
(1994) 12 MAD CK 0079
In the Madras High Court
Case No : A.A.O. No's. 541 to 544 of 1988

E.S.I.C.

APPELLANT

Vs

Trichy Dist. Co-op. Milk Producer's Union Ltd., Tiruchirapalli

RESPONDENT

Date of Decision : 16-12-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 44, 45, 45A, 45B, 75

Citation : (1995) 2 LLJ 581

Hon'ble Judges : N. Arumugham, J

Bench : Single Bench

Judgement

N. Arumugham, J.—These four appeals arise out of a common order passed by the learned District Judge of Tiruchirapalli made in E.S.I.O.P. Nos. 1 to 4 of 1976 and E.S.I.O.P. No. 1 of 1977, dated 23-7-1986 in which E.S.I.O.P. Nos. 1 to 4 of 1976 were filed by the Trichy District Co-operative Milk Producers' Union Limited represented by its Managing Director under Sec. 75 of the Employees State Insurance Act, praying to declare the order passed by the Employees State Insurance, directing the petitioner to pay a sum of Rs. 26,225.77 as employees contribution for the period from 28.6.1967 to 30.6.1973 as illegal, void and unenforceable in E.S.I.O.P. No. 1 of 1976 to pay assume of Rs. 24,886.50 covering for the period from 1.7.1973 to 31.3.1975 in E.S.I.O.P. No. 2 of 1976 to the abovesaid effect, to pay a sum of Rs. 27,396 as contribution for the period covering from 30.6.1970 to 30.6.1973 to the abovesaid effect in E.S.I.O.P. No. 3 of 1976 and to pay a sum of Rs. 3,120 as contribution covering for the period from 1.4.1975 to 26.7.1975 as illegal, void and unenforceable in E.S.I.O.P. No. 4 of 1976. However, since there was no appeal filed against the order passed by the learned District Judge in E.S.I.O.P. No. 1 of 1977 of the same common order by either parties, the other appeals alone were heard on merits.

2. Since the four appeals warrant a common question of law arising between the same parties, with the consent of the bar all the four appeal were heard together and disposed of by rendering this common judgment.

3. The short facts of the case as culled out from the records are extracted as hereunder :

The Tiruchirapalli District Co-operative Milk Producer's Union Limited, registered under the Act 6 of 1932 functioning to cater the milk to the consuming public was having their network spread over throughout the district and the collection made thereon are received pasturised and distributed to the consumers. During the said process, the various employees of the said Union come admittedly under the categories and definitions provided under the Employees' State Insurance Corporation Act. For the said reason after making the necessary inspection, studying the working condition and the nature of business with its employees and so on, necessary materials were collected by and on behalf of the appellant herein as provided under Sec. 45A of the Employees State Insurance Corporation Act (hereinafter referred to as the "Act"), on the basis of which, draft contributions were prepared and sent to the Union inviting their response in order to collect the contributions as provided under the Act. The draft orders sent by the E.S.I. Corporation have been marked as Exs. A-5 and A-6. The follow-up communications asking for the reasoning and explanation and directions given to the appellant Union are covered under Exs. A-1 to A-4, which are dated 10.7.1975 and 11.11.1975. Though the Milk Producer's Union sent the various communications challenging and representing their contentions, validity and the basis of contributions required, as evident from Exs. B-1 to B-14 on various grounds, the matter has not reached its finality. However, at this stage, it appears that the above four petitions have been filed before the Court below under Sec. 75 of the Act. Consequently, another E.S.I.O.P. No. 1 of 1977 was also filed on behalf of the Union for the return of certain amount made by way of contribution already.

4. After recording the oral evidence adduced on behalf of the respective parties and considering the documentary evidence with all its ambit, the learned trial Judge in his elaborate and detailed lengthy judgment has accepted the case of the Milk Producers' Union and consequently, declared the communications as well as the draft covered under Exs. A-1 to A-6 were void, and not valid in law and accordingly, set aside the same. Aggrieved at this, the Employees' State Insurance Corporation has filed the above four appeals canvassing the correctness of the decision arrived at by the learned trial Judge in these appeals.

5. Mr. G. Desappan, learned counsel appearing for and on behalf of the appellant viz., the Employees State Insurance Corporation, mainly dealt with his attack on the decision rendered by learned trial Judge in the judgment under these appeals on the ground that the learned trial Judge has overlooked the fact that though the Corporation is competent to prepare the draft after the necessary investigation was made with regard to any contributor under the Act and then alone the show cause notice has been issued to such contributor for the purpose of getting his response, viz., the explanation or objections, if any, and that was the procedure, which has been adopted in this case and that even doing so, no

prejudice of any kind has been caused to the Milk Producer's Union and even assuming that the union could well formulate its objections or explanation to the draft order or communication prepared under Sec. 45A and without taking cognizance of this anxiety of the matter, the learned counsel would contend that the impugned decision rendered by the learned trial Judge is not correct in law, but however, erroneous.

6. On the other hand, Mr. G. Veerabhadhira, learned counsel for and on behalf of the Milk Producers Union would contend that a show cause notice or an opportunity to the contributors to show their explanation or objections, if any, must necessarily be given before the conditions provided under Sec. 45A are to be worked out, either for preparing the draft order or final order by the Corporation and that is what exactly the law prevailing at present as enunciated by the Supreme Court, and that, therefore, without adhering to the said norm, the E.S.I. Corporation have no competency to set up a new procedure to be followed and that, therefore, there was no merit in these appeals according to the learned counsel.

7. Sec. 45A of the Employees' State Insurance Act, 1948 as amended by Act 29 of 1989 reads like this :

"45-A Determination of contribution in certain cases" (1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Sec. 44 or any Inspector or other official of the Corporation referred to in Sub-sec. 2 of Section 44 is prevented in any manner by the Principal or immediate employer or any other person, in exercising his functions or, discharging his duties under Sec. 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment.

Provided that no such order shall be passed by the Corporation unless the Principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.

2. An order made by the Corporation under Sub-sec. (1) shall be sufficient proof of the claim of the Corporation under Sec. 75 or for recovery of the amount determined by such order as an arrear of land revenue under Sec. 45B (or the recovery under sec. 45-C to Sec. 45-B".

8. In a case *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, . At page 1484 in paragraph 22 on the basis of the facts of that case, while upholding the quantification of the contribution made by the Corporation, the Supreme court has observed as follows :

"Learned counsel for appellants finally submitted that, in this event of our negating his legal contention, he should be given the benefit of natural justice we agreed. The assessment of the quantum of the employees' contribution has

now been made on an adhoc basis because they merely pleaded non-liability and made no returns. On the strength of Sec. 45A the contribution was determined without hearing. In the circumstances of the case, and the learned Attorney General has no objection we think it right to direct the relevant Corporation authorities to give a fresh hearing to the principal employers concerned, if sought within two months from today, to prove any errors or infirmities in the physical determination of the contribution. Such a hearing in tune with the ruling of this Court in *The Employees State Insurance Corporation, Bhopal Vs. The Central Press and Another*, is fair and so, we order that the assessment shall be reconsidered in the light of de novo hearing to the appellants and the quantum of contribution affirmed or modified by fresh orders."

9. It is thus to be noticed at this stage the contributions fixed under Sec. 45A of the Act relates to the period 1967 to 1975 in all the cases. Act 29 of 1989 amending the above section of law came into force only in the month of October 1989 and until in and by which a new proviso has been inserted to Sec. 45A perhaps it was based on the principals of natural justice and laid down by the Supreme court in very many cases. There was no controversy in this case that before fixing the contribution pertaining to the draft order or its communication, no opportunity was given to the contributor, viz., the Milk Producers" Union at any point of time. If this is so that would provide clearly the principles being followed against the natural justice; that would follow clearly against the principles of natural justice. Under such circumstance, before quantifying a contribution either roughly or precisely by the authority legally constituted it cannot be contended that such person need not be heard. Natural justice requires that an opportunity should be given to such persons before quantifying his liability to the contribution. Perhaps with the principle and idea in mind the section of law has been amended by adding the proviso above referred in tune with the decisions rendered by the Supreme Court. I am of the firm view that an opportunity must be given to the contributor, viz., Milk Producers" Union in this case, to be heard by means of a show cause notice or explanation called for before quantifying any contribution amount and that opportunity is a since qua non and without the compliance of which, the body constituted under the act cannot be legalised to proceed with the quantification of the contribution or the recovery thereof and so on. Therefore, on this ground alone as being a legal error and lapse which goes to the propriety of the very impugned order, the same is liable to be set aside.

10. It is true that the learned trial Judge had a very elaborate and detailed exercise in the trial and has rendered a very lengthy judgment, which in my view and constraint is not an useful exercise in the context of the above legal point.

11. For all the foregoing reasoning, I am fully constrained to set aside the common order passed by the learned District Judge in E.S.I.O.P. Nos. 1 to 4 of 1976 dated 23.7.1986, and well as the notices covered under Exs. A-1 to A-6.

12. In the result, these four appeals stand succeeded and are allowed, setting

aside the impugned order, viz., the common order passed by the learned District Judge, Trichirapalli and made in E.S.I.O.P. No. 1 to 4 of 1976 dated 23.7.1986 and notices covered under Exs. A-1 to A-6. But, however, since there was an error to flaw committed and for the various other reasonings, as a fresh investigation is needed in accordance with the procedure provided for the same under the Act, while, setting aside the impugned common order as well as the notices covered under Exs. A-1 to A-6, I feel in the interests of Justice, remanding the whole matter to the Regional Director of the Employees' State Insurance Corporation to consider the matter afresh in the light of my foregoing reasonings and points above referred and proceed in accordance with law, if necessary. However, there will be no order as to costs under the circumstances.

13. Appeals allowed.