(1992) 08 OHC CK 0019

In the Orissa High Court

Case No : Criminal Revision No. 610 of 1988

Purusottam Das Agarwal and Others APPELLANT

Vs

Employees' State Insurance Corporation RESPONDENT

Date of Decision : 12-08-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 178
Employees State Insurance Act, 1948 — Section 85

Citation : (1993) 2 OLR 500

Hon'ble Judges : L. Rath, J

Bench : Single Bench

Advocate : R.B. Mohapatra, for the Appellant; Deepak Misra, for the Respondent

Final Decision : Dismissed

Judgement

L. Rath, J.—The question raised in this case is regarding the jurisdiction of the S. D. J. M., Bhubaneswar to entertain a complaint at the instance of the opposite party, the Employees'' State Insurance Corporation through its Regional Director, alleging an offence to been committed by the petitioner u/s 85 (a) and (e) of the Employees'' State Insurance Act (for brevity ''the Act'') at Rourkela. The prosecution report had been filed alleging the offence to have been committed because of non-payment of the contribution and non- submission of returns. The learned S. D. J. M. took cognizance of the offence taking the view that since returns were to be submitted at the office of the Corporation at Bhubaneswar and the payments were also due to the Corporation, the offence was committed at Bhubaneswar where the office of the Corporation situates and hence he had jurisdiction to try the offence under the provisions of Sacs. 177 and 178, Cr PC After the order was passed taking cognizance, an application was filed by the petitioners urging lack of jurisdiction in the S. D. J. M. to take cognizance and ''Seeking no further steps to be taken in the case. That application having been rejected, the present revision has been filed.

2. In urging their respective stands while it is the submission of the learned

counsel for the petitioner that it is only the Courts at Rourkela which have exclusive jurisdiction to try the offence, it is the submission of Mr. Misra appearing for the opposite party that the offence exclusively arose at Bhubanaswar and hence only the SDJM of Bhubaneswar is competent to try the case. It is next contended that at best it may be said that offence was committed both at Rourkela and Bhubaneswar and hence there was no illegality committed by the SDJM, Bhubaneswar in entertaining the complaint.

3. Developing the submission, Mr. Mohapatra has urged that as the contribution is made by the employer of his own and on behalf of the employees at Rourkela by depositing the same in the local branch of the State Bank of India as is authorised by the opposite party and such procedure is contemplated under Regulation 29 of the E.S.I. (General Regulations, 1950 (for brevity, ''the Regulations'') the non payment of the contribution into the Sank in the account of the corporation makes the offence committed at Rourkela. Similarly, it is his submission that since Regulation 26 authorises the sending of the return either through registered post or messenger and the offence u/s 35(2) is committed if the returns are not sent, the offence must be taken to have been committed because of non-sending of the return by the due date as stipulated under Regulation 26. Such non-sending is a fact which happened only at Rourkela and hence only the Court at Rourkela will have exclusive jurisdiction over the case. Reliance has been placed by him on a decision of the Calcutta High Court reported in 1982 tip 399 (D.K. Bhattacharjee v. M/s. Chandidas Chitra Mandir and Ors.) which was a case dealing with Sections 14(1-A) and 14-A (1) of the Employees'' Provident Funds and Miscellaneous Provisions Act (19 of 1952) In the case, depending on some earlier decisions, a distinction was drawn regarding making of the payments and, sending of the returns, holding that so far as payments are concerned, the failure to pay makes the offence to have been committed at the place of situation of the establishment, but so far as the returns are concerned, since they are to be submitted at the office of the Commissioner, the offence is committed at the place where his office is located.

4. For an appreciation of the submissions advanced, it is necessary to refer to some provisions of the Act as also the regulations made thereunder. Contribution under the Act is charged on the employer u/s 39 of the Act and u/s 40 the employer has the responsibility to pay the contribution also on behalf of the employees. u/s 39(4) the contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period. Section 43 states about the method of payment of contribution and provides that the corporation may make regulations for any matter relating or incidental to the payment and collection of contributions payable and may provide for the manner and time of payment of contribution. Regulation 26 runs as follows :

"26. RETURN OF CONTRIBUTIONS TO BE SENT TO APPROPRIATE OFFICE.

(1) Every employer shall send a return of contribution in quadruplicate in From 6 along with receipted copies of challans for the amounts deposited in the Bank, to

the appropriate office by registered post or messenger, in respect of all employees for when (sic) contributions were payable in a contribution period, so as to reach the office-

(a) within 30 days of the termination of the contribution period to which it relates ;

(b) within 30 days of the date of permanent closure of the factory or establishment, as the case may be ;

(c) within 7 days of the receipt of the requisition in that behalf from the appropriate office.

(2) For purposes of Section 77 of the Act, the due date by which the evidence of contribution having been paid must teach the Corporation shall be the last of the days respectively specified in Cls.(a), (b) and (c) of Sub-sec (1)."

Regulation 29 as it stood at the relevant time having been substituted on 27-10-50 is as follows :

29. Payment of contribution :

Every contribution payable under the Act shall, except when otherwise provided, be paid into a bank duly authorised by the corporation. The amount of the contribution so paid for each week shall be indicated on the contribution card in respect of each insured person by an impression of appropriate denomination made by a rubber stamp or by a metallic die, in the space indicated for that purpose in the card."

It is the admitted case that the petitioner is liable to pay the contribution, if payable, into Account No. 1 of the State Bank of India at Rourkela. Mr. Misra has, in support of his submissions, placed reliance on Employees'' State Insurance Corporation, Madras Vs. Md. Ismail Sahib and Others, , Sohanlal Awashthi and Another Vs. Employees State Insurance Corporation, and an unreported decision of the Kerala High Court in Criminal Misc. Case Nos. 950, 1093, 1185 and 1222 of 1991 decided on 31-1-1992 (P. Renuka v. ESI Corporation and Anr.), a copy of which he has filed along with an affidavit. So far as the Full Bench decision of the Madras High Court is concerned, it is seen that the principle adopted by their Lordships, in holding in favour of the corporation that the prosecution at the instance of the corporation in respect of the breaches of payment of contribution and submission of returns lies in the Court of the Magistrate having jurisdiction over the area in which the office of the corporation is situated is the common law principle that the debtor must find the creditor, and that it is the duty of the employer to make the payment and file the return at the office of the corporation and hence in default of such duty the offence can be said to have been committed only at the place where the office is situated. It was also held that the fact that the corporation had appointed agents in different mofussils for collection of the contribution in no way varies the principle. In the Sohanlal Awashthi and Another Vs. Employees State Insurance Corporation, which involved offences

Under Sections 85(a) and 85(g) of the Act, it was held that both the offences are inextricably interlinked with each other and that the gist of the offences consists of non-payment of the contribution and non-submission of return at the office of the corporation at Nagpur within the prescribed period. It was found that the obligation under the law was that the return must be made to reach the office of the corporation and unless the return so reaches, the contribution cannot be said to have been paid and hence the non-submission of the return at the office of the corporation would constitute offences both Under Sections 85(a) and 85(g). The views expressed by the Bombay and Madras High Courts was also expressed by the Kerala High Court in the unreported decision and apart from that, the consideration which weighed with his Lordship was that a large number of complaints were to be filed by the corporation against the employers violating the provisions of the Act spread over throughout the State for which reason it would bo difficult for the corporation to launch prosecutions at such numerous places.

5. Section 39(1) declares the contribution payable under the Act to be paid to the Corporation. The payment being thus to the Corporation, the provisions of Regulation 29 authorising payment to the Bank authorised by the Corporation can be said to be in discharge of the liability created by the Act u/s 39(1), i.e. payment to the Corporation, The payment to local branch in the account of the corporation is accepted as and in fact is, payment to the corporation at the office itself. Thus merely because a facility is provided to make deposit in local branch of a bank, it does not mean that payment is not made to the corporation at its office. On the other hand such payment is only to the corporation, but merely at a different place as authorised. Similarly, Regulation 26 says that the return is to be sent by registered post or through messenger so as to reach the office of the corporation within the specified period as detailed therein. The provision on the face of it shows it to be the responsibility of the employer to See, whether he sends the return either by registered post or through messenger, that it roaches the office of the corporation within the time stipulated. If it ''does not so reach, the offence would be taken to have been committed and the employer would be exposed to criminal prosecution. The return though is permissible to be submitted at the office of the corporation through two prescribed alternative modes, yet the modes would not control the liability to submit the returns. The offence regarding Section 85(e) must hence be taken to have been committed if the return does not reach the office of the corporation and hence the offence in such case is clearly committed at the place where the office of the corporation is located. The matter can also be viewed from another angle. Section 39(1) is the substantive law declaring liability of the employer to pay the contribution of the corporation. Similarly Section 44 of the Act also declares the liability of the employer to submit the return to the corporation. While these are the substantive provisions, the procedural part is provided for in Regulations 26 and 29, The offence is committed because of contravention of the substantive provisions and any provision made in the procedural part would not control the

breach of the substantive provision.

6. Even if Mr. Mohapatra''s submission is accepted that the Court at Rourkela has jurisdiction in the matter, yet it may only be to the extent that the Court 3t Rourkela will have concurrent jurisdiction in respect of infractions of the petitioner in respect of the provisions of the Act but it can never be held that the Court at Rourkela will have jurisdiction exclusive of the Court at Bhubaneswar. There is no warrant for such proposition.

7. In that view of the matter, the application has no merit and is dismissed.

