

(1968) 03 MAD CK 0021
In the Madras High Court

Gemini Studios

APPELLANT

Vs

Employees' State Insurance Corporation and Another

RESPONDENT

Date of Decision : 05-03-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 48
Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 2, 75, 81
Industrial Disputes Act, 1947 — Section 33C
Limitation Act, 1963 — Section 2, 30
Revenue Recovery Act, 1890 — Section 5

Citation : (1970) 2 LLJ 243

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Judgement

Venkatadri, J.—The studio magnates of Gemini, Vijaya and A.V.M. have filed these petitions under Article 226 of the Constitution of India.

Writ Petition No. 843 of 1965 is to quash the order of the Regional Director, Employees' State Insurance Corporation, Madras, requiring the

Collector of Madras u/s 5 of the Revenue Recovery Act to recover a sum of Rs. 44,336 from the proprietors of the Gemini Studios. Writ Petitions

Nos. 3093 of 1965 and 4594 of 1965 are to forbear the respondents, namely the Regional Director, Employees' State Insurance Corporation,

and the Collector of Chingleput from collecting or recovering the employees, special contribution u/s 73-D of the Employees' State Insurance Act.

The Regional Director of the Employees' State Insurance Corporation has demanded the payment of Rs. 43,234 from the petitioner in Writ

Petition No. 3093 of 11165 (Vsjaya Productions) and has issued notices intending to take coercive steps to the petitioner in Writ Petition No.

4594 of 1965 (A.V.M. Studios). The assessments have been made on an ad hoc basis, as the factory in each case failed to furnish the particulars required u/s 73-E of the Employee^ State Insurance Act.

2. The main contention of the petitioners is that the claim itself is barred by limitation. The only provision is Rule 17 which has prescribed a period of one year to recover the arrears of contribution from the date on which the cause of action arose or the claim became due. This rule was struck down by a Division Bench of this Court in *Solar Works v. Employees' State Insurance Corporation* (1963) 31 F.J.R. 24, in the following words:

Where an Act itself does not provide for limitation with reference to, a particular matter and the delegation of power to make rules is conferred by a section of the Act which does not, expressly or impliedly, relate to the power to prescribe time, the authority to which the power is delegated, namely, the State in this case, cannot make a rule prescribing limitation.

Even after the pronouncement of the judgment, the main Act was not amended prescribing a period of limitation for the recovery of arrears of employer's contribution. When the main Act does not provide for any period of limitation, the question is what is the period of limitation in respect of collection of arrears of employer's contribution either under the Limitation Act or under the general law. In such a case, the only article that can be said to apply is Article 181 a residuary article which applies to applications for which no period of limitation is provided elsewhere in the Schedule to the Act or by Section 48 of the Code of Civil Procedure. The period of limitation prescribed under that article is 3 years. In this case, as the claim is made from the year 1952 onwards, that article cannot be applied.

3. The Department contended that, even assuming that there was no provision of law prescribing the period of limitation to recover the arrears of contribution, still it can claim arrears at any time. The department seeks to recover the contribution, for 13 years, which was due and payable in quarterly instalments by the petitioners. The Department seeks to rely on the observations made by their Lordships of the Supreme Court in *Bombay Gas Co. Ltd. v. Gopal Bhiva* (1963) 25 F.J.R. 179, which was a case arising u/s 33C(2) of the Industrial Disputes Act:

The failure of the legislature to make any provision for limitation cannot, in our opinion, be deemed to be an accidental omission. In the

circumstances, it would be legitimate to inter that legislature deliberately did not provide for any limitation u/s 33-C(2). It may have been thought

that the employees who are entitled to take the benefit of Section 33-C(2) may not always be conscious of their rights and it would not be right to

put the restriction of limitation in respect of claims which they may have to make under the said provisions. Besides, even if the analogy of

execution proceedings is treated as relevant, it is well known that a decree passed under the CPC is capable of execution within 12 years,

provided, of course, it is kept alive by taking steps in aid of execution from time to time as required by Article 182 of Limitation Act; so that the

test of one year or six months" limitation prescribed by the Payment of Wages Act cannot be treated as a uniform and universal test in respect of

all kinds of execution claims. It seems to us that where the Legislature has made no provision for limitation, it would not be open to the courts to

introduce any such limitation on grounds of fairness or justice. The words of Section 33-C(2) are plain and unambiguous and it would be the duty

of the Labour Court to give effect to the said provision without any considerations of limitation.

4. But it must be understood that the principle laid down by the Supreme Court in the above said case is for claiming the statutory benefits

conferred on the employees by the Industrial Disputes Act. But, in the instant case, the claim is under the Employees' State Insurance Act which

provides for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in

relation thereto. This Act is the outcome of a policy to provide remedy for the widespread evil arising from the consequences of poverty. It is a

piece of social security legislation. It was introduced in all countries to eliminate want, disease, dirt, ignorance and indigence. It also provides for

payment to dependents in certain cases. In those circumstances, the department cannot allow the arrears to be accumulated continuously for a

period of 13 years and then suddenly swoop on the employers and demand them to pay their arrears in one lump sum under threat of coercive

process. Learned Counsel for the petitioners contended that even assuming that the observations of their Lordships of the Supreme Court might be

applicable to a case of similar facts, still his definite stand was that the claims were barred by limitation, especially after the new Limitation Act

came into force. The new Limitation Act came into force on 5th October, 1963. To support his stand, he relied on the decision of the Bombay

High Court in *The Employees' State Insurance Corporation, Bombay Vs. Bharat Barrel and Drum Manufacturing Co. Private Ltd. and Another*, .

In that case, reference was made to the Bombay High Court by the Employees' State Insurance Court, Bombay, u/s 81 of the Act, as to whether

Rule 17 of the Employees' State Insurance Rules was ultra vires the rule making powers of the State Government and if so what was the period of

limitation that would apply to applications filed by the Corporation to the Employees' Insurance Court. The Division Bench of the Bombay High

Court followed the decision of this Court already referred to and struck down Rule 17, While answering the second question, the learned Judges

observed:

The question is what period of limitation, if any, applies to applications filed by the Corporation to an Employees' Insurance Court. The answer

depends upon whether the application of the Corporation was made before 1st January, 1964, or thereafter. This is because the Limitation Act of

1963 came into force on 1st January, 1964 and replaced the Indian Limitation Act of 1908. Under the Indian Limitation Act of 1908 no period of

limitation was prescribed for an application like the one made to an Employees' Insurance Court. Section 2(10) of the Indian Limitation Act of

1908 defined a suit as not including an appeal or an application. No period of limitation prescribed for filing of a suit can, therefore, have any

relevance to an application filed before an Employees' Insurance Court. The only article in the Act which might have applied to such an application

was Article 181 which provided a period of limitation of three years. However, as pointed out by the Supreme Court in the aforesaid decision in

Bombay Gas Co. Ltd. v. Gopal Bhiva (1963) 25 F.J.R. 179:

...It is well-settled that Article 181 applies only to applications which are made under the Code of Civil Procedure....

Thus an application filed in an Employees' Insurance Court before 1st January, 1964, for a relief u/s 75 of the Employees' State Insurance Act

was not subject to any period" of limitation. Applications filed on or after 1st January, 1964, would, however, be covered by Article 137 of the

Limitation Act of 1963 which provides a period of limitation of three years from

the time when the right to apply accrues. Section 2(b) of the Limitation Act of 1963 lays that an "application" includes a petition. Article 137 of the new Act covers all applications for which no period of limitation is provided by other articles in the Act. Hence our reply to the second question submitted by the Bombay Employees' Insurance Court will be that applications filed by the Corporation before 1st January, 1964, are not subject to any period of limitation, and that those filed thereafter are subject to the period prescribed in Article 137 of the Limitation Act of 1963. Article 137 of the Limitation Act of 1963 which has replaced Article 181 of the Indian Limitation Act of 1908 prescribes a period of limitation of three years from the time when the right to apply accrued. Therefore, if at all, the department can recover the arrears of contribution only for a period of three years commencing from 1962. But learned Counsel for the petitioners contended that even for these three years the petitioners are not liable to pay the contribution, since the department had not made use of the provision contained in Section 30(b) of the Limitation Act of 1963.

This Sub-section is in the following words:

...any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be preferred or made within a period of ninety days next after the commencement of this Act or within the period prescribed for such appeal or application by the Indian Limitation Act, 1908, whichever period expires earlier. Since the Department has not filed an application before the Insurance Court nor taken any steps within 90 days to claim the arrears of contribution, the Regional Director is not clothed with the necessary powers to call upon the Collector of Madras or Chingleput to recover the accumulated arrears of employer's contribution at one stroke u/s 5 of the Revenue Recovery Act.

5. Learned Counsel for the petitioners next contended that even on the merits the letter issued to the Collector cannot have any force, for the petitioners are not liable to pay contribution in respect of employees working in the various departments of the studios which are not covered by the definition of the term "factory" in the Employees' State Insurance Act. The petitioners have raised not only a controversy in regard to the payment of contribution in respect of those employed in the departments not

covered by the definition of the term "factory" but also disputed the right of the department to demand arrears of contribution from 1952 to 1964. The demand does not indicate the basis of computation with reference to the number of employees for each period. Thus order Section 75(g) of the Employees' State Insurance Act, when there is a dispute between the principal employer and the Corporation in respect of any contribution or benefit or dues payable or recoverable under the Act, such a question should be decided by the Employees' State Insurance Court. Learned Counsel further contended that without giving the petitioners any opportunity or any show cause notice the Regional Director of the Employees' State Insurance Corporation could not ask the Collector to enforce the provisions of the Revenue Recovery Act, and that such a memo issued to the Collector was arbitrary and unconstitutional, because it did not indicate the sums ascertained for each quarter and the number of persons for whom in respect of each period contribution was due and payable and other related questions. This clarification is necessary because there has been a variation of opinion expressed by the learned Judges of this Court since 1952. In *In re K.V.V. Sharma, Gemini Studios v. The State* (1952) 4 F.J.R. 329, a Division Bench of this Court consisting of Govinda Menon and Basheer Ahmed Sayeed, JJ., had to consider whether the entire studios would constitute "factory" and whether all the persons employed therein were workers as defined in the Act, for whom the employer would be Habit to pay contribution. A studio consists of various departments. The learned Judges observed (at p. 351):

...it is legally possible to separate those departments from the other which cannot be styled as factories.... It is permissible to separate the carpentry, moulding and tinkering departments which are really unnecessary for the production of films from the others.... In our opinion it is possible, even if some of those departments are factories, to separate those which are not factories from those which are factories.

In pursuance of this decision, the Department began to correspond with the studio-owners asking them to pay the employer's contribution and the petitioners paid the contribution in respect of the personnel of such of those departments covered by the above decision. But the department raised the contention that as per the decisions the term "employee" would have wider

meaning than the term, "workmen" as defined in the Act and was capable of bringing all persons working within the premises of the factory, provided they were engaged in work incidental to or connected with the work of the factory, and that even office boys, workmen and scavengers working within the factory premises would appear to be covered by the Act, since their work was connected with the work of the factory. But the department admitted that production, publicity and orchestra departments would not be covered by the Act. While correspondence was thus going on, a similar question came up for consideration in *Employees' State Insurance Corporation v. Sriramulu Naidu* (1959) 19 F.J.R. 238. The learned Judges observed at p. 242:

Where, therefore, within the same premises or compound, a number of departments are situated and the departments are engaged in the work in connection with or incidental to, the manufacturing process of the factory they would prima facie all form part of the factory.

Again, at p. 246, the learned Judges observed:

So long as the efforts of all the departments are co-ordinated to achieve the main object of the factory, that is, the manufacture, the decision whether a particular place is a factory or not would depend largely on the question, whether those activities are carried on, within the premises of the factory; the premises need not be a single building, a number of buildings within a single compound might constitute a factory.

This decision was rendered on 13th October, 1959. The department began to correspond with the studio owners and demand contribution from

them in respect of all persons working within the studio, contending that they are engaged in the work in connection with or incidental to the

manufacturing process of the factory, Once again controversy arose between the department and the petitioners in regard to the payment of

contribution in respect of personnel forming part of production department, which according to the previous decision was not covered by the Act.

The department claims contribution with retrospective effect. The stand of the petitioners is that while they have paid contribution as per the

decision in the first case, namely, *In re, K.V.V. Sharma, Gemini Studio v. The State* (1952) 4 F.J.R. 329, they were corresponding with the

department as to the demand for contribution in respect of those not covered by

the later decision namely Employees' State Insurance

Corporation v. Sriramulu Naidu (1959) 19 F.J.R. 238. Thus when there is a dispute between the petitioners and the department not only in regard

to the demand of contribution in respect of all persons working in the studio but also in regard to payment of contribution in respect of those

covered by the later decision, retrospectively from 1952, the department is not right in asking the Collector to recover the so-called arrears of

employers' contribution at one stroke, making use of the provisions of the Revenue Recovery Act. Even according to the decision in Employees'

State Insurance Corporation v. Sriramulu Naidu (1959) 19 F.J.R. 238, the decision whether a particular department is a factory or not would

depend largely on the question whether the activities are co-ordinated to achieve the main object of the factory. The department should first decide

whether the disputed departments would come within the Act, before it claims the employer's contribution in respect of the personnel working

therein. It is not a case of the petitioners evading contribution but it is a case where they are entitled to avoid the contribution within the scope of

the decisions rendered by this Court mentioned already. When there is a dispute of the kind noted here, it is for the department to institute a

proceeding in the Insurance Court and get a decision as to whether it can retrospectively claim arrears of contribution from 1952 to 1964, whether

all the persons in all the departments of the studio would be covered by the Act and also ascertain the definite sum due and payable by the

petitioners to the department. From the entire correspondence produced before me, I do not see that any decision has been rendered by the

Insurance Court. As observed by Gajendragadkar J. (as he then was in Kasturi & Sons v. Salivateeswaran (1958) 14 F.J.R. 174, the condition

precedent for recovery of money in such a case is a prior determination by a competent authority or the court of the amount due and payable. The

department cannot arrive at a figure on ad hoc basis, simply on the ground that it does not agree with the contention raised by the petitioners. The

notice sent to the Collector does not give the details as to the number of persons in each department, much less the departments from which the

contribution is payable by the petitioners for each quarter. This defect can certainly be equated to failure of the principles of natural justice, since

the petitioners are not able to verify the claim made on them.

6. In this connection, it may be noted that in Writ Petition No. 843 of 1965 the department has made a claim from the year 1952 to 31st

December, 1964. Learned Counsel for the petitioner in Writ Petition No. 843 of 1965 pointed out that contribution for the quarter ending 31st

December, 1964, has already been paid by the petitioner on 1st February, 1965. This is an error which goes to the root of the matter and the

entire demand therefore becomes illegal. In the case of the petitioner in Writ Petition No. 4594 of 1965 (A.V.M. Studios) the Regional Director of

Employees" State Insurance Corporation has issued a notes calling upon the petitioner to pay the special contribution in respect of the employees

working in the production department, it is contended for the petitioner that production department is a separate entity the identity of which is

different from the A.V.M. Studios. Though the A.V.M. Productions is housed in the same compound where the A.V.M. Studios is also housed,

that cannot alter the separate identity of the two institutions. It is seen that the management, accounts, transactions and dealings of the A.V.M.

Productions are kept separate from those of the A.V.M. Studios. In such circumstances, the department cannot consolidate the employee of the

studios and the productions for the purpose of collecting contributions under the Act. In Nagpur Electric Light & Power Co, Ltd. v. Employees"

State Insurance Corporation (1967) 32 F.J.R. 263, their Lordships of the Supreme Court, while distinguishing the case of Employees" State

Insurance Corporation, Bombay v. Raman (1956) 11 F.J.R. 462, observed that, where the factory and the administrative office maintained

separate muster and wage rolls and separate accounts, it could be held that those employed in the administrative office were not employees within

the meaning of Section 2(9) of the Act, In this case, therefore, when the petitioner has raised a dispute that the A.V.M. Productions is different

from the A.V.M. Studio, without deciding the question, the department cannot threaten them with coercive steps; more so when the department

claims contribution retrospectively from 1952. What applies to the petitioner in Writ Petition No. 4594 of 1965 will also apply to the petitioner in

Writ Petition No. 3093 of 1955. While dealing with the petitioner in Writ Petition No. 843 of 1965, I have held that the claim itself in respect of all

the petitions is time-barred. I have also held, while dealing with the Gemini Studios, that whole demand is illegal inasmuch as it included a quarter

for which the petitioner has factually paid the contribution even before the issue of notice. I have also held that the petitioners have not been given

an opportunity to verify the claims made on them. For these reasons, I upheld the contentions of the petitioners in these petitions.

The three writ petitions are accordingly allowed. In Writ Petition No. 843 of 1965, the order of the Regional Director of the Employees' State

Insurance Corporation requiring the Collector of Madras to recover a sum of Rs. 44,336 from the principal employer of the Gemini Studios is

quashed. In the case of Writ Petitions Nos. 3093 and 4594 of 1965, there will be a direction forbearing the respondents, namely, the Regional

Director, Employees' State Insurance Corporation and the Collector of Chingleput from collecting or recovering the employer's special

contribution u/s 73-D of the Act. There will be no order as to costs.