
(1979) 03 AP CK 0032
In the Andhra Pradesh High Court

K. Venkateswara Rao

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 12-03-1979

Acts Referred:

Constitution of India, 1950 — Article 265, 41, 42
Employees State Insurance Act, 1948 — Section 1
General Clauses Act, 1897 — Section 23, 9
Minimum Wages Act, 1948 — Section 27, 5

Citation : (1979) 03 AP CK 0032

Hon'ble Judges : Gangadhara Rao, J

Bench : Single Bench

Judgement

Gangadhara Rao, J.—The Employees' State Insurance Act, was passed in 1948. Its object was to provide benefits to the employees in case of sickness, maternity and "employment unjury" and to make provision for certain other matters in relation thereto. It was made applicable, in the first instance, to all factories including factories belonging to the Government other than seasonal factories. Sub-section (5) of Section 1 of the Employees' State Insurance Act (hereinafter referred to as "the Act" reads as follows:

The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government, with the approval of the Central Government, after giving six months" notice of its intention of so doing by notifications in the Official Gazette extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

A reading of this Sub-section shows that the State Government can extend the provisions of the Act, or any of them to a class of establishments. But, it can do so, in consultation with the Employees' State Insurance Corporation, with the approval of the Central Government and after giving six months" notice of its intention to do so by a notification in the Official Gazette.

2. The Estimates Committee of the Parliament in its 123rd report on the Employees' State Insurance Scheme recommended that a small committee, consisting of members of the Corporation and other experts, should be set up to go into certain important recommendations made by the Estimates Committee. A Committee called the Committee on Perspective Planning; was accordingly set up with the approval of the Central Government. The Committee submitted its report in 1972. It recommended the extension of the Employees' State Insurance Scheme to certain categories of establishments. One such category is "theatres, including cinemas". The Government of Andhra Pradesh wanted to extend the scheme to those class of establishments. It is not disputed that the Government consulted the Employees' State Insurance Corporation, and the latter agreed to it. On 10th September, 1974, State Government wrote to the Central Government stating that it was considering to issue a notification u/s 1(5) of the Act, announcing its intention to extend the Employees' State Insurance Scheme to the class of establishments referred to therein as recommended by the Committee on perspective Planning and the Central Government's approval u/s 1(5) of the Act was solicited to the extension of the scheme to all or any of the establishments specified therein, in all or any of the areas in the State where Chapters IV and V of the Act are in force. The Central Government by its letter dated 19th September, 1974, conveyed its approval u/s 1(5) of the Act to the extension of the provisions of the Act by the State Government to the following establishments:

- (a) factories using power employing 10 to 19 workers;
- (b) non-power using factories employing 20 or more workers; and
- (c) shops, theatres including cinemas; hotels, restaurants, motor transport undertakings, newspapers establishments employing 20 or more persons.

The Government of Andhra Pradesh published the notification G.O. Ms. No. 788, Health, dated 25th September, 1974 in the Andhra Pradesh Gazette, Part I, Extraordinary dated 25th September, 1974, stating that in exercise of the powers conferred by Sub-section (5) of Section 1(5) of the Act, the Government was giving notice of its intention to extend the provisions of the Act to the establishments specified in the Schedule annexed thereto on or after 25th March, 1975. According to the counter-affidavit filed by the Government, the Gazette Extraordinary dated 25th September, 1974 was printed and released on 27th September, 1974 and the printed copies of the gazette were made available to the public on 28th September, 1974. Some comments were received from the affected parties and they were duly considered by the State Government in consultation with the Employees' State Insurance Corporation. Thereafter, G.O. Ms. No. 297, Health, dated 25th March, 1975 was issued extending with effect from 30th March, 1975 all the provisions of the Act to the class of establishments specified in column I of the schedule situated in the areas specified in column 2 thereof and it was duly published in the gazette of the Government of Andhra Pradesh.

3. Questioning G.O. Ms. No. 297, dated 25th March, 1975 some exhibitors of motion pictures in this State have filed this writ petition. Sri T. Anantha Babu, the learned counsel for the petitioners, has raised two objections. First, the cycle stands and the canteens attached to the theatres are maintained by independent contractors and are separate establishments and the petitioners cannot be treated as principal employers, so far as the persons working in the canteens and cycle-stands are concerned. That question is now concluded by the decision of the Supreme Court in *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, . In that decision the Supreme Court held, that if a cinema theatre manager, who has no statutory obligation to run a canteen or provide a cycle stand, but for the better amenities of his customers and improvement of his business enters into an arrangement with another person to maintain a canteen and a cycle stand and that person employs, on his own, workers in connection with the canteen and the cycle stand, the manager of the cinema theatre is liable for contribution as the principal employer of the workmen although they are engaged independently by the owner of the canteen or the cycle stand.

4. The next objection is that G.O. Ms. No. 297 dated, 25th March, 1975 is illegal because, first, six months' notice was not given, and secondly, the approval of the Central Government was not obtained, after issuing six months' notice, but was obtained before issuing it. It is argued that the first day and the last day should not be counted, and if the period of six months is reckoned from 25th September, 1974 it falls short by two days; if it is reckoned from 27th September, 1974 when the gazette was released it falls short by four days.

5. Employees' State Insurance Act is a welfare measure to provide certain benefits to the employees in case of sickness, maternity and "employment injury". Therefore, the Act must receive a liberal construction so as to promote its objects. In this connection we may quote the observation made by the Supreme Court in *The Works Manager, Central Railway Workshop, Jhansi Vs. Vishwanath and Others*, While interpreting the definition of " worker " in the Factories Act, 1948, the Supreme Court observed:

It is probably true that all legislation in a welfare State is enacted with the object of promoting general welfare; but certain types of enactments are more responsive to some urgent social demands and also have more immediate and visible impact on social vices by operating more directly to achieve social reforms. The enactments with which we are concerned, in our view, belong to this category and, therefore, demand an interpretation liberal enough to achieve the legislative purpose, without doing violence to the language.

6. In this connection it is also well to bear in mind Articles 41 and 42 of the Constitution of India, which enunciate the directive principles of the State policy. Article 41 states that,

the State shall, within the limits of its economic capacity and development make

effective provision for securing the right to work, to education and the public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42 provides that,

the State shall make provision for securing just and humane conditions of work and for maternity relief. "These Articles also should inform us when we interpret the provisions of the Act.

7. In this case the notice was published in the Official Gazette dated 25th September, 1974. In that notice it was stated that the Government intended to extend the provisions of the Act to the class of establishments specified in the schedule annexed thereto on or after 25th March, 1975. On 25th March, 1975, the Government took a decision to extend the provisions of the Act from 30th March, 1975. Since it is an official gazette, we have to presume that the notice was published on 25th September, 1974. In our opinion, it will not be proper to hold that the publication was made only when the gazette was released to the public. In the State, it may be released on different dates at different places, depending upon the distance from capital of the State, when the gazette is published. If the period is to be counted from the date when it was made available to the public, then we will have different periods to count in the State. That will lead to confusion and uncertainty. That is why we have to presume that the gazette is published on the date that appears on its face. Publication in the gazette is different from making the gazette available to the public. Therefore, it will be proper to reckon the period of six months only from 25th September, 1974. Even if the first day is not counted, there is six months' notice between that date and 25th March, 1975, when the Government took the decision to extend the provisions of the Act. If we reckon from 27th September, 1974, when the gazette was released, the six months' notice falls short by two days.

8. Section 1(5) of the Act says, that the Government should give six months' notice of its intention to extend the provisions of the Act by a notification on the Official Gazette. Evidently, the notice is given to invite public opinion. In fact, that is what the Government have stated in their counter-affidavit. But, it cannot be equated with an enquiry where objections had to be called for and considered. In this connection reference may be made, by way of contrast, to Section 5 of the Minimum Wages Act, where it is stated that in fixing minimum rate of wages or in revising them, the appropriate Government by notification in the official gazette should publish its proposal for the information of persons likely to be affected thereby and specify the date not less than two months from the date of the notification on which the proposal should be taken into consideration. Similarly, reference may be made to Section 27 of the Minimum Wages Act, which provides, that the appropriate Government after giving, by notification in the official gazette, not less than three months' notice of its intention so to do, may, by like notification, add to either part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed

under the Act, and thereupon the Schedule shall, in its application to the State, be deemed to be amended accordingly. A comparison of Sub-section (5) of Section 1(5) of the Employees' State Insurance Act with Sections 5 and 27 of the Minimum Wages Act, clearly brings out the difference. In Section 5 of the Minimum Wages Act the words used are "not less than two months from the date of notification". In Section 27 of the Minimum Wages Act the words used are "not less than three months" notice of its intention so to do, "where as the words used in Sub-section (5) of Section 1(5) of the Employees' State Insurance Act are merely" after giving six months" notice of its intention." While in the Minimum Wages Act, the provision is in negative terms, not so in the Employees' State Insurance Act.

9. In view of the language of Section (5) of the Act, we are of the opinion, that even if six months" notice falls short by one or two days, it does not vitiate the decision taken by the Government, provided there is substantial compliance. Apart from that, it is not the case of the petitioners, that during those two any days or one of them has submitted any representation and it was not considered by the Government. Thus, it cannot be said that the petitioners had suffered any prejudice because clear six months" notice was not given. Further, six months" notice should be given of the intention of the Government to extend the provisions of the Act. In the case on hand, the Government had stated in their notice that they intended to extend the provisions of the Act on or after 25th March, 1975 and a decision was taken to extend the provisions of the Act from 30th March, 1975. Thus there was clear six months" period between the date when the notice was given and the date when the provisions of the Act were extended to some of the establishments. If we keep in mind the purpose for which the notice is given and the language of the section, we are of the opinion, that the delay of one or two days does not render the decision invalid. At the worst, it is an irregularity and it does not vitiate the action of the Government.

10. Now, we will refer to some of the decisions referred to by Sri T. Anantha Babu, learned counsel for the petitioners. He referred to the passage in the Halsbury's Laws of England (Third Edition, Volume 37):

Section 1.--Calculation of a prescribed period of time 161. Days included or excluded. When a period of time running from a given day or event to another day or event is prescribed by law or fixed by contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last-mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as " from such a day " or " until such a day " are equivocal since they do not make it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day.

(Italics is ours)

Section 2.--Period on expiration on which an act may be done.--166. Exclusion of last day: When a period is fixed before the expiration of which an act may not be done, the person for whose benefit of the entire period, and accordingly in computing it the day from which it runs as well as the day on which it expires must be excluded and the act cannot be done before midnight of that day. On the other hand, in computing the ten days required for the notice of an appeal to the sessions, it has been held that, while the day of service should be excluded, the first day of the sessions should be included.

167. Expressions showing intention to exclude in many statutes, statutory rules and bye-laws the intention to exclude both days and to give the person affected a clear interval of time between the two is put beyond all doubt by the insertion of words such as "clear days" or "not less than" so many days, or so many days "at least."

Reference also was made to Section 9 of the General Clauses Act.

11. Sureshchandra and Others Vs. Birdichand and Others, was a case where Section 14(2) of the Rajasthan Municipalities Act, 1959 fell in for consideration. That section reads, that the draft of the order for limitation of the municipal wards shall be published for filing objections thereto within a period of not less than one month and a copy of the same shall be sent to the Board concerned for comments. Sub-section (3) says, that State Government shall consider any objection and the comments received under Sub-section (2) and the draft order shall, if necessary, be amended, altered or modified accordingly, and thereupon it shall become final. Evidently, the wording of that section is different from the wording of Section 1(5) of the Act.

12. Municipal Council, Khurai and Another Vs. Kamal Kumar and Another, , it has been held, that in view of Article 265 of the Constitution the procedure for imposing the liability to pay tax has to be strictly complied with and if it is not so complied with, the liability to pay tax cannot be said to be according to law.

13. Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur, , Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur, , it has been held, that under Sections 131-135 of the U.P. Municipalities Act, 1916, which provides for assessment of municipal tax, preparation of assessment rolls, hearing of objections and framing of assessment rules are mandatory and similarly conditions involving the passing of resolutions by the necessary majority at special meetings after proper notice to members are fundamental and cannot be overlooked. The learned counsel for the petitioners also referred to some other decisions relating to imposition of tax, and it is unnecessary for us to refer to them. In the case on hand no tax is being imposed. So, these decisions are distinguishable

14 In Ramnarain Lal and Others Vs. Dr. Radharaman Das and Others, , it was

held, that although notification relating to the appointment of Additional Commissioners under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 bears the date 24th January, 1949, since it was actually published in the Bihar Gazette on the 26th, and so, according, to the Bihar General Clauses Act (Clause 36) the appointment must be deemed to be valid only from the date of its publication in the gazette. We do not see how this decision supports the contention of the petitioners. As stated by us already, six months" notice was given. Even assuming it falls short by one or two days, it does not render the decision void.

15. The next submission of Sri T. Anantha Babu, the learned counsel for the petitioners, is that the approval of the Central Government should be obtained only after the six months" notice is given, and objections from the public are received, but not before giving such a notice. He submitted that the "approval" connotes that the Central Government also should have before them all the objections of public, and since in this case, the approval of the Central Government was obtained even before issuing the six months notice provisions of Section 1(5) of the Act are not complied with. He tried to draw support to this contention by referring to Section 23 of the General Clauses Act, 1897.

16. He referred to *The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara*, at 102. There the question for consideration was whether the previous sanction of the Provincial Government was obtained before imposing coal tax under the Central Provinces Local Self Government Act. But in our case, approval of the Government is obtained.

17. He also relied upon *Sreeramulu Chetty v. The State* AIR 1958 A.P. 354 (F.B.), where Section 19(4) of the Madras General Sales Tax Act, 1939 fell in for consideration. That Sub-section says, that the rules can be made only after previous publication for a period of not less than four weeks. The wording of that Sub-section is altogether different.

18. Section 23 of General Clauses Act relates to provisions applicable to making of rules or bye-law after previous publication. In this case, no rules are made. What Sub-section (5) of Section 1 of the Act says is, that the appropriate Government before extending the provisions of the Act to any other establishment or class of establishments should (1) consult the Corporation; (2) obtain the approval of the Central Government; and (3) give six months" notice of its intention of so doing by notification in the official gazette. A fair reading of that Sub-section does not show that the approval of the Central Government should be obtained only after six months" notice is given and the objections are received. It shows that the approval of the Central Government can be obtained even before giving six months" "notice". The reason is obvious. The approval of the Central Government seems to be insisted upon because the Employees" State Insurance Act is a Central enactment. Supposing the Central Government initially refuses to give its approval for extension of the provisions of the Act to a class of establishments; then there is no need to issue six months" notice. On

the other hand, if six months" notice is given and thereafter if the Central Government refuses to give its approval, it will be positively a waste of public time and public money. Apart from that, even if the Central Government gives its approval, the State Government is not bound to extend the provisions of Act, for the word used in Sub-section is "may". The approval of the Central Government is needed only for the proposal of the State Government to extend the provisions of the Act. The Central Government does not consider the representations received by the State Government pursuant to the six months" notice given by notification in the official gazette. It is the State Government that considers those representations. We, therefore, do not agree with the learned counsel for the petitioners that the approval of the Central Government should be obtained only after six months" notice is given and the representations are received. There is no dispute that the approval of the Central Government is obligatory before the State Government extends the provisions of the Act to any class of establishments, and admittedly, in this case the State Government has obtained such an approval.

19. Before we conclude, we may also add that the Supreme Court in *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, , held that Section 1 of the Employees" State Insurance Act is not invalid on the ground of excessive delegation. The Court held that it was not an illustration of delegated legislation, but it was what could be described as conditional legislation,

20. Lastly, it was submitted by the learned counsel for the petitioners that in all these cases the assessments were made on an ad hoc basis, because the petitioners pleaded non-liability and made no returns. In *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, , in similar circumstances the Supreme Court gave a direction that the Corporation Authorities should give a fresh hearing to the principal employers concerned, if sought within two months from the date of its judgment to prove any errors or infirmities in the physical determination of the contribution, and that the assessment shall be reconsidered in the light of a de novo hearing to the appellants and the quantum of contribution affirmed or modified by fresh orders. We propose to make a similar order in this case. We direct that the Corporation should give a fresh hearing to the principal employers concerned, if sought within two months from to-day to prove any errors or infirmities in the physical determination of the contribution, and the ad hoc assessment made shall be reconsidered in the light of such a hearing.

21. We, accordingly, dismiss this writ petition, but in the circumstances of the case, without costs. Advocates fee Rs. 150.