(1963) 12 CAL CK 0009

In the Calcutta High Court

Case No : Civil Revn. No. 565 (W) to 567 (W) of 1961

G.T.R. Co. Private Ltd. — APPELLANT

Vs

The Certificate Officer, 24 Parganas and Others — RESPONDENT

Date of Decision : 03-12-1963

Acts Referred:

Constitution of India, 1950 — Article 227
Employees State Insurance Act, 1948 — Section 73A, 73D, 75(2), 75(3)

Citation : AIR 1964 Cal 285 : 68 CWN 485 : (1965) 1 LLJ 380

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Advocate : Kashikanta Moitra, for the Appellant; N.C. Chakraborty and Satyasanti Mookerjee, (for Nos. 1 to 3 and 5) and Amiya Kumar Mookerjee, (for No. 4), for the Respondent

Judgement

D.N. Sinha, J.—The petitioner in these cases is G. I. R. Company Private Ltd. which, it is stated, came into existence in 1934. A certificate case under the Public Demands Recovery Act, being Case No. 65 of 1959-60 was started against the petitioner for a sum of Rs. 3069.75 n.P., representing the employers'' special contribution payable under the provisions of the Employees'' State Insurance Act 1948 thereinafter referred to as the "said Act"). The petitioner filed objection and it is stated that ultimately this certificate was set aside and cancelled. Thereafter, the amount was split up and three different certificate proceedings were started, being Nos. 64, 65 and 66 of 1959-60. It appears that the petitioner filed objections to these three certificates, but failed to appear at the hearing and the Certificate Officer disposed of the cases ex parte. Against that, there was an application for review which failed. No appeals seem to have been preferred, but these applications have been taken out in the writ jurisdiction.

2. Before me, Mr. Maitra appearing on behalf or the petitioner has taken two objections. He does not dispute that the employer''s special contribution arises under Chapter V-A of the said Act the charging section being 73-A. He however argues that a certificate proceeding cannot be taken in respect of any special

contribution stated to be due from the employer, without proceedings being taken first to adjudicate upon the same. He points out the provisions of Chapter VI of the said Act. This Chapter is headed "adjudication of disputes and claims". u/s 74, an Employees'' insurance Court has been constituted, under Sub-section (2) of Section 75, a list has been set out or claims that are to be decided by the Employees Insurance Court. Clause (a) of Sub-section (2) relates to a claim, for the recovery of contribution from the principal employer. Clause (f) deals with any claim for the recovery of any benefit admissible under the said Act. Sub-section (3) of Section 75 lays down that no civil court shall have jurisdiction to decide, or to deal with, any question or dispute set out in Sub-sections (1) or (2) of Section 75 or to adjudicate on any liability which by or under the Act was to be decided by the Employees'' Insurance Court. Mr. Maitra argues that the proper procedure was to determine the amount or liability of special contribution u/s 73A and if there is a dispute, to refer it to the Employees'' Insurance Court. Plausible as this argument may seem, it is without any substance. Chapter V-A of the said Act was inserted as a special provision of a transitory referred, by Act 53 of 1951. The objects and reasons for introducing the legislative enactment shows that it was introduced for a temporary purpose and that the Chapter "was to be considered as self-contained". It is permissible to look into the objects and reasons for discovering the background of a particular legislation and to find out the evil which it is intended to remedy. The stately it of objects and reasons contains the following sentence :--

"A new self-contained chapter is proposed providing for collection or employees'' special contribution through-out the Union ..... Chapter can be withdrawn from the operation by the Central Government after giving three months'' notice."

3. If we look into the Chapter V-A, it will not only appear that it is headed with the expression "Transitory provisions", but that the Chapter is intended to be a self-contained one. The general previsions in the said Act with regard to contribution by employers is to be found in Chapter. 17, commencing with Section 38. While that liability is described as a mere "contribution", the liability u/s 73-A is called "special contribution". In Chapter V-A is laid down not only the nature of this special contribution to be paid by the employer, but it also contains the mode of recovery. In other words, the liability is created by the Chapter and the mode of enforcement of the liability is also contained therein. That mode is to be found in Section 73D, who provides that the employers special contribution payable judge this chapter may be recovered as were an arrear of land revenue.

This provision is not applicable to ordinary contributions, but only regulate the matter of the liability created by chapter VA, namely, "special contribution". That being so, it follows that the provisions of Chapter VI are not attracted and that it is not necessary in such cases to have recourse to the employees'' insurance Court for the adjudication of disputes. The method to be adopted is the ordinary method for recovery of land revenue. As is well know, provisions like the Revenue Recovery Act and the Public Demands Recovery Act are applicable in such cases. In this case, the authorities proceeded under the Public Demands Recovery Act and notice having been given to the petitioner, it preferred an objection, which was subsequently heard and decided by the Certificate Officer, although the petitioner, failed to be present. Any objection that the petitioner had should have been ventilated u/s 9of the Public Demands Recovery Act, and in fact the petitioner did prefer those objections u/s 9 of the said Act. It is unfortunate that it failed to appear at the hearing, but that is a matter which I cannot take note of, for the purposes of this application. The petitioner had, or may still have, its remedies under the Public Demands Recovery Act and may pursue it. This point accordingly fails.

4. Mr. Maitra next put forward the point the requisitions in these cases were issued under the Revenue Recovery Act of 1890; but further proceedings were taken under the Bengal Public Demands Recovery Act and that is not permissible. This is a point which was not taken in the courts below, and we do not know as to in what manner requisitions were made. It is a mixed question of law and fact, and I cannot permit the petitioner to take this point for the first time in this applicable. As a point of law, I do not see why a requisition cannot be made under the Revenue Recovery Act and further proceedings taken order the Public Demands Recovery Act. But the form in which the question is raised involves a number of facts. For example, Mr. Maitra has indicated that the requisition was made by the wrong person. Such questions cannot be decided without an investigation as to the facts. No such question was raised in the courts below, and even in this application it has been taken by way of a "ground" only. The necessary facts have not been stated in the body of the petition, under the circumstances, this point cannot be allowed to be urged and no decision can be arrived at upon such pleadings.

5. The result is that these applications must fail. The Rules are discharged, interim orders, if any, are vacated. There will be no order as to costs. But this writ be without prejudice to the petitioner''s right to agitate its objections in the certificate proceedings, in accordance with law.

