

(1996) 11 KAR CK 0015
In the Karnataka High Court
Case No : M.F.A. No. 92 of 1992

Siddeshwar and Co.

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 04-11-1996

Acts Referred:

Employees State Insurance Act, 1948 — Section 75, 82 (2)

Citation : (1996) 11 KAR CK 0015

Hon'ble Judges : Harinath Tilhari, J

Bench : Single Bench

Advocate : B.C. Prabhakar, for the Appellant; Ms. Geetadevi Iyappah M. Papanna and L.Y. Premavathi, for the Respondent

Judgement

1. This miscellaneous first appeal u/s 82(2) of the Employees" State Insurance Act, 1948 (hereinafter referred to as "the Act"), arises from the judgment and order dated August 21, 1990, delivered by Sri Vittal Sheregar, Judge, the Employees" Insurance Court. Hubli, whereby the Employees" Insurance Court dismissed the applicant-appellant"s application u/s 75 of the Employees" State Insurance Act.

2. The facts of the case in brief are, that the appellant which is a private limited company under the Companies Act has been engaged in the manufacture of steel safes and furniture. This factory of the applicant-appellant has been situated at Hubli. As per the admitted facts, the applicant"s company is covered by the provisions of the Employees" State Insurance Act and Scheme thereunder and in which more than hundred workers and employees have been employed and have been working. According to the appellant-applicant"s case, it has been remitting the contributions regularly. The appellant-applicant received a letter dated December 22, 1987, from the first respondent, i.e., the Regional Director of Employees" State Insurance Corporation, Bangalore, to the effect that, the applicant/appellant had not remitted the Employees" State Insurance contribution for the period from 1973 to 1981 and from 1985 to 1987 in respect

of Guttige Majoori Khate and thereunder the contribution to the tune of Rs. 49,256 had been claimed. The applicant/appellant has further alleged that without knowing the correct legal position, he had agreed to remit the amount of contribution, as claimed, in instalments and according to the appellant/applicant, the applicant/appellant remitted in total a sum of Rs. 15,000, during the month of January, 1988. Thereafter, the first respondent, i.e., the Regional Director, Employees' State Insurance Corporation, vide his letter dated March 2, 1988, directed the Deputy Commissioner, Dharwar, to recover a sum of Rs. 41,256 plus interest amounting to Rs. 630.74 to account and thus the proceedings for recovery of the total sum of Rs. 41,886.74 were initiated by way of recovery of arrears of land revenue and that in pursuance of the said letter of the first respondent, the Tahsildar, Hubli, issued a notice dated April 26, 1988, for recovery of the said amount. It is thereupon the issuance of letter by the Regional Director, Employees' State Insurance Corporation, and issuance of letter of Tahsildar, the appellant/applicant moved the application raising the dispute u/s 75 before the Employees' Insurance Court.

3. As per the allegations of paragraph No. 4 of the application u/s 75, the appellant/applicant has taken a plea that the contribution claimed, vide notice dated December 22, 1987, has been in respect of hamali charges paid to the hamalies for loading and unloading and miscellaneous expenses. The applicant/appellant has further stated that the applicant/appellant engaged the services of hamalies who were available at that time and the coolie charges were being paid to them. It was further stated that the hamalies were not the employees of the applicant/appellant as they were engaged for the purpose of loading and unloading. It has been stated in paragraph No. 4 that the hamalies who were engaged for the purpose of loading and unloading are not the employees of the applicant/appellant nor the coolie charges paid to them could be termed as "wages" within the meaning of the Act and on this ground, the management's liability to pay contribution was denied by the appellant/applicant.

4. Objections to this application u/s 75 of the Act were filed before the Employees' Insurance Court on behalf of the Regional Director, Employees' State Insurance Corporation. In paragraph No. 3 of the objections it has been stated that the appellant/applicant's company has been covered by the provisions of the Employees State Insurance Act and so the appellant/applicant has been required to pay the contribution for wages paid. It was asserted by Respondent No. 1 in his objections that during the course of inspection carried on by the Insurance Inspector at the applicant's factory on October 16, 1987, and on November 9, 1987, it was found that the applicant had paid Guttige Majoori for the period from 1973 to 1987 and the applicant had maintained the Guttige Majoori Khata indicating the amount spent during the period as below :

Rs. 1973 to 1981 5,86,528.83 1985 to 1986 1,09,221.85 1-11-1986 to 30-9-1987 3,875.25 The case of the respondent is that the above payment amounted to wages under the Act and, so the applicant, i.e., the appellant was

required to pay the contribution to the tune of Rs. 49,256 on the above mentioned wages. The respondent Regional Director, Employees' State Insurance Corporation further averred that the said charges include the payment made by the applicant/appellant towards the Guttige Majoori, national and festival holidays and Hangami Majoori, etc. According to the respondent, a show-cause notice dated December 22, 1987, was issued to the applicant along with the demand of contribution. The respondent-Regional Director, Employees' State Insurance Corporation admits that the applicant paid a sum of Rs. 4,000 on January 6, 1988, another sum of Rs. 4,000 on January 27, 1988, and third sum of Rs. 3,000 on March 10, 1988, and, lastly, a sum of Rs. 4,000 on April 21, 1988, in total amounting to Rs. 15,000 has been paid with reference to contribution in instalments. The case of the respondent is that, as the applicant/appellant failed to pay the remaining amount, recovery proceedings, has been initiated after deducting the amount that has been paid at that time. The case of the respondent further is that the claim of contribution made by the respondent has been on actual basis and, therefore, no order u/s 45-A of the Employees' State Insurance Act was passed. The respondent has further averred in his objections that the applicant had engaged piece rate workers and their wages were paid weekly under the head of Guttige Majoori Khata and the wages were also paid for the work done on holidays. The respondent denied the allegations that the hamalies engaged for loading and unloading were not employees, instead the respondent asserted that the hamalies were employees. The respondent denied the allegation of the applicant that the payment of Rs. 15,000 towards contribution was made by the applicant without knowing the legal position. It was asserted by the respondent - the Regional Director that the applicant after having fully understood the legal position and the amount due with reference to the contribution to be made by the applicant, made a request for being allowed to make payment in instalments and were so allowed. As such, the respondent asserted that it was incorrect to say that without knowing the correct legal position, the applicant/appellant made the payment of Rs. 15,000 towards the contribution. The respondent further asserted that the applicant/appellant was not entitled to the refund of Rs. 15,000 which has already been paid to the applicant towards the contribution. The respondent asserted that the application u/s 75 is without any cause of action and liable to be dismissed.

The Employees' Insurance Court, Hubli, framed the following issues :

ISSUES

(1) Whether the applicant proves that the amount of contribution claimed by Respondent No. 1 amounting to Rs. 49,256 was in respect of the hamali charges paid to the hamali for loading and unloading and the miscellaneous expenses and that, therefore, the amount paid to them are not wages as defined u/s 2(22) of the Employees' State Insurance Act ?

(2) Whether Respondent No. 1 proves that the amount spent from 1973 to 1983, amounting to Rs. 5,86,528.83 and for the period from 1985-86 amounting to Rs.

1,09,221.85 and for the period from November 1, 1986, to September 30, 1987, amounting to Rs. 3,875.25 under the Guttige Majoori Khata is the wages u/s 2(22) of the Employees' State Insurance Act, and that, therefore, the applicant is liable to pay contribution of Rs. 49,256 on the above said wages ?

(3) Whether Respondent No. 1 proves that without passing an order u/s 45-A of the Employees' State Insurance Act he is competent to issue recovery proceedings ?

(4) Whether the applicant further proves that the amount of contribution claimed is in respect of the coolie charges paid to hamalies who are not the employees of the applicant within the meaning of Section 2(9) of the Employees' State Insurance Act and hence, the applicant is not liable to pay any contribution ?

(5) Whether the applicant is entitled to refund of the said amount of Rs. 15,000 ?

(6) Whether the claim of the first respondent is belated ?

(7) Whether the applicant is entitled for setting aside the claim made in the letter No. KAR. INS. VII. 53-4054, dated December 22, 1987, and to quash the revenue recovery order in its letter No. KAR. INS.VII. 53-4054-51, dated March 2, 1988 ?

(8) What order ?

5. After considering the materials on record, the Employees' State Insurance Court answered issues Nos. 1, 2 and 4 against the applicant and held that the applicant/appellant failed to prove that the amount of contribution claimed by Respondent No. 1 amounting to Rs. 49,256 was in respect of hamali charges paid to hamalies for loading and unloading and miscellaneous expenses as well as to prove that the said amount were not wages. It further found that the applicant/appellant failed to prove that the amount of contribution claimed was in respect of coolie charges paid to Hamalies and that they were not employees of the applicant/appellant. It has found that from the evidence on record it is evident that all these steel goods were manufactured inside the factory premises and the expenses and the payments were made under the head Guttige Majoori and Hangami Majoori. The Employees' Insurance Court has, in this connection, made a reference to the cash book entries where it is mentioned at page 57 that "contract wages expenses paid for the manufacture of steel goods in the factory" and held that the entries reveal that steel goods were manufactured inside the factory and payments were made in regard thereto. It further held that the applicant/appellant had paid a sum of Rs. 15,000 in instalments after receipt of communication in Form No. C-18 demanding contribution on amount paid under Guttige Majoori Khata and so answered issue No. 2 in favour of Respondent No. 1, i.e., the Regional Director of the Employees' State Insurance Corporation and held that the applicant/appellant had been liable to pay the contribution of Rs. 49,256 on the wages referred to in issue No. 2 as well as in the objections filed by the opposite party, i.e., Respondent No. 1. It further held that the amount of

contribution that was claimed was claimed on actuals as omitted wages and it was not necessary to pass orders u/s 45-A of the Act before issuing revenue recovery proceedings. It further held that the applicant/appellant was not entitled to refund of Rs. 15,000. The Employees' Insurance Court further held that it cannot be contended that the claim made by Respondent No. 1 is belated or barred by limitation. Having accorded these findings, the Court found that the applicant/appellant was not entitled to the reliefs claimed in the application and rejected the applicant's application u/s 75 of the Act, vide its judgment and order dated August 21, 1990.

6. That, having felt aggrieved from the order dated August 21, 1990 passed by the Employees' Insurance Court, Hubli, the company (applicant/appellant) has filed this appeal u/s 82(2) of the Employees' State Insurance Act, 1948.

7. I have heard Sri C. K. Subramaniam holding brief for Sri B. C. Prabhakar, learned counsel for the appellant and Smt. Geethadevi Iyappa, holding brief for Sri M. Papanna, learned counsel for Respondent No. 1 at length.

8. On behalf of the appellant, Sri Subramaniam submitted that the amount had been paid to an independent contractor who supplied hinges, levers and agalies to the applicant and, therefore, the amount paid to those who made and prepared the hinges, levers and agalies through the independent contractor and those workers were not the employees of the applicant and, therefore, the amount paid could not be termed as wages paid to the employees. Even payment made to the hamalies for loading and unloading could not be termed to be wages as hamalies could not be termed to be the employees of the applicant. In this connection, Sri Subramaniam made a reference to the decision of the Bombay High Court in the case of Parle Bottling Co. Pvt. Ltd. Vs. The Regional Dir. Employees' State Insurance Corpn., . Sri Subramaniam further submitted that those workers were not and could not be identified as they were not permanent employees and there was no master and servant relationship. Sri Subramaniam, learned counsel for the appellant, further contended that before issuing the recovery proceedings, no proceedings u/s 45-A of the Employees' State Insurance Act have been taken and the appellant has not been given an opportunity of having his say. So recovery proceedings are bad. The third and last contention that has been raised on behalf of the appellant by learned counsel Sri Subramaniam is that recovery being sought to be made of the sums for contribution to the funds for the period from 1973 to 1981 and from 1985 to 1987 and notice was issued in 1987 while recovery proceedings were started in 1988. As such it was delayed and so it is illegal.

The contentions made by Sri Subramaniam, learned counsel appearing for the appellant, have been hotly contested by Smt. Geethadevi Iyappa, learned counsel appearing for the respondents. Dealing with the last contention first, learned counsel for the respondents Smt. Geethadevi Iyappa contended that this contention that recovery or claim of the amount is belated and delayed and so it is bad is based on no provision of law. It was submitted by learned counsel for

the respondents that there is no period prescribed for claiming contribution and it is a case of recurring cause of action. She submitted that no provision of law to the effect that proceedings for recovery of arrears of contribution under the Act should be made within a particular specified period has been pointed out by the appellant's counsel and that there is no period of limitation prescribed for starting recovery. Learned counsel for the respondents made a reference to the decision of their Lordships of the Supreme Court in the case of Bhagirath Kanoria v. State of Madhya Pradesh 1994 III LLJ 765 and submitted that failure to pay the employers contribution may be taken to be a recurring cause of action. Smt. Geethadevi Iyappa also made a reference to another decision in the case of Nagammai Cotton to Mills v. Regional Director, Employees' State Insurance Corporation 1994 Su 2 SCC 142. Smt. Geethadevi Iyappa further contended that the payment was made as found by the Court also on the basis of evidence on record to the workers for manufacturing of goods in the factory and when payment was made to the workers either under the head Guttige Majoori or under Hangami Majoori, it is a payment for manufacture of steel goods working inside the factory and for manufacture of steel goods. It cannot be said to be anything else than the wages and the persons to whom it has been paid was paid as wages. Learned counsel further invited my attention to the allegations in the application that the workers were engaged by the applicant has averred in the application itself. No case of workers being engaged by the contractor or their working outside the factory has been taken or stated in the application u/s 75(1) and, therefore, that part of evidence cannot be looked into and was rightly held to be incorrect. Learned counsel submitted that the payments were made to the workers employed in relation to the work at factory either for loading or unloading or for making of steel goods, may be hinges, levers or agalies or others, but those goods which were essential for the purpose of preparation of steel furniture, etc., were got prepared and made in the factory and, therefore, it cannot be said that the workers with reference to whom the amount was directed to be deposited towards contribution were not the employees or the sums paid to those workers were not wages. Learned counsel for the respondents further pointed out that no such issue was raised before the Court below that payment was made to the contractor and, therefore, that point or plea may not be permitted to be raised at this stage. Apart from that, learned counsel submitted that even if the workers were engaged through contractors, but when they prove that they worked inside the factory they were the employees of the applicant/appellant and, therefore, the applicant/appellant was liable to pay the contribution to the tune it was claimed.

9. Learned counsel for the respondents challenged the contention of learned counsel for the appellant to the effect that the recovery proceedings could not be taken without following the provisions of Section 45-A of the Employees' State Insurance Act. Learned counsel for the respondents Smt. Geethadevi Iyappa submitted that no such circumstances did exist which would have necessitated taking of proceedings u/s 45-A as the respondent-Inspector was allowed to

inspect the accounts and the necessary records and what was actually found was accepted by the appellant and he sought that he may be allowed to make deposits in instalments which he was permitted to do and he deposited that sum to the tune of Rs. 15,000 in instalments as stated by the applicant/appellant as well as in the statement of objections filed before the Employees' Insurance Court. As such, learned counsel submitted that proceedings for recovery were well within law and the application was rightly rejected.

10. I have applied my mind to the contentions made by learned counsel for the parties as well as I have also perused the records. I propose to deal firstly with the last contention of learned counsel for the appellant. The last contention of learned counsel for the appellant is that recovery proceedings were belated and delayed and therefore in the interest of justice the said proceedings are required to be set aside. I am unable to accept this contention of learned counsel for the appellant. A perusal of Section 45-B of the Employees' State Insurance Act, 1948, provides that,

"Any contribution payable under this Act may be recovered as an arrear of land revenue."

Section 45-C of the Act provides for issuance of certificate by the authorised officer to the Recovery Officer under a signature of the authorised officer specifying the amount of arrears and it is provided that on receipt of the certificate, the Recovery Officer shall proceed to recover the amount specified therein from the factory or establishment or, as the case may be, the principal or immediate employer by one or more of the modes mentioned in that Section. Sub-section (2) of Section 45-C further provides that this certificate may be issued notwithstanding any proceedings for recovery of the arrears by any other mode having been taken. Here it will be proper to quote Sections 45B, C, D and E of the Act in extenso.

"Section 45-B Recovery of contribution. - Any contribution payable under this Act may be recovered as an arrear of land revenue.

Section 45-C Issue of certificate to the Recovery Officer. - (1) Where any amount is in arrear under this Act, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the factory or establishment or, as the case may be, the principal or immediate employer by one or more of the modes mentioned below :

(a) attachment and sale of the movable or immovable property of the factory or establishment or, as the case may be, the principal or immediate employer;

(b) arrest of the employer and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the factory or establishment or, as the case may be, the employer :

Provided that the attachment and sale of any property under this Section shall first be effected against the properties of the factory or establishment and where such attachment is and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorised officer may issue a certificate under sub-section (1) notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

45-D Recovery Officer to whom certificate is to be forwarded. -

(1) The authorised officer may forward the certificate referred to in Section 45-C to the Recovery Officer within whose jurisdiction the employer -

(a) carries on his business or profession or within whose jurisdiction the principal place of his factory or establishment is situate; or

(b) resides or any movable or immovable property of the factory or establishment or the principal of immediate employer is situate.

(2) Where a factory or an establishment or the principal or immediate employer has property within the jurisdiction of more than one Recovery Officer and the Recovery Officer to whom a certificate is sent by the authorised officer -

(a) is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction; or

(b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do,

he may send the certificate or, where only a part of the amount is, to be recovered a copy of the certificate certified in the manner prescribed by the Central Government and specifying the amount to be recovered to the Recovery Officer within whose jurisdiction the factory or establishment or the principal or immediate employer has property or the employer resides, and thereupon that Recovery Officer shall also proceed to recover the amount due under this Section as if the certificate or the copy thereof had been the certificate sent to him by the authorised officer.

45-E. Validity of certificate and amendment thereof. -

(1) When the authorised officer issues a certificate to a Recovery Officer u/s 45-C, it shall not be open to the factory or establishment or the principal or immediate employer to dispute before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the authorised officer shall have power to withdraw the certificate or correct any

clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

(3) the authorised officer shall intimate to the Recovery Officer any orders withdrawing or cancelling a certificate or any correction made by him under sub-section (2) or any amendment made under sub-section (4) of Section 45-F."

Section 73-D of the Employees' State Insurance Act further provides that the employer's special contribution payable under Chapter V-A is also recoverable as if it were arrears of land revenue. A perusal of this provision per se does not reveal that there is any period of limitation prescribed for starting recovery proceedings by adopting the mode of arrears of land revenue. Learned counsel for the appellant/applicant failed to invite my attention to any provisions, either under the Act or under the Rules, which may be said to be prescribing any specific period of limitation subject to which the recovery proceedings may be said or by which the proceedings for recovery may be said to be controlled either. In this view of the matter, in my opinion, the proceedings for recovery of arrears of contribution cannot be said to have been subjected to any such thing as bar of limitation or period of limitation. I find support for my view from the following observations of their Lordships of the Supreme Court in the case of *Nagammai Cotton Mills v. Employees' State Insurance Corporation*, and, their Lordships observed as under :

"Learned counsel for the appellant vehemently urged that the proceedings for recovery were barred by time. He urged that by virtue of Section 29(2) the provision of the Limitation Act applied to the Employees' State Insurance Act and, therefore, any suit or proceedings for recovery initiated after three years from the date it became due could not be recovered. Learned counsel, however, could not point out any provision either in the Employees' State Insurance Act or in the Recovery Act laying down any period of limitation for recovery of such dues."

Apart from the above the Limitation Act, as per the provisions thereof, bars the filing of suit, appeal or application after the expiry of period of limitation and direct the Courts before which suit is instituted or preferred, an application is made that it shall be dismissed on the ground of limitation. The proceedings for recovery as arrears of land revenue cannot be equated with either suit, appeal or application. The proceedings for recovery by issuance of certificate for recovery of the arrears of contribution of land revenue whenever initiated by issuance of certificate, it cannot be equated with the proceedings of suit or appeal or application under civil Court. Apart from that, the contribution when it is to be paid or deposited by the employer or by the establishment and it is not being deposited, the view has been taken that failure to deposit may be taken to furnish a recurring cause of action. In this connection, it will be appropriate and profitable to quote the following observations of their Lordships of the Supreme Court in the case of *Bhagirath Kanoria v. State of Madhya Pradesh*, (supra). In paragraph 20 of that decision, their Lordships dealing with the question whether

failure to pay the employer's contribution would amount to a continuing offence or fresh offence committed each day if the person failed to comply with the obligation to pay the contribution observed as under (at PP 769 - 770) :

"The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence. Turning to the matters before us, the offence of which the appellants are charged is the failure to pay the employer's contribution before the due date. Considering the object and purpose of this provision, which is to ensure the welfare of workers, we find it impossible to hold that the offence is not of a continuing nature. The appellants were unquestionably liable to pay their contribution to the provident fund before the due date and it was within their power to pay it, as soon after the due date had expired as they willed. The late payment could not have absolved them of their original guilt but it would have snapped the recurrence. Each day that they failed to comply with the obligation to pay their contribution to the fund, they committed a fresh offence. It is putting an incredible premium on lack of concern for the welfare of workers to hold that the employer who has not paid his contribution or the contribution of the employees to the provident fund can successfully evade the penal consequences of his act by pleading the law of limitation. Such offences must be regarded as continuing offences, to which the law of limitation cannot apply."

11. The basic theme of these observations clearly leads to one principle that as the employer under social welfare legislation is required to comply with his obligation to pay his contribution as well as to pay the employees' contribution to the fund under the Employees' State Insurance Act. Till that obligation is complied with, the failure to comply with it each day even after the due date should be taken to create fresh cause of action in the same way as it amounts to committing of a fresh offence and such a person or employer who has not paid his contribution or the employees' contribution to the fund should not be allowed to successfully evade his liability or obligation by simply pleading the law of limitation. Thus, considered, in my opinion, firstly, the framers of the law have not, therefore, specifically prescribed any period of limitation for initiating recovery proceedings or proceedings of recovery of arrears of contribution and, secondly, any breach or failure to pay the contribution may amount to continuing cause of action. Apart from that, in the present case, a notice of demand has been issued on December 22, 1987, and proceedings had been started in March, 1988, when certificate was issued by the first respondent the recovery related to the period from 1973 to 1981 as well as from 1985 to 1987 and both the periods were taken into consideration and recovery proceedings were initiated. The failure to deposit the entire amount under the notice dated December 22, 1987, also furnished a fresh cause of action. So it cannot be said that recovery proceedings were delayed in any manner. Apart from the fact that neither the Employees' State Insurance Act nor any law or provision has been shown or

placed before me by learned counsel for the appellant which may be said to prescribe any period of limitation for initiating the recovery proceedings. In this view of the matter, the last contention of learned counsel is rejected as being without substance.

12. The second contention of learned counsel for the appellant that before starting the recovery proceedings, proceedings u/s 45-A of the Act have not been taken and, therefore, recovery proceedings are bad. In my opinion, this contention is based on misconception. In the present case, there is no dispute that the Insurance Inspector inspected the records relating to the matter in the premises of the appellant's factory and the appellant allowed it to be inspected. The Inspector, thereafter, found the actual figure with reference to each contribution as has to be made without any objection from the applicant/appellant, i.e., the employer. The appellant/applicant himself also stated that he has deposited a sum of Rs. 15,000 towards his Employees' State Insurance contribution in instalments as indicated in the narration of facts and admitted by both the parties. A.W.-1, Guruputrappa Nilkhantappa Kammar, in his deposition has stated that the Employees' State Insurance Inspector inspected the records of the applicant-Company during 1987. The Employees' State Insurance Inspector inspected the records from 1973 onwards, even prior to 1987. The Employees' State Insurance Inspector inspected the records of the applicant-Company which had maintained regular books of account. The Inspector verified all those khatas and accounts. The amount taken by the Employees' State Insurance Inspector from the books of account from 1973 onwards is correct. The applicant-Company paid Rs. 6,99,625.93 towards Guttige Majoori for the above said purpose during the above mentioned period. After the Employees' State Insurance Inspector conducted inspection of books of account, the applicant- Company received a notice in Form C-18 as per exhibit A-1. A perusal of the statement of A.W.-1 per se reveals that the Inspector did perform his job of inspecting records and on the basis of records he assessed from the amount paid towards the wages amounting to Rs. 6,99,625.93 during the relevant period and A.W.-1 admits it to be correct. A.W.-1 is none else, but the Manager of the applicant-Company. Thus this appears to be the position that the amount was assessed on the basis of original records of the company with reference to which the contribution have now been paid, and after issuance of Form-C, Rs. 15,000 were paid by the applicant to the Employees' State Insurance Corporation. In such circumstances, in my opinion, there was no question of Section 45-A being applied or becoming applicable to the facts of the case. A perusal of Section 45-A of the Act per se reveals that recourse may be had to Section 45-A proceedings only in cases where either no returns or particulars or registers or records are submitted or furnished or maintained by the company or in cases where the Inspector or official of the Corporation referred to u/s 45 are prevented by the principal or immediate employer or any other person from exercising his powers and discharge his duties. In the present case, neither of these circumstances do appear nor has been reported. So there were no such circumstances and

conditions in existence in which question of obligation u/s 45-A would have arisen. Really as it has been asserted by the opposite party, the applicant allowed the Insurance Inspector to examine the records and to find out and when they found out the exact position and required the applicant/appellant to pay that amount, the applicant/appellant did pay a sum of Rs. 15,000 towards contribution in instalments. In such circumstances, at present, it is not open to the applicant/appellant to raise a contention on the basis of the provisions of Section 45-A. This contention, as such, being without merit is rejected.

13. The first contention which is raised and which has been dealt herewith as the last one has been and to the effect that the sum of Rs. 6,99,625.93 which was paid as Guttige Majoori or to hamali charges or to the workers, whether those persons to whom this amount was paid were employees or whether the sum paid amounted to wages. The Employees' Insurance Court has very rightly observed that in the pleadings the applicant/appellant had taken a plea that the said amount of Rs. 6,99,625.93 was paid to hamalies for loading and unloading and while it has not been the case in pleadings that the said amount was paid to an independent contractor who supplied hinges, levers or agalies to the applicant/appellant.

14. The Employee Insurance Court judge at Hubli has considered the evidence, both oral and documentary. That the report of the Inspector as well as the cash book entries per se reveal that the various expenses were paid for manufacture of steel goods in the factory and on this basis, the Insurance Court concluded that the steel goods were manufactured inside the factory and the expenses and the payments of wages were made under the head Guttige Majoori and Hangami Majoori. Looking to this aspect of the matter as well as to the pleadings of the parties that the employees were engaged by the applicant/appellant, the Insurance Court has opined that those persons to whom payment had been made under the head Guttige Majoori Khata they were the employees of the applicant/appellant, i.e., the present appellant, and they were paid for manufacturing goods in the factory premises. It was contended on behalf of the appellant/applicant that these persons were casual labourers engaged for loading and unloading as well as for miscellaneous purposes and it was contended that the casual labourer is not covered by the expression "employee". The expression "employee" has been defined as per Section 2(9) of the Act. It reads as under :

" "Employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and -

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or

his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the Standing Orders of the establishment; but does not include -

(a) any member of the Indian naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed (such wages as may be prescribed by the Central Government) a month :

Provided that an employee whose wages (excluding remuneration for overtime work) exceed (such wages as may be prescribed by the Central Government) a month at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;"

15. The definition of the expression "employee" as given in the Act clearly reveals that an employee is one who is engaged for wages in the work of or with reference to the establishment or the factory to which this Act applies. The employees so engaged have been categorised firstly one who is directly employed with the principal employer on any work of, or any work incidental or preliminary to or connected with the work of the factory or establishment and it is immaterial whether such work is done by the employee in the factory or establishment or elsewhere. The second category of those persons who though may not have been directly employed by the principal employer but are employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment. This definition further reveals that it also includes those persons whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service. This Section further provides that the expression "employee" includes any person engaged for wages on any work connected with the administration of the factory or any part, department or branch thereof or related with the purchase of raw materials or distribution or sale of products of the factory. It has been provided in this Section that any

person engaged as an apprentice may also be included, provided the apprentice is not engaged under the Apprentices Act, 1961, or under the Standing Orders of the establishment. This Section further clarifies that any member of Indian naval, military or air forces or any person so employed whose wages excluding remuneration for overtime work exceed the wages of the Central Government a month. A perusal of this definition u/s 2(9) of the Act reveals that for a person to be an employee, he should have been engaged by principal employer or by immediate employer for wages and he should have been in or for or in connection with the work of the factory or establishment. The definition appears to be of wider connotation. It does not appear to exclude a casual labourer or casual employee. Even the person whose services are taken or lent to the principal employee, is included in the definition of the employee. In the case of Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation, their Lordships have been pleased to hold that the employees of cycle-stand and canteen run by the contractors can be covered within the term "employee" of the establishment. Their Lordships of the Supreme Court dealing with the expression "in connection with the work of an establishment" observed as under (page 394) :

"The expression "in connection with the work of an establishment" ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of the establishment. Some nexus must exist between the establishment and the work of the employee but it may be a loose connection. "In connection with the work of an establishment" only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment."

Their Lordships further observed (page 395) :

"Merely being employed in connection with the work of an establishment, in itself, does not entitle a person to be an "employee". He must not only be employed in connection with the work of the establishment but also be shown to be employed in one or other of the three categories mentioned in Section 2(9)."

In the present case, it is admitted that the workers were employed by the applicant/appellant, as per the allegations made in the application. It has nowhere been mentioned in the pleadings that the workers are labourers or employed by any other person. Even for a moment, if it be taken that the workers were employed by the contractor and they worked or performed the job relating to or connected with the work of factory or ancillary to the purpose and business of the factory, even then such persons employed may be said to be employees of the principal employer though employed by or through the immediate employer. In the case of the Employees' State Insurance Corporation

v. Suvarna Saw Mills 1980 57 FJR 154, the Full Bench of this Court, after quoting the definition of Section 2(9) and after having made a reference to Sections 38 and 39 of the Act, has been pleased to observe as under (page 159) :

"The definition of the word "employee" contained in Section 2(9) of the Act does not make any difference between a casual or temporary or permanent employee. It is wide enough to include even a casual employee employed for a day for wages. Therefore, every person who is employed for wages on any work connected with the work of a factory or establishment to which the Act applies except those exempted by the definition, fall within the definition of the word "employees"."

Their Lordships further observed (page 159) :

"Sub-section (4) of Section 39 provides that the contribution payable in respect of each week shall ordinarily fall due on the last day of the week, or when a person is employed under two or more employers during the same week, the contribution shall fall due on such days as may be specified in the regulations. Sub-section (4) gives the clearest indication that casual employees are also covered by the provisions of the Act, as it covers cases of employees who are employed for a part of the week or are employed under two or more employers during the same week. A permanent or regular employee does not work under more than one employer in the same week. The possibility of his working under more than one employer in the same week exists only in the case of casual employees. Therefore, having regard to the definition of the word "employee" contained in Section 2(9) of the Act and the provisions of Sections 38 and 39 of the Act, the conclusion that is irresistible is that casual employees are also governed by the provisions of the Act."

This view of the Full Bench holding that a casual employee also comes within the purview of the Act and the definition of the term "employee" as per Section 2(9) of the Act stand supported by the decision of the Supreme Court in the case of Regional Director, Employees' State Insurance Corpn., Madras Vs. South India Flour Mills (P) Ltd., . Therefore, the employees - those have been employed by the appellant/applicant, even if they be said to be casual employees, are covered by the definition of the term "employee". Learned counsel submitted that such employees might have ceased to work and they are not identifiable and, therefore, with respect to them, there is no liability to deposit or to make contribution. Such a contention is also based on misconception. Such a contention has been considered and rejected by their Lordships of the Supreme Court in the case of Regional Director, E.S.I. Corporation Vs. Kerala State Drugs and Pharmaceuticals Ltd. and Others, by observing as under (at P. 48) :

"As regards the finding that the workmen were unidentifiable, what is forgotten is that under the Act, once an establishment comes to be covered by the Act, the employer becomes liable to pay the contribution in respect of the employees in his employment directly or indirectly. The contribution which had become payable

for the relevant period has to be paid even if the employees concerned are no longer in employment. Whether the employees are unidentifiable today or not is, therefore, irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment."

16. In the present case, the finding that had been recorded is that the account books indicate that the amount mentioned in the accounts were paid for the steel goods manufactured or produced in the factory by the workers. In the pleadings he has admitted clearly that the workers were engaged by the principal as per the allegations contained in paragraph No. 4 of the application u/s 75. Even if those workers were engaged or some of them were engaged by an independent contractor as an immediate employer, but as they were engaged for the purposes of preparing hinges, levers, agalies, etc., which are integral part of business in preparing or making of steel furniture it is definite that their engagement was in connection with and in relation with the functioning of the factory. Therefore, in my opinion, the finding recorded by the Insurance Court cannot be termed to be suffering from any error of law, much less substantial error of law. The scope of Section 82(2) of the Employees' State Insurance Act, 1948, is limited to only substantial question of law. Under sub-section (1) of Section 82, it is very clearly provided that :

"Save as expressly provided in this Section, no appeal shall lie from an order of an Employees' Insurance Court."

Sub-section (2) of Section 82 provides that :

"An appeal shall lie to the High Court from an order of an Employees' Insurance Court if involves a substantial question of law."

17. As the appeal appears to be primarily concluded by the finding of facts and no error of law of substantial nature has been established, the appeal deserves to be dismissed and is hereby dismissed with costs assessed at Rs. 1,650.