

(1984) 09 BOM CK 0032
In the Bombay High Court
Case No : First Appeal No. 478 of 1981

Regional Director Employees State Insurance Corporation	APPELLANT
Vs	
Light Metal Works	RESPONDENT

Date of Decision : 04-09-1984

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(22), 45A, 73

Citation : (1985) 1 BomCR 157

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : R.M. Jaykar, instructed by M.V. Jaykar and Co, for the Appellant; C.J. John, for the Respondent

Judgement

Sharad Manohar, J.—This appeal has got to be allowed having regard to the pronouncement of law on the question, involved in this appeal, by a Division Bench of this Court in the case of Employees" State Insurance Corporation v. Asian Paints India Ltd., reported in 83 Bom.L.R. p. 479.

2. The facts are very simple. They are correctly set out in the judgment under appeal. To state briefly the facts are as follows :

The respondent/Company is admittedly governed by the Employees" State Insurance Act (hereafter, the "Act"). As such, the Company has to file returns in respect of the various employees as regards the wages paid by them to the labourers and on the basis of the returns filed by the company the contribution to be paid by the employer is determined by the Corporation under the Act. There were in all 7 items in respect of which labour charges were paid by the Company. The correspondence which is produced in the Court shows that the Corporation had been giving notices to the Company in connection with many of the requirements, but the Company was turning deaf-ear to them. We are concerned with the notice dated 17-6-1975. By the said notice, the Company was informed that the Regional Director proposed to make ad hoc assessment of the Company"s dues under the Act u/s 45-A of the Act. It was stated in the

notice, further, that an opportunity would be given to the company for placing their view points orally before the Director. The Company was in fact given 14 days" time to take appointment with the Regional Director. Even the telephone number on which the appointment was to be taken was mentioned. But the partners of the firm decided to ignore the notice completely for a full period of at least 3 months. A letter dated 12-9-1975 was flourished before me by Mr. John, in which letter one of the partners had stated that he had been out of station for some period and that he had no time to pay attention to the said notice dated 17-6-1975 and on that account he wanted the entire proceedings to be re-opened. But the point is that long before that date, but after the expiry of the said period of 14 days on 22-7-1975, the Regional Director made the ad hoc assessment in respect of the contribution dues to be paid by the Company to the Corporation in respect of the above mentioned 7 items of labour charges. There was a dispute as regards two items. But as will be presently pointed out, even the dispute of these two items revolves around the question as to whether the claim made by the Corporation in respect of the two items was barred by limitation or not. It goes without saying that the ad hoc assessment was made ex parte, but that was simply because of the fact that the Company had left no other option to the Regional Director but to pass an order of assessment ex parte. By the ad hoc assessment, the Company was directed to pay a total amount of Employee"s Special contribution in connection with the 7 items amounting to Rs. 1109/- as also the Employees" contribution totally amounting to Rs. 716.45 as regards all the 7 said items. Adding to the said amount the amount of interest upto 30-6-1975 the total amount demanded by the Corporation amounted to Rs. 1264/- as Employers" contribution and Rs. 815.99 as the Employees" contribution.

When the recovery proceeding as regards this order was started, the employer filed an application before the Employees" Insurance Court u/s 75 of the Act. Out of the 7 items, 6 items, that it to say, the assessment in respect of the 5 items was conceded by the employer. The dispute revolved around only the assessment in respect of the two items. Contention of the employer before the Court was that the amount assessed as against these two items was irrecoverable by the Corporation because the same was barred by limitation. In support of this contention, the judgment of a learned Single Judge of this Court in the case of Asian Paints (India) Ltd. v. Employees" State Insurance Corporation and another, (1981 Labour and Industrial Cases, p. 514) (hereafter referred to as the Asian Paints case) was relied upon by the Company. In the said case it was held by the learned Single Judge of this Court, that the claim to be made by the Regional Director of the Corporation had to be made within the period of limitation prescribed by the Act and if the same was not made within the said period, it would be deemed to have been barred with the result that the claim would have to be rejected by the Court. The Company"s objection to the assessment in respect of the two items was based upon this aspect of the ruling of the learned Single Judge of this Court in the Asian Paints case. This contention was accepted

by the trial Court and hence, the trial Court held that the Corporation's claim for contribution in respect of the two items was barred by limitation. By its order dated 17th February, 1981, therefore, the Court allowed the employer's application partly and the Court disallowed the Corporation's claim relating to the two items which was held to be barred by limitation and the Corporation's claim relating to the remaining five items was upheld by the Court.

3. Against this order, no appeal has been filed by the Employer/ Company at all. The appeal is filed only by the Corporation and the Corporation's contention was that the Court's view regarding the bar of limitation was unsustainable. Fortunately, for the Corporation the question is no longer *res integra*. The self same judgment of justice Agarwal in *Asian Paints*" case was examined by a Division Bench of this Court in appeal and in the appeal the view of the learned Single Judge to the effect that the Corporation's claim was subject to any provision of limitation has been over-ruled by the Division Bench.

In view of the said judgment, the present appeal would normally have to be allowed without any further arguments. I may state here that so far as Mr. John, the learned Advocate appearing for the Employer/Company, is concerned, he did not dispute the fact that the judgment was binding upon me nor did he want to raise any contention regarding the correctness of the judgment. Mr. John, however, contended that several points were raised by the employer against the order of ad hoc assessment made by the Regional Director and that the bar of limitation was just one of the pleas. He contended that the remaining points have not been answered by the Court and hence the matter has got to be remanded to the trial Court for consideration of the said question. But before raising the contention, he contended that the view of Aggarwal, J., in *Asian Paints*" case was also based upon the basic principle of enquiries viz. that even the ad hoc assessment, could be made only after reasonable hearing to the person concerned. The learned Advocate argued that before passing the order of ad hoc assessment, no hearing was given by the Regional Director to the Employer/ Company which fact vitiated the ad hoc assessment made by the Director u/s 45-A of the Act. Mr. John contended that this part of the judgment of Aggarwal, J., in the *Asian Paints*" case has not been affected by the judgment of the Division Bench. Contention of Mr. John was that before passing the impugned order dated 22nd July, 1976 no hearing was given to the Employer/Company and hence the order was nullity.

4. I may state here that so far as the requirement of giving hearing is concerned, there cannot be any dispute about the proposition in question. The fact that even before making the ad hoc assessment on the ground that the necessary return has not been filed by the employer or on any of the grounds mentioned in section 45-A, the employer concerned has got to be given a hearing as to the nature of ad hoc assessment is a proposition which cannot be seriously disputed. Not only that such a rule of law is very much entrenched in our corpus juris but even the two authorities under consideration, namely the judgment of the

learned Single Judge and of the Division Bench in the Asian Paints" case make the position perfectly clear. But at the same time, there cannot be any dispute that the proposition that though giving of hearing is the requirement of the principles of natural justice, the kind of hearing that needs be given in each case will depend upon the facts and circumstances of each of the case. Even the Division Bench has not held that the hearing has got to be given in the manner in which the proceeding is heard in the suit in a Civil Court. The Court will have to examine each question on its own facts and shall have to consider as to whether the kind of hearing which was given or offered to the employer was enough or not. I have mentioned at the outset, while stating the facts, that in the instant case the Employer/Company had shown studied stubbornness and recalcitrance in the matter of giving assistance to the Regional Director in the matter of arriving at the correct assessment. This fact is clear from the Regional Directors" letter dated 17-6-1975. I have already referred to the contents of the said letter. What is necessary to repeat here is the fact that by this letter an opportunity was given to the Employer/Company to take an appointment with the Director within 14 days from the date of the notice and to satisfy the Director about the various items of assessment. When a hearing is to be given by any authority to any person before passing any order against him, all that is implied is that he should be given opportunity to be heard at a reasonable time and in a reasonable manner. But in the ultimate analysis, it is for the person concerned to avail of the opportunity. If the person is given such a long rope, as is given in the instant case by the Regional Director, to choose his own date for being heard and if the person concerned refuses to avail of even such long rope of an opportunity, then the only course open for the Regional Director would be to proceed ex-parte. The fact that the Employer/Company is proceeded against ex-parte does not mean that no opportunity was given to the Employer/Company. Such a situation is the result of obstinacy and adamance of the Company itself. The Company cannot bring the blame on that account to the door-step of the Corporation. The plea that the order is bad because no hearing was given to the Employer/Company is, therefore, devoid of any basis, apart from being somewhat at variance with the factual position.

5. The next contention urged by Mr. John is that the order has to be a speaking order, because the proceeding provided for by section 73 of the Act for relief against such order is almost an appellate proceeding and if the order appealed against is not a speaking order, the Court will always be at a loss to know as to the rational of the said order.

Here again, Mr. John is right in formulating the principle; but the principle has no application to the facts of the case. Once it is found that the order had to be passed by the Director ex-parte, all that he has to do is to write the amount in figures and to direct the Company to pay the amount. It is true that if the Company had appeared and raised certain objections to certain method of assessment and if the objections were not accepted by the Director, the Director might have been required to give reasons why he was not accepting the same.

But when there are no objections whatsoever taken before the Officer of the Corporation by the Employer/Company, for the very simple reason that the Employer/Company did not appear at all, there does not arise any question on the part of the Regional Director of dealing with any objection. From the very nature of things, the order would be by way of specification of the amount payable by the Company towards the E.S.I. dues. This is the precise thing done by the Regional Director and I, for one, find no justification to cavil at the same.

6. However, another answer to the above mentioned argument is that in the lower Court there was no dispute with the fact that the assessment in respect of the 5 (five) items was a correct assessment. The dispute centered around only two items which were alleged to be barred by limitation. If the Employer/Company wanted to question the correctness of the assessment in respect of the five items, it was perfectly open for the Company to place the material before the Court with a view to show inaccuracy of the assessment. Point is that not only that this is not done by the Company even before the trial Court, but the correctness of the assessment is admitted in so many words by the representative of the Company appearing before the Court. The argument relating to speaking order is, therefore, devoid of any substance in the instant case.

7. But the main argument of Mr. John was that, in the instant case, the assessment was in connection with the payment of labour charges. Contention was that the labour charges were paid to the employees of the other Companies for work done of the respondent/Company. Reliance was placed upon the definition of the word "Wages" u/s 2(22) of the Act and it was contended that if the employer gets the work of his establishment done from the labourers of other Companies and pays the labour charges to some other Companies, then those labour charges are not wages within the meaning of this Act.

To my mind, the point needs just be stated to be rejected. In the first place even a casual glance at section 2(22) of the Act is enough to show that there is no justification for such argument at all. Mr. John contended that the wages must be payable to an employee and the necessary postulate must be that the employee must be the employer's employee. I do not find any justification for such contention in the instant case. The word "wages" is defined no doubt in such a manner that the wages are paid to an employee. But the definition itself does not state that the wages have to be paid to the employer's employee. Significantly enough, the definition states that the labour charges paid to "an" employee are wages within the meaning of the Act. There are certain kind of labour charges which are excluded from the definition. But labour charges paid to somebody else's employee for the work done for the Company's own establishment are not excluded from the concept of "wages" by said section 2(22).

Even otherwise, such a construction would lead to preposterous result. The E.S.I. contribution is based upon the labour charges paid by the employer to his employees, who bring about the and products. It would be very easy for any person to defeat the entire requirement of payment of the contribution by the

simple device and expedient of getting the entire work done from somebody else's employee. The illustration that I gave to Mr. John, to which he had no answer, was as follows :

There may be two Partnership Firms : Firm "A" and Firm "B", having understanding with each other. Firm "A" will be employing its own employees and Firm "B" will be employing its other own set of employees. Firm "A" will get its goods manufactured by the employees of Firm "B" and Firm "B" would get its goods manufactured by the employees of Firm "A". Firm "A" would pay the labour charges to Firm "B" and vice-versa. If the interpretation sought to be put by Mr. John of section 2(22) of the Act is correct, both the Firms would be paying no wages to anybody and as such would be exempted from the operation of the entire E.S.I. Act. No Court would be justified in allowing such interpretation of the statute which would wholly defeat every provision and every object of the same.

Incidentally, I may mention here that the fact that the employer in the instant case had got the work done of the other Company, namely Rolex Corporation, is not denied by the Corporation. But at the same time the employer himself has admitted in so many words that the Employer/Company used to get the work done from Rolex Corporation and other Companies, that they used to pay labour charges for the work done by the other employees and that they used to debit those labour charges in the Employer/Company's own books under the heading "labour charges". It will be, thus, seen that the Company itself has been treating those labour charges as their own labour charges all this time. It is, therefore, clearly an afterthought on the part of the Company to raise an objection that the contribution was not leviable on such labour charges paid by the Company for the manufacture of its own goods.

Having regard to all these facts and aspects of the matter, to my mind, the appeal has got to be allowed.

8. The appeal, therefore, succeeds. The order passed by the lower Court is set aside and the original order passed by the Regional Director stands restored. The respondent shall pay the costs of this appeal.