

(1997) 03 MAD CK 0049
In the Madras High Court
Case No : C.R.P. No. 1175 of 1995

The Employees' State Insurance

APPELLANT

Vs

Thiruvallargal Oraiyur Devanga Handloom Weavers Co-op.
Sales Society, and others

RESPONDENT

Date of Decision : 27-03-1997

Acts Referred:

Employees State Insurance Act, 1948 — Section 44(1), 44(2), 75, 75(1), 75(3)

Citation : (1997) 2 LLJ 176 : (1997) 2 LW 148

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : G. Desappan, for the Appellant;

Judgement

1. Though respondents were served, no representation on their side and therefore they were set ex parte.

2. Heard Mr. G. Desappan, for the petitioner. This revision is directed against the order of the Sub Court, Tiruchirapalli in O.S. No. 224 of 1988, dated March 29, 1994.

3. The first respondent is the Handloom Weavers' Co-operative Sales Society, represented by its Secretary, Oraiyur, Trichy. The first respondent

society has been functioning as a Handloom Weavers Society since 1936. In pursuance of the powers of the defendant under the Employees' State

Insurance Act, 1948, the plaintiff was summoned to bring the society under the provisions of the Act by submitting a Form 01 under the regulation

of 10-S State Insurance (Central) Regulation. The society did not comply with the same, since according to them the said society is not covered

under the Act. It is the contention of the first respondent society that the provisions of the Act are not attracted towards the plaintiff Society.

However, a proceeding dated May 25, 1981 stating that the society is covered under the provisions of the Act with effect from May 14, 1981

was issued and code No. 12695/19 had been allotted to the first respondent. It is also stated in the plaint that once the authorities come to the

conclusion that the first respondent society is one, which is to be covered as a factory or establishment must call upon the plaintiff/first respondent

to submit the application in Form 01 and if the first respondent has not submitted the same, then it is incumbent upon the first respondent -- society

to invoke Section 44(2) of the Act and adjudge whether the first respondent is a factory or establishment to which the Act applies. Only after

adjudication, the first respondent factory can be brought under the net of the Act. According to the first respondent, no adjudication order was

passed or issued. Hence, the first respondent -- society passed a resolution challenging the proceedings in E.S.I. O.P. 1/81 on the file of the Sub

Court, Trichy and challenged the said proceedings dated May 25, 1981. The said proceedings were resisted by the defendant. The Sub Court,

Trichy disposed of the said case on February 18, 1984, after observing as follows :

In view of the fact that the plaintiff has not submitted the Form 01, in the case it is always open to the defendant to invoke the provision 44(2) of

the Act. But before the said provisions have been invoked the plaintiff has rushed to the Court to declare the proceedings Ex. A-2 (Proceedings

dated May 25, 1981 of the defendant photostat copy of which is also submitted herein) illegal and ultra vires. I am of the view that not

withstanding the issue of Ex-A.2 to the plaintiff the defendant can bring the plaintiff society within the purview of the Act only after invoking section

44(2) of the Act. I am of the opinion till such proceedings are taken u/s 44(2) the plaintiff society cannot be brought under the scheme of ESI Act.

Further I am of the view that Ex.A.2 is not conclusive to decide that the plaintiff society is an establishment coming under the scheme of the Act.

When action u/s 44(2) is taken by the defendant Corporation, it is for the plaintiff society to put forward his objections"".

4. On March 10, 1987, the E.S.I. Corporation again issued a proceeding to the first respondent society calling upon them to pay contribution,

failing which it threatened to prosecute the second respondent herein, the second defendant in the suit, who was the then Secretary of the first

respondent society for failure to comply with the Act. According to the first respondent, the E.S.I. Corporation has issued the said proceedings

without complying with the directions issued in E.S.I. O.P. 1/81 for passing suitable orders in accordance with Section 44(2). So, the first

respondent society could not comply with the demand raised in the proceedings dated March 10, 1987 in as much as there was no adjudication

holding the first respondent as a factory or establishment to which the Act applies. However, the E.S.I. Corporation chose to prosecute the second

respondent herein, the then Secretary for the failure to comply with the Act in C.C. No. 5 189/87 on the file of the Second Metropolitan

Magistrate, Madras. Prosecution was laid personally against the second respondent herein. It is also the case of the first respondent/plaintiff that

when the prosecution was launched, the second respondent/second defendant, who was the then Secretary of the, first respondent society was on

leave on medical grounds. Therefore, the Handloom Department of the State of Tamil Nadu posted the third respondent herein i.e., the third

defendant, as Secretary, who was a Textile Control Officer of the Department of Handlooms and textiles of the State of Tamilnadu to hold

Additional charge of the post of the Secretary of the first respondent society. It is also the case of the first respondent that the third respondent was

not aware of the claim of the department or the earlier litigation. The second respondent however yielded to the prosecution of the third respondent

and the third respondent allowed the second respondent to remit a fine of Rs. 400/- imposed by the Court on the alleged plea of guilt.

Therefore, the management decided to fight against the claim of the E.S.I. Corporation and fought the case in E.S.I. O.P. No. 1/81 and invited a

favourable finding in E.S.I. Court as stated supra. It is stated that the first respondent management having obtained an order from the E.S.I. Court

that they were not liable to be covered till the adjudication was made u/s 44(2) of the E.S.I. Act could not allow the said order to be ignored. The

second and third respondents were bound to comply with the orders of the E.S.I. Court favourably secured for the plaintiff's society. The action of

the Corporation was challenged by way of filing the suit. It is contended that if the employer does not comply with the request of the E.S.I.

Corporation then the Corporation must hold an enquiry u/s 44(2) of the E.S.I. Act and enquire whether the employer's factory or establishment is

the factory or establishment to which the Act applies and if so, pass an order adjudicating such an employer as a factory or establishment to which

the Act applies and then bring it under the net of the Act and allot a code number. The Corporation could prosecute such employer for failure to

comply with the Act. According to the first respondent, this is the legal position that one can cull out from a reading of Regulation No. 10(b) read

with Section 44(2) of the Act. Such being the case, the E.S.I. Court, Trichy in E.S.I. O.P. No. 1/81 did not as and could not direct the plaintiff to

submit to the jurisdiction. The first respondent therefore filed the suit for the following reliefs :

(a) declare that the conviction rendered in C.C. 5189/87 on the file of the II Metropolitan Magistrate, Madras against the second defendant and

the remittance of the fine by the second defendant was not binding on the plaintiff society and violative of the direction of the E.S.I. Court, Trichy,

in E.S.I. O.P. No. 1/81.

(b) Consequently directing the defendants 2 and 3 to remit into the coffers of the plaintiff's society the sum of Rs. 400/-remitted by them as fine.

(c) declare that the proceedings dated February 23, 1987 claiming the coverage of the plaintiff society under the E.S.I. Act and also alleging in the

proceedings

failure on the part of the plaintiff to submit requisite particulars in Form 01, in duplicate as directed by the Court (E.S.I. O.P. No. 1/81) u/s 44(2)

of the E.S.I. Act"" are violative of the direction passed in E.S.I. O.P. 1/81 on the file of the E.S.I. Court, Trichy are also ab initio void, illegal and

without jurisdiction and ultra vires the powers of the first defendant corporation;

(d) Consequential permanent injunction restraining first defendant Corporation and its local office 4th defendant from enforcing or giving effect to

the proceedings No. 51-126 INS-VI dated Feb. 88 (Date illegible)

(e) Award cost of the suit.

5. Issue No. 2 relates to the jurisdiction of the Civil Court in deciding the matters pertaining to E.S.I. Corporation. The Sub Court after considering

the rival claims passed an order holding that the Civil Court has jurisdiction. Section 75 deals with matters to be decided by the Employees

Insurance Court. Section 75(3), with which we are concerned, reads thus :

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.

It is contended that the lower Court has erred in law in holding that the issue arising in this suit could be dealt with only by ordinary Civil Courts. It

is also contended that the order of the lower Court is liable to be set aside on the sole ground of want of jurisdiction. Section 75(3) of the Act in

my view should be construed to oust the jurisdiction of the Civil Court to entertain a suit of this nature brought by the first respondent/plaintiff.

6. This apart, the first respondent wants declaration that the conviction rendered in C.C. No. 5189 of 1987 on the file of the Second Metropolitan

Magistrate, Madras, against the second respondent and the remittance of fine by him was not binding on the first respondent Society and violative

of the direction of the E.S.I. Court, Trichy in E.S.I. O.P. No. 1/81 and consequently directing the defendants 2 and 3 therein to remit into the

coffers of the first respondent Society the sum of Rs. 400/- remitted by them as fine. In my opinion, such a prayer cannot at all be maintained by

the first respondent Society, in a civil proceeding. Admittedly, the second respondent, who was the then Secretary pleaded guilty and paid the fine.

If the first respondent Society is aggrieved against the said order it ought to have preferred a revision or an appeal as the case may be as provided

under the Criminal Procedure Code and not by filing a suit invoking the jurisdiction of the Civil Court, which does not come under the purview of

Section 75 of the Act.

7. Section 75(1) sub-clause (a) to (g) enumerates question or dispute which are to be decided by the Employees' Insurance Court in accordance

with the provisions of this Act. One of the contentions of the first respondent in this case is that they are not covered by the provisions of the E.S.I.

Act. Such a question in my opinion can only be decided by the E.S.I. Court. The lower Court having gone through the Section 75 of the Act and

particularly Section 75(3) which deals with specific bar of the Civil Court, has erred in law in holding that the issue arising in the suit could be dealt

with only by ordinary Civil Court. In my opinion, the order of the lower Court is liable to be set aside on the ground of want of jurisdiction. The

Civil Revision Petition therefore succeeds. There will be no order as to costs. Consequently, C.M.P. No. 6641 of 1995 is dismissed.