
(1997) 12 AP CK 0035
In the Andhra Pradesh High Court
Case No : C.M.A. No. 219 of 1992

Hind Metal Industries, Hyd.	Vs	APPELLANT
Employees State Insurance Corporation, Hyderabad		RESPONDENT

Date of Decision : 24-12-1997

Acts Referred:

Employees State Insurance Act, 1948 — Section 45

Citation : (1998) 2 ALD 253 : (1998) 2 ALT 72

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : Mr. Koka Satyanarayana Rao, for the Appellant; Mr. B.G. Ravinder Reddy, for the Respondent

Judgement

1. The only question involved in this appeal is whether there should be an order to be passed by the respondent-Employees State Insurance Corporation (E.S.I.) u/s 45A of the Employees State Insurance Act, 1948 (for short "the Act") before proceeding to recover u/s 45B of the Act as arrears of land revenue. The determination of question has arisen because of these facts.

2. The appellant is an industry. It was to remit contributions to the Corporation u/s 39 of the Act regarding the employees who are to be compulsorily insured u/s 38 of the Act. The appellant is covered by the Act. The respondent Corporation initiated proceedings for recovery of Rs.6,814-18 ps. towards the alleged ESI contributions for the periods extending from December, 1975 to March, 1977. The appellant raised dispute before the ESI Court u/s 75 of the Act raising a dispute as to its liability to pay the amounts demanded on the grounds viz., that there was no default in payment as alleged and secondly that there was no order passed u/s 45A of the Act that such an order should not have taken place without determination of the dues under the said provision after giving reasonable opportunity to the appellant. The Employees Insurance Court, Hyderabad (for short E.I. Court) after holding enquiry and hearing both sides held that no question as to passing of an order u/s 45A of the Act arose as the

contribution payable was made on actuals in the case and consequently dismissed the petition, which was registered as E.I. Case No.11 of 1989 by order dated 1-8-1991. Mr. Koka Satyanarayana, learned advocate for the appellant contended that the impugned proceedings of the respondent-Corporation are illegal and opposed to Section 45A of the Act and secondly the order of the E.I. Court is also opposed to the said provision as there would not have been any proceedings u/s 45B without passing an order u/s 45A of the Act. He has endeavoured his best to bring home the point to the satisfaction of the Court by also relying upon two precedents namely a decision of this Court in A.P. Handloom Weavers Co-operative Society Limited, v. E.S.I. Corporation 1988 Lab.IC 481, and a ruling of a Full Bench of the High Court of Karnataka in Regional Director, E.S.I. Corporation v. Fibre Bangalore (P) Ltd. 1980 Lab. IC 583. Mr. B.G. Ravinder Reddy, learned advocate for the respondent-Corporation has contended that there was no question of passing any order u/s 45A of the Act as the Corporation was entitled to recover any dues from appellant as arrears of land revenue u/s 45B of the Act on any information available even without determining or assessing the actual dues and secondly it is contended by him that the decisions depended upon by the learned advocate cannot be understood to mean that at all times the Corporation is bound to pass an order u/s 45A of the Act.

3. The principal provision under the Act regarding the contributions payable by an employer is u/s 39. It not only obliges the employer to remit contributions but also the details of quantum, manner and method of such contributions to be remitted. Section 42 deals with general provisions as to the payment of contributions and Section 43 method of payment of contribution Section 44 mandates the employers to furnish returns and maintain registers in certain cases. Section 45 contemplates the inspection by the Corporation through the inspectors for the purposes of the Act for so many matters. The powers, duties and functions of the inspectors are enumerated therein. Section 45A deals with determination of contributions in certain cases. A repetition of provision may be useful;

45-A : Determination of contributions 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 Section 44 or any Inspector or the official of the Corporation referred to in sub-section (2) of Section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties u/s 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-section (1) shall be sufficient proof of the claim of the Corporation under Section 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45A or the recovery u/s 45C to Section 45I"

The Corporation may determine the amount of contribution payable in respect of the employees of a factory or establishment either on the basis of the returns, particulars or records furnished or maintained in accordance with the provisions of the Section 44, where such Inspector u/s 45, is prevented in any manner, the Corporation may on the basis of the information available may by an order determine the amount of contribution payable in respect of the factory or establishment. This is the implication of sub-clause (1) of Section 45A. By virtue of sub-clause (2) of Section 45A. an order made by the Corporation under sub-section (1) shall be sufficient proof of the claim u/s 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45A or the recovery u/s 45C to Section 45I of the Act. A proviso is added by the Amendment Act 29 of 1989 which came into force with effect from 20-10-1989 that such an order is passed by the Corporation, a reasonable opportunity of being heard should be given to such persons who are going to be affected viz., the principal or immediate employer or the person in charge of the factory or establishment as the case may be. The proviso is not found to be retrospective and it refers only to matters arising subsequent to 20-10-1989 and the facts of the case may not attract it as the arrears and action taken were in relation to the matters prior to the adding of proviso by means of amendment. However, as held by our own High Court (1988 Lab. IC 48 (supra)) whenever any order is passed u/s 45A of the Act, reasonable opportunity should be granted to the persons who are going to be affected in order to serve the requirement of the principles of natural justice. A full bench of the High Court of Karnataka (1980 Lab. IC 583 (supra)) has declared the law as to the implications of Section 45A of the Act and as to when such an order will be passed. A careful reading of the precedent clearly go to show that an order under Section 45-A of the Act need not be passed always and if such an order is passed the implication of the provision has to be followed. As rightly pointed out by Mr. K, Saiyaranayana, learned advocate for the appellant, the law declared therein in regard to Section 45A of the Act has been succinctly stated in Para 5 of the judgment as follows :

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The Corporation is not compelled to seek an adjudication before the Insurance Court by reason alone of the fact that the employer disputes the claim so determined.

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The operative portion in Para 6 also shall be useful :

"Where, in cases to which provisions of Section 45A of the Act are attached, the Corporation by an order made in accordance with that section determines the

amount of contributions payable and that claim is disputed by the employer, it would not be necessary for the Corporation to seek a resolution of that dispute before the Insurance Court. Such a claim is recoverable as arrears of land revenue. If the employer disputes the claim it is for him to move the Insurance Court for relief. In other cases - other than cases where determination of the amount of contributions u/s 45A is made the Corporation, if its claim is disputed by the employer, should seek an adjudication of the dispute before the Insurance Court before enforcing recovery""

4. Therefore, unmistakably, the law which must be understood in the back ground of the provisions and also the precedents supra with all such non-express words is that where in cases to which provisions of Section 45A of the Act are attracted, the Corporation by an order in accordance with the said Section determine the amount of contribution payable to mean that always the provisions of Section 45 are not attracted. It is also clear that an employer is entitled to dispute any demand or enforcement of the dues by the Corporation, but cannot compel the Corporation to approach the Insurance Court for determining the contributions as amended. On the other hand, it may be open for the employer to approach the Insurance Court by raising a dispute u/s 77 of the Act whereby such dispute will be determined by the E.I. Court in accordance with the procedure and that is what the appellant did in this case. Mr. K. Satyanarayana, learned advocate for the appellant seems to have misunderstood the implications of the said provision and also the precedents of this Court and Full Bench of the High Court of Karnataka to mean that at all times whenever the recovery proceedings of contribution are taken up to be enforced u/s 45B of the Act, it should be proceeded u/s 45A of the Act whereby reasonable opportunity should be given to the employers or the persons who are going to be affected by such an order. This Court is unable to accept such contention either from the provisions or from the precedents supra. The reasons for such an inference are plenty.

5. Section 39 of the Act is the principal provision regarding the contributions as already pointed out not only stipulating the contributions to be paid but also regulating the manner and method in which the contributions are to be paid in addition to Sections 42 and 43 of the Act. Section 45B declares that any contribution payable under the Act may- be recovered as an arrear of land revenue to mean that the amounts payable u/s 39 of the Act can be recovered as arrears of land revenue. Rightly the persons liable to contribute know what they are to pay and may pay whatever they are to pay. It is only where they fail to pay or dispute the liability to pay or the quantum to pay etc., then a determination arises either u/s 45C of the Act by the Corporation or any dispute u/s 77 of the Act by the E.I. Court. The E.I. Court was therefore justified in saying that there was nothing to be determined as there was no dispute. Patently, the appellant had defaulted or was determined in due for so many years which amounted to Rs.6,814-18 ps. regarding which recovery proceedings were initiated u/s 45B of the Act against which the appellant raised a dispute u/s 77

before the E.I. Court. The only explanation offered by the appellant to the Corporation in answer to the notice was that the period of dues or defaults being such a long, it was difficult to explain for want of records. Therefore, what the appellant could have done before the E.I. Court was to take up some amount and explain as to how it was unable to contribute in accordance with the provisions of the Act or regularly etc., or that it was not due to pay as claimed. But to expect that every time if any due is found from an employer or a person liable to contribute to determine the contribution u/s 45A of the Act appears to be totally alien to the provisions therein. If such an argument is accepted, it may mean that the persons liable to contribute may keep quiet and every time the Corporation should determine the amount to recover and every time some dispute is raised, there must be some allegation or determination u/s 77 of the Act and that cannot be the real scope of the Act. As held by the Full Bench of the High Court of Karnataka (1980 Lab. IC 583 (supra)) the liability of the employer to contribute is certain under the Act and as stated by the Supreme Court in AIR 1972 1935 (SC) the right of the Corporation to recover the amounts by coercive process is not restricted by- any limitation nor could the Government by recourse to the rule making power prescribe a period in the teeth of Section 68. Similarly a suo motu power of the Corporation to proceed to recover has been brought from Section 45 of the Act; to clarify with unambiguous terms - The Corporation may, on the basis of the information available to it, determine the amount of contributions payable and make necessary demands. To clearly understand that no order as necessary in the sixth sense of the term for demands or recovery u/s 45B of the Act. An examination of the provisions of the Act shows that a determination of the contribution u/s 45A of the Act may arise for various reasons due to the conduct of the employers in not submitting or furnishing the registers or records and not maintaining such records in accordance with Section 44 of the Act or preventing the Inspector when he comes to visit u/s 44 of the Act and to determine the amount of contribution in accordance with Section 45 of the Act. But to determine any amount on the information available, no enquiry is contemplated as straightaway it can be recovered as if it is arrears of land revenue u/s 45B of the Act. Mr. K. Satyanarayana is correct that when a civil consequence arise by virtue of Section 45 of the Act, then the rule of principles of natural justice is sacrosanct and that is why the proviso was added. It may not be inopportune to say that defaulters of contributions are open for both civil and penal consequences and prosecution also under Chapter VII of the Act and therefore any action taken u/s 45A of the Act may possibly lead to such consequences on the defaulters and it is in such cases, an order is absolutely necessary to pass an order u/s 45A of the Act in accordance with the provisions of the Act by giving an opportunity by means of adhering to the principles of natural justice prior to 28-1-1968 and by mandatorily giving an opportunity to the affected persons after the proviso was added. If any construction beyond this legal sequence is put up on the provisions of Section 39, Section 45 and Section 45B of the Act would create a chaos in the administration of justice system in the industrial and labour law and the contributors-employers can successfully avoid

contribution seeking for an order to be passed u/s 45A at all times and for all purposes.

6. Sections 45A and 45B have advisedly used the expression "may" to pass an order and to recover the dues of contribution as arrears of land revenue; the reason being that in all cases no such order is essential or expedient to be passed, and secondly there are any number of modes of recovery apart from Section 45B of the Act as can be gathered from Sections 45C, 78 including Section 45B and Section 45G of the Act which deals with other modes of recovery. Therefore Section 45B can never be an exhaustive mode of recovery particularly in view of Section 45G of the Act.

7. Therefore, this Court finds no merit in this appeal in regard to the contentions raised by the appellant, but Mr. Satyanarayana has pointed out that the respondent-Corporation or its Inspector never raised a little finger for such a long time when allegedly committed certain defaults and suddenly they thought of enforcing the recovery of contribution u/s 45B of the Act and the details and reasons for the default could not be explained by the respondent properly in reply to the notice. If an opportunity was given it was possible for the appellant to explain the same satisfactorily or to seek some concession if permissible in law. Mr. E.G. Ravinder Reddy, learned advocate for the respondent-Corporation submits that this was not a case for explanation as a whole and patently there was default and the delay on the part of the staff of the Corporation is no answer, to the liability in law. Although the submissions of Mr. Ravinder Reddy are reasonable and attractive, this Court feels surprised as to how the officers of the Corporation were reticent for such along time without bringing it to the notice of the appellant about the defaults to rectify as and when it was found and any deprobe in the matter may expose certain realities which may be difficult to note or believe. It only speaks of the violation on the part of the staff of the Corporation but may not be an answer to the default of the appellant. But stilt if such defaults ranging for years are found over night as rightly pleaded by the appellant, it might have been difficult to explain the default for want of records and each item was to be examined. However, when a dispute was raised, it was possible for the appellant to explain before the E.I. Court to examine and give proper remedy as per the law. Therefore, only with this limited scope of the matter rejecting all the contentions of the appellant, the matter deserves to be remitted back to the E.I. Court to consider any explanation or circumstances to pass appropriate orders according to law, particularly, when such a dispute had been raised by the appellant. The appeal is partly allowed by rejecting all the contentions of the appellant except, for want of opportunity to explain, remitting the matter to the E.I. Court for giving opportunity to the appellant to explain such defaults and to pass appropriate orders according to law and in the light of the observations made above. This shall be completed within three months from the date of communication of copy of this order. However, this relief subject to the appellant depositing the entire alleged dues within one month from today deducting any amount which is already paid and in case the appellant succeeds

either the excess recovery may be refunded or adjusted towards future contributions. No costs.