

(1997) 07 OHC CK 0019
In the Orissa High Court
Case No : O.J.C. No. 6969 of 1997

Royal Plastics Industries and Another	APPELLANT
Vs	
Employees' State Insurance Corporation and Others	RESPONDENT

Date of Decision : 15-07-1997

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 75

Citation : (1998) 1 LLJ 776

Hon'ble Judges : S.C. Datta, J;A. Pasayat, J

Bench : Division Bench

Advocate : Biswajit Mohanty and S. Patra, for the Appellant; Purnandu Prasad Ray, for the Respondent

Judgement

Pasayat, J.—Petitioner calls in question legality of determination of contribution payable as made by Deputy Regional Director of Employees' State Insurance Corporation, Orissa (in short, the Corporation) u/s 45A of the Employees' State Insurance Act, 1943 (in short, the "Act")

2. Preliminary objection has been raised by Mr, P.P. Ray, learned Counsel for the Corporation stating that petitioner has an effective alternative remedy available under the statute and therefore, the writ application should not be entertained. Mr. B. Mohanty, learned counsel for petitioner submitted that dispute as involved in the case is not covered by any provision of the Act and therefore no other form is available.

3. Petitioner has been held to be liable to pay contribution in terms of the Act for various periods. Copies of the Orders of determination have been annexed as Annexures 2,3,4, 11 and 14 and several other communications have been received from the authorities directing payment. Orders relating to contribution have been passed in purported exercise of powers conferred u/s 45-A of the Act. Section 75 of the Act provides for matters which are to be decided by Employees' Insurance Court (in 5 short Court).

4. A bird's eye view of some pivotal provisions would suffice to deal with rival submissions.

Section 1 (4) of the Act envisages that the Act shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories. Section 1(5) gives power to the appropriate Government after consultation with the Corporation to notify in the Official Gazette extending the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Section 1(6) envisages that a factory or an establishment to which this Act applies shall continue to be governed by the provisions of the Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under the Act or the manufacturing process therein ceases to be carried on with the aid of power. After its application under chapter IV, all employees in factories, or establishments to which the Act applies shall be insured in the manner provided by this Act. u/s 39(1), the contribution payable under the Act in respect of an employee, shall comprise contribution payable by the employer and contribution payable by the employee shall be paid to the Corporation, the manner and details of payment and interest and the rate of interest for the delay in payment and the procedure for recovery are not material for the purpose of this case. Hence, they are omitted. Section 40 envisages that the principal employer is enjoined to pay contribution in respect of every employee in the first instance whether he is employed directly by him or through an immediate employer, both the employer's and employee's contribution. Subsection (2) thereof provides, with a non ob-stante clause, that subject to the provisions of the Act and the regulations, if any, made thereunder, the principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employees contribution by deduction from his wages and not otherwise. The recovery has been provided in Section 41 of the Act. The method of payment of contribution has been adumbrated in Section 43 where the contribution has not been paid as envisaged in Section 42 of the Act. Section 44 deals with the obligation of the employer to furnish returns and maintain registers in certain cases. Section 45 gives power to the Inspectors appointed by the Corporation to inspect the premises etc., the details of which are not material. Section 45-A gives power to the Corporation to determine contribution in certain cases. It reads as under:

"45-A Determination of contribution in certain cases-(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 Section 44 or any Inspector or other official of the Corporation referred to in Sub-section (2) of Section 45 is prevented in any manner by the principal or immediate employer or any other person in exercising his functions or discharging his duties u/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:

Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.

(2) An order made by the Corporation under Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45-C or the recovery u/s 45-C to Section 45-I".

5. Section 45-C provides for the contribution to be recovered as arrears of land revenue. In case it is not recovered, a certificate is required to be given u/s 45-C to the Recovery Officer for recovery thereof as arrears of land revenue in the manner contemplated therein, the details thereof are not necessary for the purpose of this case. When a dispute is raised in that behalf, Section 75 of the Act envisages determination by the Insurance Court as under.

"75. Matter to be decided by Employees" Insurance Court-(I) 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 employee's 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 the 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

(ee) any direction issued by the Corporation u/s 55-A on a review of any payment of dependents' benefits or

(f) xxxx

(g) any other matter which is in dispute between a principal employer and the corporation or between a principle 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.

such question or dispute subject to the provisions of Sub-section (2-A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) Subject to the provisions of Sub-section (2-A), the following claims shall be

decided by the Employees' Insurance Court, namely-

- (a) claim for the recovery of contribution from the principal employer;
- (b) claim by a principal employer to recover contributions from any immediate employer;
- (c) xxx xxx
- (d) claim against a principal employer u/s 68;
- (e) claim u/s 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto, and
- (f) any claim for the recovery of any benefit admissible under this Act.

(2-A) If any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a Medical Board or a Medical Appeal Tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the Medical Board or the Medical Appeal Tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under subsection (2) of Section 54-A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

(2-B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation;

Provided that the Court may, for reasons to be recorded in writing waive or reduce the amount to be deposited under this Sub-section.

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by a Medical Board, or by a Medical Appeal Tribunal or by the Employees' Insurance Court."

Sub-section (1) (g) of Section 75 of the Act is relevant for the purpose of the case at hand. Section 75 of the Act provides for the matters which are to be decided by Employees' Insurance Court, and Sub-section (1) (g) thereof. reads as follows:

"(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 principal or immediate employer, in respect of any contribution or benefit or other dues

payable or recoverable under the Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act."

It deals with all matters which are in dispute between a principal employer and the Corporation or between a principal employer and an immediate employer, or between a person and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, except those enumerated in the provision itself. "Principal employer" is defined in Section 2(17) to mean inter alia, so far as a factory is concerned the owner occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named. A dispute between the principal employer and the Corporation as regards the former's liability determined u/s 45-A is cognizable by the Court. A similar view was taken by this Court in *Regional Director of Employees' State Insurance Corporation, Orissa v. Revenue Divisional Commissioner, Central Division, Cuttack* 72 1991 CLT 293, and by the Karnataka High Court in *Hedge of Golay Ltd. v. Employees' State Insurance Corporation* 1991 LIC 1277.

These aspects have been highlighted by a Division Bench of this Court in *Indian Hygiene (Food Craft Division) and Another Vs. Employees' State Insurance Corporation and Another*, and by the apex Court in *Employees' State Insurance Corporation Vs. M/s. F. Fibre Bangalore (P) Ltd.*, .

6. The irresistible conclusion is that orders impugned can be adjudicated by Court. Mr. Mohanty for the petitioner stated that the period prescribed for taking action in terms of Section 15 is over. Let the petitioner file necessary appeal within one month from today. If it is so done, it shall be heard after condonation of delay for disposal on merits. In view of this order, no, coercive action shall be taken till filing of appeal. It is open to the petitioner to move the appellate authority in the matter of interim order. If such a motion is made, the same shall be considered in accordance with law.

7. The writ application is disposed of accordingly.

S.C. Datta, J.

8. I agree.