

(1980) 07 KAR CK 0036
In the Karnataka High Court
Case No : WP 3444 of 1980

Hegde and Golay Ltd. and Another

APPELLANT

Vs

Employees" State Insurance Corporation and Another

RESPONDENT

Date of Decision : 29-07-1980

Acts Referred:

Employees State Insurance Act, 1948 — Section 45a

Citation : (1980) 2 KarLJ 265

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

Judgement

1. The 1st petitioner is a Public Limited Company and is registered under the Companies Act. It has its registered Office at Bangalore. The 2nd Petitioner is said to be the Managing Director of the Company. The Company carries on business of manufacturing watches. It is said, that besides having regular employees under its rolls, the Company also takes apprentices and trains them in various fields of activities connected with the industry. The provisions of the Employees" State Insurance Act, 1948 (the Act) are attracted to this concern. Employees working therein are required to be insured in the manner provided by the Act. For this purpose both the employer and the employee are required to make contributions and to pay the same to the Employees" State Insurance Corporation (Corporation). Rates are specified in this behalf in the Schedule to the Act. Under S. 40 of the Act it is the duty of the principal employer to pay both the employer and the employees contribution. Guide lines, as to the manner now it should be done, are provided for in the Act. Whenever the Corporation feels that contributions, as required by the Act, were not being made by the employer, it could, by an order, determine the amount of contribution payable by the factory or establishment as provided under S. 45A of the Act Exercising that power the Regional Director of the Corporation (1st respondent herein) passed an order (vide Ex-A) determining a sum of Rs. 14,670 83 paise as the amount of contribution payable in respect of some employees said to be working in the concern for certain periods specified in the earlier notices issued by the Corporation to this concern (vide Ex-C1). The Company's objection to the

payment of contribution in the case of those persons, in whose cases such contributions had been demanded by the Corporation, was that they were not employees but were only apprentices, and therefore, the provisions of the Act are not attracted to their cases and no contributions are required to be made. In this petition the Company is challenging the order of the respondent, Ex-A.

2. Notices were issued re Rule. The 1st respondent is represented through its Counsel. The learned Counsel for the petitioners and the 1st respondent were not merely heard in the matter of issuing Rule but also on merits as they had agreed to argue the matter on merits also.

3. Counsel for the petitioners argued that in so far as these apprentices were concerned they used to be taken by the Company on apprenticeship under an agreement executed by each of them as per proforma Ex-B. His contention is that apprentices, thus taken for training, were not employees within the meaning of the provision of S. 2(9) of the Act, and therefore, no contributions, as provided under the Act, are required to be made in their cases. He argued that in demanding contribution even in such cases the Corporation had acted without jurisdiction and contrary to law. He further pleaded that the 1st respondent had not held any enquiry; had not followed the provisions of S. 44(2) of the Act before resorting to Sec. 45 of the Act; and that this order was in complete violation of the principles of natural justice, and that the quantum of contribution had been determined without any basis and arbitrarily. He submitted that the 1st respondent, in passing the impugned order, had completely ignored the principles enunciated by the Supreme Court in *E.S.I. Corpn. v. Tata Eng. & Co*, AIR 1976 SC. 66 (Tata Engineering and Co., case).

4. On behalf of the 1st respondent statement of objections have been filed and the learned Counsel appearing for the 1st respondent submitted that these persons, who are called as only apprentices by the petitioner, were in reality regular employees of the Company. He also argued that the impugned order was in accordance with law and that the petition was not maintainable, in that, the petitioner had an alternate remedy under Sec. 75 of the Act, and that, therefore, Rule should not be issued and the petition should be dismissed.

5. Besides A.I.R. 1976 SC 66, some other authorities have been relied upon by the Counsel for the petitioners and reference to them will be presently made.

6. The main argument of the Counsel for the 1st respondent was that, since there is an effective alternate remedy for the petitioners against the impugned order, there is no need to issue Rule and the petition be dismissed in limine. Countering this argument the Counsel for the petitioners submitted that the availability of the alternate remedy is, in the circumstances of the case, no bar to entertain this petition and grant the relief sought for. Let me, therefore, examine this question first,

7. Reference has already been made above to the powers of the Corporation under Sec. 45A of the Act in determining the amount of contributions payable in

respect of the employees of a factory or establishment. Under certain circumstances the Corporation can proceed even on the basis of the information available to it. Sub-sec. (2) of S. 45A says that any order made by the Corporation under sub-sec. (1) shall be sufficient proof of the claim of the Corporation under S. 75 or for the recovery of the amount determined by such an order as an arrears of land revenue under S. 45B. S. 75 of the Act is brought into play in this way.

8. Disputes may arise between the Corporation and the employer in the matter of making contributions under the Act. The liability to make the contribution itself may be denied or the quantum may be disputed or disputes may arise in other ways in this matter. No doubt, S. 45A is a provision enabling the Corporation to suo motu proceed in the matter. A complete adjudication as to all aspects of the dispute between the parties is not contemplated under this provision. There is a separate chapter, Chapter VI, dealing with that question and that Chapter contains Sections 74 to 83. Section 74 envisages the constitution of a Court to go into such disputes referred to above. Such a Court is empowered and conferred with jurisdiction to decide all such disputes that may arise in this regard. One of the ways in which a dispute may arise in the matter of an establishment's liability to make contributions under the Act is a determination by the Corporation of the liability of the establishment followed by a demand to pay the said sum and the denial by the establishment or the employer of its or his liability to comply with the demand. The Court referred to above is a forum wherein this dispute can be gone into and the rival contentions could be examined. As to the powers of the Court, the procedure that may be followed by it, and other connected matters, Ss. 78 and 79 of the Act may be seen. Those two Sections read as follows:

"78 Powers of Employees" Insurance Court. (1) The Employees" Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects. administering oath and recording evidence and such Court shall be deemed to be a Civil Court within the meaning of section 195 Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898)

(2) The Employees" Insurance Court shall follow such procedure as may be prescribed by rules made by the State Government.

(3) All costs incidental to any proceedings before an Employees" Insurance Court shall, subject to such rules as may be made in this behalf by the State Government, be in the discretion of the Court.

(4) An order of the Employees" Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil Court.

79. Appearance by legal practitioner, Etc., Any application, appearance or act required to be made or done by any person to or before an Employees Insurance Court (other than appearance of a person required for the purpose of his

examination as a witness) may be made or done by a legal practitioner or by an officer of a registered trade union authorised in writing by such persons or with the permission of the Court by any other person so authorised."

9. But, what was argued by the Counsel for the petitioners is that in determining the liability of his clients, under S. 45A, the Corporation had not followed the required procedure, and had, in violation of the principles of natural justice, passed the order, and therefore he has a right to challenge that order invoking the writ jurisdiction of this Court. It is stated that before resorting to S. 45A recourse should have been taken by the Corporation to the procedure laid down in Ss. 44 and 45 of the Act and that had not been done in the instant case. It is his further plea that his client should have been provided with an adequate opportunity to place its facts in the case of each person in whose case it has now determined that there existed a liability on the part of the company to make contributions under the Act. In its statement of objections the Corporation denies these averments and pleads that it has complied with the necessary procedure while passing the impugned order.

10. Two conditions are required to be satisfied before the Corporation takes recourse to S. 45A. They are: (i) that the factory or establishment should have failed to submit returns, furnish particulars, or maintain registers or records in accordance with the provisions of S. 44; or (ii) that any Inspector or other official of the Corporation referred to in sub-sec. (2) of S. 45 should have been obstructed by the principal or immediate employer or any other person of the factory or establishment, while that official, was performing his (that official's) functions or discharging his duties under S. 45. The records placed before me indicate that the Corporation had resorted to S. 45A in the instant case, not because its Inspector or other officials had been obstructed in performing their functions or carrying on their duties in the matter of verifying as to the correctness of the returns submitted by the Company, but, on the ground that returns furnished by the Company, showing the particulars that were required to be shown in is regard, were not correct. Ex-CI, a letter addressed by the Corporation to the Company in Sept-1977, shows of the Inspector of the Corporation having inspected the records of the Company under S. 45(2) of the Act and of his having found certain lapses. The Deputy Regional Director himself is said to have carried on a test inspection of the factory on 25.8.1978 to find out as to whether certain averments made by the Company disclaiming its liability to pay compensation in the case of some of these persons were correct or not. In this connection Ex-C may be seen. After such inspection of the returns and verification of the facts the Corporation appears to have come to the conclusion that the Company had evaded making contributions in the case of some of its employees and that the total contribution it was liable to make between that specified period was Rs. 14,670-83 paise and having come to this tentative opinion it issued a show-cause notice as per Ex-A to the Company directing it to "show-cause as to why assessment should not be made by order as provided under S. 45A of the Employees State Insurance Act", and has further

determined, by its order under S. 45A, a sum of Rs. 14,670-83 paise as being the amount the Company was liable to contribute for the period in question.

11 .In the circumstances it cannot be said that recourse taken to S. 45A by the Corporation was without jurisdiction, in that, the necessary preliminaries that were required to be taken prior to invoking S. 45A had not been taken recourse to, nor, is it possible to say that the procedure followed by the Corporation was in violation of the principles of natural justice. The correspondence between the Company and the Corporation was spread over a long period and that is an indication of the fact that the Corporation had allowed sufficient opportunity to the officials of the Company to substantiate their averment that in the case of these persons contributions, as envisaged in the Act, were not required to be made. After observing these formalities, if the Corporation takes a decision under S. 45A, it cannot be said that in the matter of determining the amount and in holding an enquiry in this regard it had violated the principles of natural justice. In view of this finding it is not necessary for me to consider the authorities cited by the learned Counsel for the petitioners in support of his argument that because the Corporation had violated the principles of natural justice in holding this enquiry and because it had not followed the prescribed procedure, the Company was entitled to take recourse to the filing of this writ petition even assuming that there was an effective alternate remedy available to the Company.

12. As referred to above, learned Counsel for the petitioners, while arguing on merits, placed strong reliance on Tata Eng. & Co., case. He submitted that persons who had been considered by the Corporation as regular employees under his clients", were, in fact, only apprentices and they had joined as such after executing an agreement, a proforma of which is exhibited in the record, and that, in similar circumstances, in the Tata Engineering and Company's case the Supreme Court had observed that such persons were not employees employed in the work of the Company or in connection with the work of the Company. In that case the Supreme Court was dealing with a matter wherein a fuller adjudication of the dispute between the factory or management on the one hand and the Corporation on the other had taken place before the Industrial Tribunal under S. 73B of the Act. Under that Section if no Employees" Insurance Court, as contemplated under S. 75. is constituted to try a dispute, the question or dispute that may arise in a given case is required to be decided by such authority as the Central Government may specify in that behalf. It was in those circumstances an Industrial Tribunal had taken the place of the Court and tried that dispute. The decision of the Tribunal was first taken to the Patna High Court and from there it came to the Supreme Court by way of an appeal under Art 133(1)(a)(b) of the Constitution. Since all the relevant facts were before Court the findings given by the Tribunal and the High Court were considered on merits by the Supreme Court and in the light of the facts, the Court came to the conclusion that in that, case the persons concerned were only apprentices. Is this a case in which such a finding, on merits, can be given at this stage? Have all the facts been available now? In cases like these the controversial questions should

first be examined thread-bare by a fact finding authority and only thereafter it will be proper for a Court, exercising its writ jurisdiction, to decide the limited question as to whether the findings arrived at by the forum in that given case have been arrived at in accordance with law. The case of the Corporation is that the agreement was only camouflage and that in reality the duties performed by those persons part-took the character of employees' duties and they were, therefore, employees in fact. No doubt this fact is vehemently denied by the Company. But, precisely, this is the dispute and who should resolve it at the first instance and how best it can be done? Perhaps evidence may be required, perhaps a closer examination of all facts and circumstances in the light of the agreement is required to be made, and all these can appropriately be done, at the first instance, by the authority fully empowered to make such an investigation. The Court envisaged in S. 75 has all the powers to consider these rival contentions in detail. The petitioner will have its opportunity to adduce all the evidence it may have in support of its contention and it may also therein urge its case placing reliance on the Tata Engineering and Co., case. The following observations of the Supreme Court in E.S.I. v. Central Press , AIR 1977 SC. 1351, may be noted.

"It appears that the respondents employers failed to maintain the registers or records and to submit returns of wages paid as required under Section 44 of the Act. Hence, the Insurance Court, which was called upon to adjudicate under Sec. 75(1)(c) of the Act, on the matter in dispute, found itself unable to decide the question in issue. It dismissed the application on the ground that there was no provision for deciding such a dispute on an "ad hoc basis" We fail to understand what is precisely meant by "ad hoc basis". We find "that Section 75(2) of the Act provides, inter alia, that a claim for the recovery of contributions shall be decided by the Employees' Insurance Court. Not only is the mandatory duty cast upon it to decide such disputes, but it is armed with the powers of a Civil Court, including summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects under Section 78 of the Act."

13. In my opinion, the petitioner has an effective alternate remedy in the matter. It can move the Insurance Court. It is, therefore, not necessary to issue Rule.

14. Hence, Rule is not issued, and the writ petition is dismissed. No costs.