

(1992) 01 KAR CK 0050
In the Karnataka High Court
Case No : M.F.A. No. 311 of 1983

Sri Krishna Spinning and Weaving Mills Ltd.

APPELLANT

Vs

E.S.I. Corpn.

RESPONDENT

Date of Decision : 30-01-1992

Acts Referred:

Employees State Insurance Act, 1948 — Section 44, 45 A, 45 B, 75, 82 (2)

Citation : (1992) 65 FLR 150 : (1992) ILR (Kar) 1635 : (1992) 2 KarLJ 638 : (1993) 1 LLJ 1072

Hon'ble Judges : S.A. Hakeem, J;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : K.R. Rajagopalan, for the Appellant; R. Gururajan, for the Respondent

Judgement

Venkatachala, J.—This appeal u/s 82(2) of the Employees' State Insurance Act (for short "the ESI Act") is filed by M/s. Krishna Spinning and Weaving Mills (P) Ltd., the employer, against an order dated November 9, 1982 made on its ESI Application No. 27/1980 by the Employees Insurance Court at Bangalore (for short "the Insurance Court"), dismissing that application.

2. An Inspector of the Employees' State Insurance Corporation at Bangalore (for short "the ESI Corporation"), who visited the Mills of the employer and examined its account books on June 2/5, 1978, found debit entries made in those account books respecting Rs. 86,636-04 Ps., for the year April 1977 to April 1978 under the heading "factory wages, D.A. Account, factory establishment account and Office establishment". Having regard to the said debit entry found in the account books of the employer by the Inspector, the ESI Corporation felt that the amount in the entry must be wages of the employees of the employer in the Mills for which contribution payable by it under the Act had not been paid. This situation led the ESI Corporation to serve a notice on the employer along with a draft order, proposed to be made u/s 45A of the ESI Act, requiring the employer to show cause why such order should not be made finally u/s 45A of the ESI Act

determining the amount of contribution as mentioned therein and such amount of contribution recovered as arrears of land revenue u/s 45-B of the ESI Act. Though a reply to that show cause notice was sent by the employer, no order determining the amount of contribution payable by the employer was made as required u/s 45-A of the ESI Act. However, a requisition dated January 10, 1980 of the ESI Corporation is said to have been sent to the Deputy Commissioner, Bangalore, calling upon him to recover from the employer the amount of contribution mentioned in the draft order, which had been annexed to its earlier show cause notice issued in the matter to the employer. When the Deputy Commissioner, pursuant to the said requisition, sought to recover the said amount of contribution under the provisions of the Revenue Recovery Act, the employer, it is said, came to file ESI Application No. 27/80 before the Insurance Court praying for declarations, inter alia, (i) that the sum of Rs. 86,636 - 04 Ps., paid by the employer to the employees during April 1977 to April 1978 since did not increase the amount of contribution payable under the ESI Act, no additional contribution was liable to be paid to the ESI Corporation; (ii) that no valid determination was made by the ESI Corporation u/s 45-A of the ESI Act; and (iii) that there being no valid determination made by the ESI Corporation u/s 45-A of the ESI Act, Section 45-B of the ESI Act providing for recovery of the contribution as land revenue arrears could not have been invoked.

3. The Insurance Court has afforded to the ESI Corporation an opportunity to file its objections respecting Application No. 27/1980 filed by the employer and has permitted the rival parties to adduce necessary evidence for and against the claim. The Insurance Court has, thereafter, on consideration of the Application and Objection Statement of parties and the evidence adduced by them, both for and against, dismissed the Application by affirming the draft order of the ESI Corporation which had to be made a final order u/s 45-A of the ESI Act. The order so made by the Insurance Court is appealed against by the employer in the present Appeal.

4. We have heard the learned Counsel for the appellant-employer as well as the learned Counsel for the respondent-ESI Corporation. The question, which needs our consideration in this Appeal in the light of their arguments, is whether the order under Appeal calls to be sustained or interfered with.

5. When the ESI Corporation sent a show cause notice to the employer along with a draft order to be made a final order u/s 45-A of the ESI Act, on its reply thereto, the ESI Corporation had to proceed to determine the amount of unpaid contribution by making the proposed final order as provided for u/s 45-A of the ESI Act. Such final order though was not made by ESI Corporation, it sent a requisition to the Deputy Commissioner invoking the provision u/s 45-B of the ESI Act for the purpose of recovery of the amount of contribution mentioned in the draft order itself, as arrears of land revenue. The amount of contribution mentioned in the draft order, to become recoverable u/s 45-B of the ESI Act, should have been the amount of contribution determined by an order made u/s

45-A of the ESI Act, was also not disputed. If the ESI Corporation did not choose to determine the amount of contribution payable by the employer, the alternate course open to it for having determined such amount of contribution was to make an application before the Insurance Court u/s 75 of the ESI Act seeking from it determination of such amount of contribution, was, as well, not disputed. However, in the instant case, since the ESI Corporation did not invoke the provision u/s 75 of the ESI Act for determination of the amount of contribution payable, the employer itself has gone before the Insurance Court with an application u/s 75 of the ESI Act seeking the determination of the amount of contribution, if any payable by it, though sought to question before it the claim for contribution made by the ESI Corporation in its draft order. As the employer was also entitled to have the amount of contribution payable or otherwise by it determined, by invoking the power of the Insurance Court vested in that regard u/s 75 of the ESI Act, the Insurance Court, on the application of the employer made u/s 75 of the ESI Act, should have determined the amount of contribution, if any payable by the employer under the ESI Act, having regard to the pleadings in the case and the evidence adduced by the parties in respect thereof. But, the Insurance Court, as seen from the order under appeal, has not made any effort to make any determination of the amount of contribution, if any, that was to be paid by the employer to the ESI Corporation under the ESI Act. This aspect of the matter is not, and very rightly controverted by either Counsel appearing for the parties before us. The approach made by the Insurance Court in its order, as seen therefrom, was to find whether there were sufficient grounds available to the employer to have the draft order made by the ESI Corporation set aside. This approach made by the Insurance Court was misconceived inasmuch as what was required to be done by it in exercise of its powers u/s 75 of the ESI Act was to independently determine the amount of contribution, if any payable by the employer, as a Court of first instance. Hence, the order of the Insurance Court under Appeal becomes unsustainable and calls to be interfered with.

6. The next question, which arises for our consideration in this appeal, is as to what is the course which should be adopted by us, if the order under Appeal is interfered with and set aside.

7. Dealing with the scope of Sections 44, 45A and 75 of the ESI Act, the Supreme Court has observed in the case of *The Employees State Insurance Corporation, Bhopal Vs. The Central Press and Another*,

"3. The powers of the Corporation are given in Section 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 a case where there is omission on the part of the employer to maintain records in accordance with Section 44 of the Act, determine the amount of the 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 u/s 75 of the Act. The Court should give the Corporation a direction to perform its duty when it considers that this should be performed by the Corporation. It cannot decline to perform its own duty because the Corporation has failed to discharge its function."

If we have regard to the said observations of the Supreme Court, what follows therefrom is that the ESI Corporation when has failed to make a determination of the amount of contribution payable by the employer to the ESI Corporation, availing itself of the provision in Section 45-A of the ESI Act and on such failure, the Insurance Court, which was required to make such a determination on an application made u/s 75 of the ESI Act before it, has also failed to make such determination, it would be the plain duty of this Court as an appellate Court to set aside the order under appeal and remit the application to the Insurance Court to make a determination of the amount of contribution, if any, on the basis of the pleadings and evidence in the case. In this view of the matter and having regard to the facts and circumstances of the present case, it would be just and reasonable to set aside the order under Appeal and remit the case to the Insurance Court at Bangalore with a direction to determine the amount of contribution, if any, liable to be paid by the employer to the ESI Corporation under the provisions of the ESI Act and make an order accordingly if required by the parties by permitting them to supplement the pleadings and evidence.

8. In the result, we allow this Appeal, set aside the order under Appeal and remit the case to the Insurance Court at Bangalore with a direction to dispose of the application made by the employer, in accordance with law, after affording an opportunity to the parties, if they so desire, to supplement their pleadings and evidence in the case.

9. We direct the parties to this Appeal to appeal before the Insurance Court on February 28, 1992 without the need to receive any notice, to receive instructions as to further stages of the disposal of the application of the employer before it.

10. The records, which have been received by this Court from the Insurance Court, may be sent back to it forthwith along with a copy of this order and the Insurance Court shall dispose of the case within period of six months from February 28, 1992.