

(1980) 04 KAR CK 0007

In the Karnataka High Court

Case No : Misc. First Appeal No. 147 of 1974

Regional Director, E.S.I.

APPELLANT

Vs

Fibre Bangalore (Pvt.) Limited

RESPONDENT

Date of Decision : 19-04-1980

Acts Referred:

Employees State Insurance Act, 1948 — Section 32, 40, 45 A, 46, 48

Citation : (1980) 41 FLR 330 : (1980) 2 LLJ 301

Hon'ble Judges : V.S. Malimath, J;S.R. Range Gowda, J;M.N. Venkatachaliah, J

Bench : Full Bench

Judgement

G. Venkatachaliah, J.—A Division Bench of this Court has, in a matter arising under the Employees' State Insurance Act, 1948, (hereinafter referred to as the "Act") referred the following question of law to a Full Bench for its opinion :

"Whether in the case of a disputed demand for contribution under the E.S.I. Act by the E.S.I. Corporation, the latter alone should raise a dispute before the Employees' State Insurance Court in accordance with Ss. 75 and 77 of the E.S.I. Act or any other provision therein; or, whether it is the employer against whom such levy is made, and by whom it is disputed, who should raise such a dispute before the E.S.I. Court for adjudication ?"

2. The facts leading up to the reference are that a certain employer, namely, F. Fibre Bangalore (P) Ltd., on being called upon to pay the Insurance Contributions under the Act, on a sum of Rs. 97,819-37, claimed by the Employees' State Insurance Corporation (hereinafter referred to as the "Corporation"), to be the wages paid to the employees for and during the year 1967-68 and the Corporation having resorted to recover the contributions demanded as arrears of land revenue, disputed the said liability and approached the Employees' Insurance Court under S. 75 of the Act, for a declaration, inter alia that the disputed sum of Rs. 97,819-37 on which Insurance Contributions were demanded did not constitute wages, attracting the liability to contributions on the part of the employer and that, at all events, the demand in this behalf, was

barred by time.

3. In the course of the said proceedings, the employer, on 11th October, 1973, filed a Memo which reads :

The applicant now submits that it is not pressing other issues except praying that a declaration may kindly be given to the effect that the respondent shall not resort to revenue recovery proceedings to recover its claim without seeking an adjudication of the matter before this Hon"ble Court".

4. What is implicit in this plea is that wherever the employer disputed his liability for the contribution under the "Act" the Corporation must need, as a condition precedent to the enforceability of its demand, seek an adjudication of its claim before the Employees' Insurance Court. This was the only plea which was urged before the said Court.

5. By its order dated 30th November, 1973, the Court following the decision of a Division Bench of this Court in Sri Krishna Mills Co. v. Regional Director, Emp. State Ince. (1973) Kar. L.J. 151, wherein the view is taken that where the employers disputed their liability to pay contribution, the Corporation could not itself decide the dispute and make a demand straightway, but that it should refer the question to be decided by the Employees, Insurance Court in accordance with the "Act", held and answered the issue in favour of the employer and granted its prayer.

6. The Corporation came up to this Court in appeal under S. 32 of the "Act". The Division Bench, consisting of Venkataswami and Noronha, JJ. which heard the appeal was of the opinion that the view of the law taken in Sri Krishna Mills Co."s. case relied upon by the Corporation was open to doubt and required reconsideration and referred the question to a Full Bench. That is how the matter is before us.

7. The "Act" is a piece of beneficial legislation and was enacted to effectuate a scheme providing for benefits to the employees and their dependents in cases of sickness, maternity and "employment injury". Section 40 of the "Act" renders the employer liable in the first instance to pay the contributions of the employer as well as the employee to the Corporation subject to the recovery from the employee of the amount he is liable to contribute. Section 44 of the "Act" enjoins upon the employer to submit to the Corporation returns as specified therein. Sections 46 to 73 deal with the benefits which, inter alia, include sickness and disablement benefits and the manner in which and conditions subject to which the said benefits are made available. If the employer fails or neglects to pay the contributions as required, the Corporation has the right to recover from him under S. 68, the amounts specified in that section as an arrear of land revenue. Section 94 provides that the contributions due to a Corporation are deemed to be included in the debts under the Insolvency Acts and the Companies Act and are given priority over other debts in the distribution of the property of the insolvent or in the distribution of the assets of a company in liquidation. Chapter VI deals

with adjudication of disputes and claims. Section 74 contemplates and provides for the constitution of the Insurance Court. Section 74 also specifies the matters to be decided by that Court. Sections 76 and 77 deal with the institution and commencement of proceedings and S. 78 with the powers of the Insurance Court. Section 80 deals with the non-admissibility of the claim, if not made within twelve months after the claim is due, while S. 82(3) prescribes the period within which an appeal should be filed against the order of the Insurance Court.

8. An examination of the general scheme of the "Act" in regard to various obligations imposed by and the rights to benefits accruing under the "Act" would show that the whole scheme is dependent upon the contributions made by the employer not only with respect to the amounts payable by him but also with respect of those payable by employees. The basic obligation is on the employer to stamp any employee's card with the appropriate stamp, even though a portion of the amount due may be payable by the employee and recoverable by deductions from his wages.

9. Cases, where the employer on the basis of his own returns indicates the context (extent ?) of his liability, present no difficulty, Corporation can proceed to recover the contributions in cases where the liability is manifest from the returns filed by the employer.

10. The answer to the question referred to us for opinion turns upon the true construction of provisions of Ss. 44, 45, 45A, 45B, 74, 75 of the "Act". The said provisions read :

44. (1) Every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf.

(2) Where in respect of any factory or establishment the Corporation has reason to believe that a return should have been submitted under sub-s. (1) but has not been so submitted, the Corporation may require any person in charge of the factory or establishment to furnish such particulars as it may consider necessary for the purpose of enabling the Corporation to decide whether the Factory or establishment is a Factory or establishment to which the Act applies.

(3) Every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf.

45. (1) The Corporation may appoint such persons as Inspectors, as it thinks fit, for the purposes of this Act, within such local limits as it may assign to them.

(2) Any Inspector appointed by the Corporation under sub-s. (1) (hereinafter referred to as Inspector), or other official of the Corporation authorised in this behalf by it may, for the purposes of enquiring into the correctness of any of the

particulars stated in any return referred to in S. 14 or for the purpose of ascertaining whether any of the provisions of this Act has been complied with :

(a) require with any principal or immediate employer to furnish to him such information as he may consider necessary for the purpose of this Act;

(b) at any reasonable time enter office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in charge thereof to produce to such Inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine with respect to any matter relevant to the purposes aforesaid, the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises, or any person whom the said Inspector or other official has reasonable cause to believe to be or to have been an employee :

(d) make copies of, or take extracts from, any register, account book or other document maintained in such factory establishment, office or other premises.

(e) exercise such other powers as may be prescribed.

(3) An Inspector shall exercise such functions and perform such duties as may be authorised by the Corporation or as may be specified in the regulations.

45A. (1) Where in respect of a factory or establishment no returns, particulars registers or records are submitted, furnished or maintained in accordance with the provisions of S. 44 or any Inspector or other official of the Corporation referred to in sub-s. (2) of S. 45 is obstructed by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under S. 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment.

(2) An order made by the Corporation under sub-s. (1) shall be sufficient proof of the claim of the Corporation under S. 75 or for recovery of the amount determined by such order as an arrear of land revenue under S. 45B.

45B. Any contribution under this Act, may be recovered as an arrear of land revenue.

74. (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 local 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.

75. (1) If any question or dispute arises as to -

(a) Whether any person is an employee within the meaning of this Act or whether he is liable to pay the employees" contribution, or :

(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or;

(c) the rate of contribution payable by a principal employer in respect of any employee, or;

(d) the person who is or was the principal employer in respect of any employee, or;

(e) the right of any person to any benefit and as to the amount and duration thereof, or;

(f) any direction issued by the Corporation under S. 55A on a review of any payment of dependents" benefits, or

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees" Insurance Court under this Act."

11. Such question or dispute subject to the provisions of sub-s. (2A) shall be decided by the Employees" Insurance Court in accordance with the provisions of this Act.

75 (2) Omitted as not necessary.

75 (2A) Omitted as not necessary.

75 (3) Omitted as not necessary.

12. Sections 45A and 45B were introduced by S. 17 of the Amending Act 44 of 1966 with effect from 17-6-1967.

13. Section 45A provides that where in respect of a factory or establishment, who return, particulars, registers or records are submitted, furnished or

maintained in accordance with the provisions of S. 44 or any Inspector or other official of the Corporation referred to in sub-s. (2) of S. 54 is obstructed by the principal or immediate employer or any other person in exercising his functions or discharging his duties under S. 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment.

14. Sub-section (2) of S. 45A provides that an order made by the Corporation under sub-s. (1) shall be sufficient proof of the claim of the Corporation under S. 75 or for recovery of the amount determined by such order as an arrear of land revenue under S. 45B.

15. Section 75 of the "Act" provides that if any question or dispute arises in respect of any question or dispute arises in respect of any matter contemplated in cls. (a) to (g) of sub-s. 75 which include "any other matter which is in dispute between a principal employer and the Corporation" such question or dispute shall be decided by the Insurance Court.

16. The question that is raised is on the constructions of the provisions of Ss. 45A, and 45B, in the context of the scope and purpose of S. 75 of the "Act" and is whether - even where the Corporation has, in the class of cases to which S. 45A is clearly attracted, determined, by order, the amount of contributions payable under that section the Corporation has, before invoking the provisions in the Act enabling the recovery of the contributions as arrears of land revenue, to seek an adjudication of the claim.

17. We have heard Sri M. Papanna, learned counsel for the appellant and Sri Rajagopalan, learned counsel for the respondent-company, and Sri G. S. Ullal, who offered to assist the Court; and sought to supplement the submissions of Sri Rajagopalan. Sri Rajagopalan's main contention was that the provisions of S. 75 are clear to the effect that wherever there is any dispute even if the dispute relates to the subject-matter of a determination made by the Corporation under S. 45A, the Corporation must necessarily seek the resolution of the dispute before Insurance Court. In support of this contention the learned counsel relied upon several decisions.

18. The first decision relied on was of a Bench of this Court in Sri Krishna Mills Co's case wherein this Court observed :

"..... In support of his latter contention, the learned counsel relied on the provisions of S. 75(1)(g) of the Act, which provides that if any question or dispute arises as to any matter which is in dispute between a principal employer and the Corporation, such a question or dispute, shall be decided by the Employees' Insurance Court in accordance with the provisions of the Act. Since the petitioners have disputed their liability to pay contribution in respect of the alleged contract labour, the learned counsel urged that the respondent was incompetent to decide that dispute and make a demand straightway."

"The contention urged by the learned counsel, in our opinion, is well founded and the action of the first respondent cannot be supported. It was not shown by the learned counsel for the first respondent "as to how the first respondent could have made a demand straightway when the petitioners have disputed their liability to make contribution under the Act in respect of the alleged contract labour. The question or dispute should have been referred by the first respondent to be decided by the Employees" Insurance Court in accordance with the provisions of the Act."

19. The next decision relied on was Free India (P) Ltd., v. The Regional Director, Employees" Insurance Corporation (1973) 2 Mad L.J. 303, where Ramparasada Rao, J. observed :

"..... The determination under S. 45A(1), which the Corporation has to make, is not an administrative order, but is a quasi-judicial one which will impinge upon the rights of parties. That being so, the principles of natural justice have to be adhered to and the determination of liability being made after due notice and a reasonable enquiry. Even S. 45B says that any contribution payable under this Act may be recovered as an arrear of land revenue. It is not always compulsory for the Corporation to have recourse to the provisions of the Revenue Recovery Act. A fortiori in a case where the quantum of liability is in dispute recourse to such a summary procedure is not permissible"

20. Strong reliance was placed on the observations of the Supreme Court in The Employees State Insurance Corporation, Bhopal Vs. The Central Press and Another, , where the Supreme Court referred to the demand made pursuant to an order under S. 45A as a "provisional demand". The observations relied on are in terms following :

"4. After having considered the provisions of S. 99A of the Act, we doubt whether this provision can be availed of for the purpose of supplying a defect or overcoming difficulty in adjudication of a dispute for which the Employees" Insurance Court is given ample powers. Moreover, the Corporation has itself to collect the information initially and make a provisional demand on the basis of that information under S. 45A in such a case"

21. On the basis of the above observation, and in particular on the observation that the demand was a provisional demand it was contended that wherever there is a dispute between a principal employer and the Corporation in respect of any contribution payable under this Act, including a dispute relating to a determination made under S. 45A, the matter must necessarily be brought for decision before the Insurance Court before any claim is enforced.

22. So far as the decision of the Bench of our Court in Sri Krishna Mills Co."s case is concerned, it is to be observed that it is not shown to us that the Bench was considering a case where there was an order under S. 45A of the Act preceding the demand. Indeed the observations of the Bench to the effect that "it was not shown by the learned counsel for the first respondent as to how the

first respondent could have made a demand straightway " would show that the effect of an anterior determination under S. 45A did not fall for consideration in that case.

23. Indeed, the observations of Ramaprasada Rao, J. in *Free India (P) Ltd.*'s, case which seem to suggest a different view, if understood in the context of the further direction made in the course of that order granting time to the employer and directing the latter to move the Insurance Court against the determination made under S. 45A would show that in such a case it is the employer that should move the Insurance Court. This case cannot be of any assistance to the appellant.

24. Indeed, in AIR 1972 1935 (SC) the Supreme Court had occasion to consider the Scheme of the Act, though, however, the context in which the matter arose was whether Rule 17 framed by the Bombay Government prescribing a period of limitation for filing to an application under S. 75 was ultra vires S. 96(1)(b) of the Act or not. In the said case, the Supreme Court observed :

"..... We are unable to appreciate the logic of this submission because the benefit of an employee can be negated or partially admitted for instance either by reason of the employer not showing him in the return as an employee of his or showing him as drawing a lesser wage than what he is entitled to or as it may happen mostly when he fails to make the payments even according to the returns made by him. In all these cases the employees' benefits will be affected because the basis of the Scheme of conferring benefit on the employee is the contribution of both the employer and the employee. It is clear, therefore, that the right of the corporation to recover these amounts by coercive process is not restricted by any limitation nor could the Government by recourse to the rule making power prescribe a period in the teeth of S. 68"

25. Again in the *Employees' State Insurance Corporation, Bhopal*'s case the Supreme Court observed :

"3. The powers of the Corporation are given in S. 45A of the Act, introduced by Act 44 of 1966, whereby the Corporation may, on the basis of the information available to it, determine the amount of contributions payable and make necessary demands. Apparently, the scheme, of the Act, after the amendment, is that the Corporation itself should in case where there is omission on the part of the employer to maintain records in accordance with S. 44 of the Act, determine the amount of contributions on the strength of such information as it may collect. It can then make the demand. If the employer refuses to comply with the demand so made the matter can come up before the Employees' Insurance Court under S. 75 of the Act"

26. After a careful consideration of the matter, we are of the opinion that what emerges from a conspectus of the relevant provisions of the Act is that in cases where the requirements of S. 45A, are attracted and satisfied and where the Corporation is enabled to and does make an order under and in accordance with that section determining the amount of contributions payable in respect of the

employees of the Factory or establishment, the Corporation can proceed to recover the amount so determined as an arrear of land revenue though the employer affected by that order may raise a dispute in regard thereto. The Corporation is not compelled to seek an adjudication before the Insurance Court by reason alone of the fact that the employer disputes the claim so determined. Indeed the expression "determine" occurring in S. 45A is far too strong to permit of its being understood as meaning anything but a decision which, unless set aside by the Insurance Court in exercise of its powers under S. 75, is enforceable under S. 45B. This, in our opinion, is the clear effect of the provisions in sub-s. (2) of S. 45A read with S. 45B. In such a case, if the employer seeks to dispute and avert his liability, it is for him to institute proceedings before the Employees' Insurance Court.

27. Section 77(1) of the Act provides that proceedings before an Employees' Insurance Court shall be commenced by application. Sections 77(1A) provides that every such application shall be made within a period of three years from the date on which the cause of action arose. Explanation (b) to sub-s. (1A) of S. 77, inter alia, provides that the cause of action in respect of a claim by the Corporation for recovering contributions from the Principal Employer or a claim by the principal employer for recovering contributions from an immediate employer "shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to received by the Corporation under the regulations. The provision merely provides a "deemed date" for the arising of the "cause of action" by providing that it shall not be earlier than the date by which the evidence of payment of contribution is required to be filed. This provision does not detract from or otherwise affect the position that in cases where a claim for contributions by Corporation has received prior determination under S. 45A and the employer raises disputes on such a determination it is not necessary that the dispute be resolved by the Insurance Court before such a claim can acquire the element of enforceability as arrear of land revenue. However, in cases where there is and can be no determination under S. 45A and where the claims are disputed by the employer, it is necessary for the Corporation to take its claim before the Insurance Court for a resolution of the dispute. The view taken by a Bench of this Court in Krishna Mills Co.'s case, must be understood as applying only to the latter class of cases, and so understood, in our opinion, lays down the principle correctly.

28. In the result, we answer the question referred to us as follows :

"Where, in cases to which provisions of S. 45A of the "Act" are attracted, the Corporation by an order made in accordance with that section determines the amount of contributions payable and that claim is disputed by the employer, it would not be necessary for the Corporation to seek a resolution of that dispute before the Insurance Court. Such a claim is recoverable as arrears of land revenue. If the employer disputes the claim it is for him to move the Insurance Court for relief. In other cases - other than cases where determination of the

amount of contributions under S. 45A is made the Corporation, if its claim is disputed by the employer, should seek an adjudication of the dispute before the Insurance Court before enforcing recovery."

29. Question answered accordingly.