the contribution or the special contribution. Such dispute as to liability would be excluded from the jurisdiction of the civil court. Once the jurisdiction is so founded in favour of the Employees' Insurance Court, it is well-settled principle that such Court or Tribunal will have jurisdiction to decide all question that are necessary for the purpose of giving or refusing to give the relief under the provisions of the given statute : See *Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi*, ; *Dhulabhai v. State of M.P.*, AIR 1960 SC 78; *Shree Raja Kandregula Srinivasa Jagannatha Rao Pantulu Bahadur Garu Vs. State of Andhra Pradesh*, , and *Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation*, . The suits of the present kind which raised the disputes

having reference to the provisions of the Employees' State Insurance Act that has provided an adjudicatory machinery will have to be treated as barred on the pari materia principle that was applied when attempts were made in the face of the special statute to file civil suits relying on the provisions of Section 9 of the CPC in respect of disputes of the kind which could fall within the special adjudication contemplated by special statute to file civil suits relying on the provisions of Section 9 of the CPC in respect of disputes of the kind which could fall within the special adjudication contemplated by special status "See Custodian of Evacuee Property Punjab and Others Vs. Jafran Begum, ; Mohd. Mahmood and Another Vs. Tikam Das and Another, ; and Ohene Moore v. Akesseh Tayee, AIR 1935 PC 5."

10. 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 or raised by the respondent plaintiff expressly falls within the cognizance of the Employees' Insurance Court by reason for Section 74(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 special Act which creates liability not existing in common law, which gives special forum of remedy different from the remedy which exists 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.

11. For the reasons stated above, this revision petition is allowed. The order of the trial court is set aside. The lower Court is directed to reject the plaint and dismiss the suit as not maintainable. No costs.