

(1999) 01 MAD CK 0069
In the Madras High Court
Case No : A.A.O. No. 302 of 1991

Regional Director, Employees State Insurance Corporation	APPELLANT
Vs	
Samsons Rubber Industries (P) Ltd.	RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Employees State Insurance Act, 1948 — Section 75

Citation : (2000) 87 FLR 86 : (2000) 2 LLJ 1490

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : G. Desappan and J. Josephnath, for the Respondent

Final Decision : Dismissed

Judgement

K. Gnanaprakasam, J.—The Employees" State Insurance Corporation has filed this appeal as against the order dated February 21, 1989, passed by the Employees" Insurance Court, Madras, in E.S.I.O.P. No. 19 of 1986.

2. The appellant, by its notice dated February 19, 1986, called upon the respondent to pay a sum of Rs. 2,255 as damages for the delayed payment of contribution for the period from September, 1976, to July, 1978. The respondent questioned the said demand by filing a petition u/s 75 of the Employees" State Insurance Act, wherein, it is stated that (1) the respondent has paid the said contribution amount in time, and hence, the damages claimed by the appellant is not correct; (2) the appellant had no legal authority to levy and claim damages, as there was no valid delegation of the powers.

3. The appellant resisted the said petition on the ground that the damage was claimed under the notice dated October 27, 1979, and the respondent should have filed the petition within a period of three years from the said date, but whereas, he has filed the petition only in the year 1986, and that, therefore, the petition filed by the respondent u/s 75 of the Employees" State Insurance Act is barred by time u/s 77(1-A) of the Act.

4. The Employees' Insurance Court, after taking into consideration all the aspects of the case and also the materials placed before it, came to the conclusion that the damages claimed by the appellant is not proper, and that the appellant was not delegated with the power to take action, and that petition filed by the respondent was in time and thereby allowed the petition. Aggrieved by the same, the Employees' State Insurance Corporation has filed this appeal.

5. The learned advocate for the appellant has submitted that, though the appellant paid the contribution amount in time, there was a delay of eight days in the submission of the cards duly stamped, to the Corporation and, therefore, the respondent is liable to pay damages. The fact that the respondent paid the contribution amount in time, is not in dispute. But, however, it appears that there was a delay of eight days in forwarding the cards duly stamped to the Corporation. Section 85-B provides for, recovery of damages, which runs as follows:

"Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer by way of penalty such damages, not exceeding the amount of arrears as may be specified in the regulations of the Act."

6. It should be borne in mind that in claiming damages, it should be seen, whether the firm has made profits by retaining the money, and if so, to what extent. Here, the contribution amount payable has been paid in time and there was a delay of eight days, which is only negligible, in sending cards to the appellant and the said delay has not caused any loss or damages to the Corporation. Further, the claiming of damages u/s is not mandatory and discretion is given to the Corporation, which should be exercised in a fit and proper manner, which should not be punitive in nature. The respondent, having paid the contribution amount in time, should not be penalised to pay damages for the delay of eight days in sending cards, and only in the said circumstances, the Employees' Insurance Court has come to the conclusion that the damages claimed by the respondent is not proper and maintainable.

7. The very same view was taken by the Division Bench of the Karnataka High Court in the case of Regional Director, Employees' State Insurance Corporation v. Blue Star Ltd., 1981 59 FJR 191. But, however, the appellant relied upon the decision rendered by the Apex Court in the case of Sovrin Knit Works etc. Vs. Employees' State Insurance Corpn. and another etc., . It is a case, where the establishment has not paid the contribution amount in time, and, therefore, the Corporation has called upon the establishment to pay damages on delayed payment with interest. But, in our case, the contribution amount has been paid in time and the damages was claimed only for the delay in sending cards and hence, the abovesaid decision is not applicable to our case.

8. Thiru J. Josephnath, learned advocate for the respondent, has submitted that the appellant was not at all entitled to pass an order as there is no delegation of

powers as contemplated u/s 94-A of the Employees' State Insurance Act, which states:

"The Corporation, and, subject to any regulations made by the Corporation in this behalf, the Standing Committee may direct that all or any of the powers and functions which may be exercised or performed by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subject to such conditions, if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation."

9. Admittedly, there was no delegation of the power by the Corporation to the appellant on May 22, 1980, on which date, the orders were passed. The powers were delegated by the Corporation to the appellant only on March 13, 1983, i.e., after three years from the date of passing of the order. Hence, it is contended that the very order passed by the appellant is a nullity and it may not at all be enforced. To support the said contention, the respondent relied upon the decision rendered by the Supreme Court in the case of Sahni Silk Mills (P) Ltd. and Another Vs. Employees' State Insurance Corporation, .

"10. Section 94-A does not specifically provide that any officer or authority subordinate to the Corporation to whom the power has been delegated by the Corporation, may in his turn, authorise any other officer to exercise or perform that power or function. But by the resolution dated February 28, 1976, the Corporation has not only delegated its powers u/s 85-B(I) of the Act to the Director-General, but has also empowered the Director-General to authorise any other officer to exercise the said power. Unless it is held that Section 94-A of the Act enables the Corporation to delegate any of its powers and functions to any officer or authority, subordinate to the Corporation, and he in his turn can sub-delegate the exercise of the said power to any other officer, the last part of the resolution dated February 28, 1976, cannot be held to be within the framework of Section 94-A. According to us, Parliament, while introducing Section 94-A in the Act, only conceived direct delegation by the Corporation to different officers or authorities, subordinate to the Corporation, and there is no scope for such delegate to sub-delegate that power, by authorising any other officer to exercise or perform the power so delegated."

10. On the contrary, the learned advocate for the respondent has relied upon the decision rendered by the Apex Court in the case of Sovrin Knit Works v. Employees' State Insurance Corporation, (supra), wherein it was held that:

"2. Firstly, it is contended that u/s 94-A of the Act, Corporation has been empowered to delegate the power to one of the officers, but, the officer-delegatee has no power to further delegate to any other officer. Therefore, exercise of the power by the officer is bad in law. When we requested Shri S. K. Gambhir to produce the order passed by the Corporation authorising the officer, he is unable to place his hands on the order passed by the Corporation. But he seeks to contend that the Regional Director, one Mr. G.R. Nair was a delegatee

officer to whom power was delegated by the Corporation, pursuant to its resolution. Therefore, the order is bad in law. Unless we look into the order passed by the Corporation, it is difficult to see whether it is a further delegation. It is seen u/s 94-A of the Act that the Corporation has been empowered to authorise any of its officers. It would be obvious that the Regional Director is one of the officers in the region. Necessarily, he is a competent officer to exercise the power under the Act on behalf of the Corporation. It was conceded in the lower Court that he was so authorised. So, the officer has power to pass the order imposing damages and interest thereon for delayed payment."

11. That, in the said case, it was conceded before the lower Court that the concerned officer was so authorised, hence the Apex Court held that the order passed by the said officer was in accordance with law. But, in our case, the appellant has not contended so, and on the other hand, he has accepted that the Corporation has not delegated the power to the appellant to pass orders, and as such, the order passed by the appellant cannot at all be held as a good and valid order, and hence, the observation of the Employees' State Insurance Court, in the said aspect, that the appellant has no valid delegation of the power to levy the damages, is hereby confirmed. Further, it is noticed that the judgment rendered by the Apex Court, in the case of Sahni Silk Mills (P) Ltd., (supra) which is three-Judges order, was not placed before the two-Judges Bench in the case of Savrin Knit Works, (supra).

12. Mr. Desappan, learned advocate for the appellant, put forth yet another argument stating that the petition filed by the respondent before the Employees' Insurance Court u/s 75 of the Act is hit by limitation as stated u/s 77(1-A) of the Employees' State Insurance Act. It is submitted that the claim for damages was dated July 4, 1980, whereas the respondent filed the petition only on March 7, 1986, and, therefore, the petition has been filed after the expiry of three years and hence, the very petition itself is not maintainable. No doubt, it is true that every application should be made within a period of three years from the date on which the cause of action arose as provided u/s 77(1-A) of the Employees' State Insurance Act.

13. The learned advocate for the respondent has submitted that the cause of action would arise, as and when the demand was made, and in this case, the demand was by the notice dated February 19, 1986, and the petition was filed on March 7, 1986, and, therefore, the petition was in time. In order to justify his stand, he relied upon various decisions reported in (1) Merla Ramanna Vs. Nallaparaju and Others, , which deals with an application by a party to the suit to recover possession of properties, which had been taken delivery of under a void execution sale, would be in time under Article 181, if it was filed within three years of his dispossession.

(2) Mst. Rukhmabai Vs. Lala Laxminarayan and Others, , which states that where there are successive invasions or denials of a right, the right to sue under Article 120 accrues when the defendant has clearly and unequivocally threatened to

infringe the right asserted by the plaintiff in the suit.

(3) *Ranendra Narayan Sinha and Others Vs. State of West Bengal*, which deals with Article 62 of the Limitation Act, wherein, it is stated that to a claim for declaration of the right of that abatement of revenue, there is no bar of limitation. Each demand for recovery of revenue by the Government furnishes a fresh cause of action, and facts in all these cases are not at all applicable to our case.

14. The Employees' State Insurance Act, 1948, is a special enactment, and as such, it would overrule the general enactment. The period of limitations set forth in the special Act have got to be adhered to. Section 77(1-A) is so clear that every such application shall be made within a period of three years from the date on which, the "cause of action" arose. Admittedly, the cause of action arose on July 4, 1980, and hence, the petition should have been filed within three years from that date onwards. But the petition was filed only on March 7, 1986, and the same cannot be held that it is in time.

15. The respondent is trying to say that the demand was made only on February 19, 1986, and, therefore, cause of action arises on and from February 19, 1986, and, therefore, the petition was in time, and, I am afraid to accept the said contention, because the said demand does not give rise to a fresh cause of action. But, at the same time, the time limit was prescribed for the Corporation also, under the proviso to Section 77(1-A)(b), which states that:

"Provided that no claim shall be made by the Corporation after five years of the period to which, the claim relates."

16. Obviously, the claim related to the order dated July 4, 1980, and the recovery proceedings were taken by the appellant by the notice dated February 19, 1986, which is *ex facie* barred by time. Hence, the very demand of the appellant, itself is barred by time, and hence, the notice issued by the appellant calling upon the respondent to pay damages for the delayed payment of contribution is unsustainable in law. Though I have come to the conclusion that the petition filed by the respondent is out of time, the very demand made by the appellant is also beyond the period prescribed under the Act, and hence, the very demand itself is illegal and bad, the appellant cannot sustain its claim on that ground.

17. For the reasons set forth above, the civil miscellaneous appeal is dismissed. No costs.