

(1962) 01 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 57 of 1961

Jiyajirao Cotton Mills Ltd.

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 17-01-1962

Acts Referred:

Employees State Insurance Act, 1948 — Section 74, 96

General Clauses Act, 1897 — Section 22

Madhya Bharat Employees Insurance Rules, 1954 — Rule 4

Citation : AIR 1962 MP 340 : (1962) 5 FLR 475 : (1963) ILR (MP) 179 : (1962) JLJ 976

Hon'ble Judges : P.R. Sharma, J

Bench : Single Bench

Advocate : A.B. Mishra, for the Appellant; S.T. Mungre and J.P. Diwan, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Sharma, J.—This is an application for review of the judgment and decree passed by me in Civil Misc. Appeal No. 35 of 1960.

2. The sole ground on which this review application is urged is that Shri Shah, by whom the application u/s 66 of the Employees State Insurance Act, 1948 was entertained and tried, was not a properly constituted Court under the provisions of Section 74 read with Section 96 of the Employees' State Insurance Act (hereinafter referred to as the Act).

3. In order to appreciate the points raised by Shri Mishra in the course of his arguments a few facts might first be mentioned. The Employees' State Insurance Act was, with the exception of certain Sections (which had already been brought into force) brought into force in certain areas of the former State of Madhya Bharat by a Notification issued by the Central Government which was published in Madhya Bharat Government Gazette dated 22-1-1955. It was stated therein that the provisions of Chapters IV, V and VI of the Act (with the exception of

certain Sections mentioned therein) shall come into force in the areas of Indore, Greater Gwalior, Ujjain and Rutlam with effect from the 23rd of January, 1955. By another Notification published in the same issue of the Gazette the State Government, in exercise of its powers u/s 74 of the Act, appointed the Labour Judges" of Indore and Ujjain as the Employees" Insurance Courts for the areas specified against each of them. In the same issue were also published the Rules made by the State Government u/s 96 of the Act.

4. Three contentions were raised by learned counsel for the applicant in support of this review application : Firstly, he contended that an Employees" insurance Court had first to be constituted before any person could be appointed as a Judge of that Court; secondly it was contended by him that the State Government was bound in the first instance to frame rules in exercise of its powers under Clause (a) of Section 96 of the Act, regarding constitution of Employees" Insurance Courts, the qualifications of the persons who may be appointed as Judges thereof, and the conditions of service of such Judges, and that it was only after this had been done that the State Government could exercise the power vested in it under the provisions of Section 74 of the Act; lastly it was contended by the learned counsel that the State Government had under Rule 4 of the Madhya Bharat Employees" State Insurance Rules, 1954 provided that presiding officers of civil or criminal Courts could, in addition to their regular duties, be appointed to work as Judges of the Employees" Insurance Court. From this provision the learned counsel sought to draw the conclusion that where it was intended to appoint any judicial officer as an Employees" Insurance Court in addition to his regular duties, such judicial officer ought to have been the presiding officer of a civil or criminal Court. No one else could according to the learned counsel, be appointed to function as an Employees" Insurance Court in addition to his other judicial functions.

5. I shall proceed to examine these contentions in order :

Section 74 of the Act runs as under:

"74. Constitution of Employees" Insurance Court.-

(1) The State Government shall, by notification in the Official Gazette, constitute an Employees" Insurance Court for such local area as may be specified in the notification.

(2) The Court shall consist of such number of Judges as the State Government may think fit.

(3) Any person who is or has been a judicial officer or is a legal practitioner of five years "standing shall be qualified to be a Judge of the Employees" Insurance Court.

(4) The State Government may appoint the same Court for two or more local areas or two or more Courts for the same area.

(5) Where more than one Court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them."

6. It will appear from Clause (1) of the aforesaid Section that the State Government was empowered to constitute an Employees' Insurance Court by a notification in the Official Gazette for such local area as may be specified in the notification. It is no doubt true that Section 74 came into force in the former Madhya Bharat State on 23-1-1955. But that point I shall consider later. At present the only question to be considered is whether it was necessary to constitute a Court first and then to appoint a Judge to discharge the functions of that Court. It will be seen that in Section 74 the word "Court" is used in a compendious sense. In Clause (1) provision is made for the constitution of an Employees' Insurance Court; whereas in Clause (5) it is provided that where more than one Court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them. There is nothing in the general law or in the specific provisions of Sections 74 and 96 of the Act, which could even remotely suggest that the State Government was bound to proceed in the order suggested by the learned counsel; namely that it should have constituted an Employees' Insurance Court first and thereafter appointed an officer as a Judge thereof. This contention of the learned counsel cannot, therefore, be accepted.

7. The next question which we have to consider is whether the State Government was bound to frame rules u/s 96 before it could exercise the power conferred on it by the provisions of Section 74 of the Act, Where the rule-making power is conferred on an authority different from the one by which the power itself may be exercised, there may be some force in the contention that the exercise of the power is subject to the rules framed by that external source; but where the power is vested in the same authority on which the rule-making power is conferred, and that if I may say so is the usual course adopted in statutes, it cannot be argued with reasons that the power conferred upon that authority can be exercised only after rules governing its exercise have been framed. The provisions of Section 96 are merely enabling in nature. They empower the State to frame rules on the subjects mentioned therein. But as will be obvious from the use of the words "not inconsistent with this Act" in Section 96, its provisions were never intended to place an embargo on the other provisions contained in the Act. The only conditions for the exercise by the State Government of its powers u/s 74 of the Act are to be found within the four corners of that Section. There is nothing in that section from which It could be inferred that the exercise of the power u/s 74 of the Act was intended to be made subject to any rules that may be framed by the State Government u/s 96 thereof. Of course when the State Government framed certain rules it would be bound to follow them. But that is quite a different matter from saying that the power u/s 74 could never be exercised until the rules u/s 96 had been framed by the State Government. I am, therefore, of the opinion that this contention of the learned counsel is wholly

misconceived.

8. In so far as the third point raised by the learned counsel is concerned all that need be said is that the Employees' Insurance Act being a Central Act the provisions of Section 22 of the General Clauses Act shall apply to it. According to Section 22 of the General Clauses Act where any Central Act had been passed but had not yet come into force, a power conferred under it for the establishment of any Court or officer or for the appointment of any Judges or officers thereunder could be exercised before the coming into force of that Act. But such an appointment could not take effect till the commencement of the Act. A similar situation came up for consideration before the Calcutta High Court in Amarendra Nath Roy Chowdhury Vs. Bikash Chandra Ghose and Another, . Before the coming into force of the Calcutta City Civil Courts Act (21 of 1953) but after the passage of the Act a Chief Judge Was appointed. It was held that as the Judge was appointed by an order after the Act was passed, but before it came into operation the appointment was perfectly valid. The Chief Judge could not, however, consider his appointment to be effective until the Act itself had come into operation.

9. In the present case the Employees' Insurance Act had been passed and the appointment of the Employees' Insurance Court was made by the State Government one day prior to the date on which the Act came into force in the former State of Madhya Bharat By virtue of the provisions of Section 22 of the General Clauses Act the power so exercised shall be deemed to be valid, but the appointment made in exercise of that power would take effect only on the coming into force of the Act in the State i.e. the 23rd of January, 1955.

10. It remains now for me to deal only with the last contention of the learned counsel for the applicant. Rule 4 of the Madhya Bharat Employees' State Insurance Rules is merely an enabling provision by which the State Government provided that the presiding officers of civil or criminal Courts might, in addition to their duties, be appointed to act as Employees' Insurance Courts. This rule has to be read along with Section 74, of the principal enactment. As already observed above the rules framed by the State Government u/s 96 of the Act were not to be inconsistent with the provisions of the Act itself, and there is nothing to be found in the provisions of Section 74 of the Act which could restrict the power of the State Government to appoint persons, other than the presiding officers of civil or criminal Courts to function as Employees' Insurance Courts in addition to their regular duties. The provisions of Rule 4 cannot, in my opinion, be resorted to in order to restrict the scope of the powers of the State Government as laid down by Section 74 of the Act.

This disposes of all the grounds urged in support of this review petition.

11. The result is that this review petition has no force and is hereby dismissed with costs. The learned Government Advocate, who was especially ordered by the Court to appear, shall be entitled to a fee of Rs. 50/- for his appearance.