

(1972) 03 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil First Appeal No. 97 of 1967

The Regional Director, Employees State Insurance Corporation	APPELLANT
Vs	
The Assistant Engineer, Municipal Council, Waterworks and Others	RESPONDENT

Date of Decision : 14-03-1972

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 3, 38, 39, 40
Factories Act, 1948 — Section 2

Citation : (1972) RLW 258 : (1972) WLN 215

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kan Singh, J.—This is an appeal u/s 82(2) of the Employees' Insurance Act, 1948, hereinafter to be referred as the "Act", lodged by the Regional Director on behalf of the Employees State Insurance Corporation, hereinafter to be referred as the "Corporation", and is directed against the order of the Employees Insurance Court (Civil Judge), Ganganagar, dismissing an application made by the Corporation u/s 75(2) of the Act for the recovery of employees' contribution from the respondents in respect of the employees of the Water Works maintained by the Municipal Council of Ganganagar at Ganganagar.

2. The Corporation averred that the Water Works maintained by the Municipal Council, Sri Ganganagar, was a factory as defined in Sub-section 12 of Section 2 of the Act and consequently the Municipal Council as employer was liable to pay contribution as required by Section 40(1) of the Act at the rates provided u/s 39 read with Schedule I of the Act to the Corporation. The period for which such contribution was not paid was from 1-4-60 to 30-9-65 and actual amount of wages paid to the employees covered by the Act for the aforesaid period as intimated by the Municipal Council came to Rs. 2,64,779.29 paise. It was further alleged by the Corporation that no return showing the actual contribution week-

wise had been furnished & consequently the rates of employees contribution had been fixed on the basis of an average of contribution payable in respect of all the wages groups of Schedule I prescribed u/s 39 of the Act. The Corporation proceeded to say that according to this formula the employees' contribution on the aforesaid wages came to Rs. 6619 48 paise as per schedule attached with the application. The application was presented on 27-7-66. The respondents denied their liability to pay employees' contribution to the Corporation. The stand taken by them that the Water Works were not a factory within the meaning of the Act, as 20 or more than 20 workers had never worked in the Water Works at any time and further the storing and supply of water did not involve any manufacturing process so as to constitute the water works a factory within the meaning of the Act. Further, the respondents raised the plea of limitation. In the first place, it was contended that in accordance with Rule 17 of the Rules framed by the State of Rajasthan under the Act, the claim could have been preferred only within a period of 3 years. Then it was further contended that in accordance with Section 271 of the Rajasthan Municipalities Act, 1959, hereinafter to be referred as the "Municipal Act", a suit could be filed against the Municipal Council only after giving it the requisite notice of two months. Then further no action except one for the recovery of immovable property, or for a declaration of a tide thereto could be commenced otherwise than within six months next after the accrual of the cause of action.

3. The learned Civil Judge set down the following issues for trial,

(1) Whether Municipal Water Works is not factory under Employees State Insurance Corporation Act? B.O.D.

(2) Whether non-petitioner No. 1 is the principal employer of the Municipal Council water works & as such is necessary party? B.O.A.

(3) Whether the application is within limitation? B.O.A.

(4) Whether the Municipal Council water works can be sued as such? B.O.A.

(5) Whether the amount of Rs. 264779 29 was paid as wages and Employees contribution is payable on this amount? B.O.A.

(6) Whether the defendant is estopped from pleading against the Municipal Council water works being a factory and the non-petitioner No. 1 being a principal employer under the Employees State Insurance Act? B.O.A.

(7) Whether Shri Surjit Singh Regional Director is competent to file this petition? B.O.A.

(8) Relief?

4. On the side of the Corporation only one witness Shri S.C. Jain was examined. On the side of the respondents two witnesses D.W. 1 Kashmiri Lal and D.W. 2 Harcharandas were examined.

5. The learned Judge considered the definition of the term "factory" as given in the Act as also one given under the Factories Act, 1948. He observed that both the definitions were almost the same. The learned Judge then took into consideration the evidence led by the parties. In particular he referred to the statement of D W. 2 Harchandas who was one Overseer under the Municipal Council. He held that according to this witness there were 3 shifts run at the Water Works and they were of 8 hours each. There were 6 workers employed at a time in a shift with one Chowkidar. Further he referred to the schedule of workers furnished by the Municipal Commissioner namely, Schedule B and C with the written statement. He noticed that 6, 7 and 6 persons worked respectively in the 1st, 2nd and 3rd shifts with two persons relieving and 3 persons employed as Fitters in addition. The learned judge further held that the requisite number of employees or workers were there for holding the establishment a Factory. The learned Judge further held that maintenance of water works involved a manufacturing process. The learned Judge also took notice of the fact that some "Beldars" and other employees were working at the Rest House attached to the Water Works and they have also to be included in counting the strength of the establishment. In the result, he held that Water Works was a Factory within the meaning of the Act and consequently he decided issue No. 1 in favour of the Corporation.

6. As regards issue No. 2, the learned Judge reached the conclusion that the Assistant Engineer, Water Works was the Incharge of the Water Works Section and was consequently its Manager. He was, therefore, a principal employer within the meaning of the Act. Consequently this issue was also decided in favour of the Corporation and against the respondents.

7. As regards issue No. 3, the learned Judge held that in accordance with Rule 17 of the Rules the claim for contribution could be preferred to the Employees' Insurance Court only within a period of 3 years. As regards the applicability of Sub-section (2) of Section 271 of the Municipal Act, the learned Judge held as the cause of action had arisen on 30-9-60, the application brought on 27-7-66 was time barred. As regards issue No. 4, the learned Judge held that as the Municipal Council was a proper party and could be sued as such. As the respondents could not show how the Municipal Council could not be sued in respect of its employees" the learned Civil Judge, decided the issue in favour of the petitioner & against the respondents.

8. Regarding issue No. 5, the learned Civil Judge took into consideration the documents Ex. 4 to Ex. 25 which were the documents admitted by the respondents as also the statement of their witness D W 1 Kashmiri Lal. The documents were prepared on the basis of the muster rolls & the salary bills. The learned Judge, therefore, held that the amount of Rs. 2,64,779.29 paise was paid to the employees of the Water Works during the relevant period. He further observed that it was for the respondents to show as to what portion related to leave or holiday salary and the respondents had completely failed to prove this.

Issue No. 6 was also decided against the respondents. Issue No. 7 had not been proved by the respondents and consequently that issue too was decided against the respondents.

9. In the result, however, the learned Civil Judge dismissed the application as it was, according to him, barred by limitation.

10. In assailing the order of the court below learned Counsel for the Corporation contends that Rule 17 of the Rules made under the Act was ultra vires and consequently no bar of limitation would confront the Corporation in presenting its application for employees' contribution by the employer. As regards the provisions of Section 271 of the Municipal Act or regarding the rules o(SIC) limitation contained therein, learned Counsel urges, that this application under the Act cannot be characterised as a suit within the meaning of Section 271 of the Municipal Act and, therefore, that section was out of his way.

11. Learned Counsel for the respondents contests this position. He has also challenged the conclusions reached by the learned Civil Judge regarding the other issues decided against the respondents.

12. So far as the rule of limitation embodied in Rule 17 of the Rules is concerned, the position has been authoritatively determined by a recent judgment of the Supreme Court in *Bharat Barrel & Drum Mfg. Co. v. E.S.I. Corporation*. 1971 F.J.R. 339. In that case Rule 17 of the Bombay Employee's Insurance Court Rules, as it then was, came up for consideration. A limitation of 12 months was laid down under the Rule. Rule 17 of the Bombay Employees' Insurance Court Rules was word for word similar to Rule 17 of the Rules framed by the Rajasthan State under the Act except for the period. Their Lordships had held Rule 17 of the Bombay Employees' Insurance Court Rules to be ultra vires the power of the State Government and it was consequently held to be invalid. Their Lordships observed that such a rule will have the effect of extinguishing the rights of parties if a claim is not made within the prescribed period and the Legislature does not part with the powers to prescribe limitation which it retains to itself unless it intends to do so in clear and unambiguous terms or by necessary intendment. There is, therefore, no escape from the conclusion that Rule 17 of the Rules made by the Rajasthan State under the Act was ultra vires the powers of the State Government and was consequently invalid. Therefore, the application moved by the Corporation cannot be said to be barred by the rule of limitation embodied in Rule 17 of the Rules made by the State Government.

13. I may now turn to the provisions of Section 271 of the Municipal Act which reads as under:

Section 271 Suit against Board or its officers.-(1) No suit shall be instituted against a Board, or against the Chairman, Vice-Chairman, member, officer or servant of a Board or against any person acting under the direction of any of them in respect of an act done or purporting to have been done in its or his official capacity until the expiration of two months next after notice thereof in

writing has been in the case of a Board left at its office and, in the case of the Chairman, member, officer servant or person, delivered to him or left at his office or place of abode, explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the intending plaintiff, and the plaint shall contain a statement that such notice has been so delivered or left.

(2) No action such as is described in Sub-section (1) shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be commenced otherwise than within six months next after the accrual of the cause of action

(3) Nothing in Section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the commencement of the suit or proceeding.

According to its plain language this section relates to suits instituted against the Municipal Board or against the Chairman, Vice chairman, member, officer or any of its servants or against any person acting under the direction of any of them in respect of the act done or purporting to have been done in its or his official capacity. Two subordinate questions fall for consideration here: the first one is whether an application u/s 75 of the Act before an Insurance Court created under the Act is a suit within the meaning of Section 271 of the Municipal Act; and the second question is whether failure to pay contribution in accordance with the provisions of the Act to the Corporation can be said to be an act done or purporting to have been done in official capacity as contemplated by the aforesaid section.

14. I may turn to the definition of the term "act" as given in the General Clauses Act. Sub-section (2) of Section 3 lays down: "act", used with reference to an offence or a civil wrong, shall include a series of acts & words which refer to acts done, extend also to illegal omission." Failure to pay contribution as provided under the Act cannot, in my view, amount to an "act" within the meaning of Section 271 of the Municipal Act. It is only in respect of an offence or civil wrong that the term "act" shall include a series of acts and words which refer to acts done extend also to illegal omissions. The application that is made by the Corporation is to enforce a right created by the statute. The relief is not claimed in respect of any act done by the Municipal Council or its servants, but it is enforcing a right of the Corporation on account of the employer namely, the Municipal Council failing to comply with the provisions of the Act. Apart from this an application under a special provision like the one u/s 75 of the Act cannot be characterised as a suit within the meaning of the Act.

15. Section 40 of the Act casts the obligation on the principal employer in respect of every employee's contribution in a Factory. Then there are several provisions regarding the method of payment of contributions and the mode of their

realization. The Act provides that every employee shall be insured (vide Section 38). Section 46 and other related sections make provision for certain benefits like periodical payments to an insured person in case of his sickness, periodical payments to an insured woman in case of confinement, or miscarriage or sickness arising out of pregnancy, periodical payment to a person suffering from disablement, periodical payments to such dependents of an insured person who dies as a result of an employment injury & so on. The Act is thus a beneficent piece of legislation. The rights created by it are special rights & so are the imposed by it. Where certain rights are created by a statute and the machinery is also set up thereunder for the enforcement of such rights then normally resort can be had only to such machinery provided by the Act. The Act also makes provision for adjudication of disputes and claims. Section 74 provides for constitution of Employees Insurance Court. It lays down that the State Government shall by notification in the official gazette constitute an Employees' Insurance Court of such local area as may be specified in the notification. The Court shall consist of such number of Judges, as the State Government may think fit. As regards the qualifications of the persons to be appointed, it is laid down that 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. The matters to be dealt with by such Employees Insurance Court are laid down in Section 75 of the Act. The question of employees' contribution is one such matter. Sub-section (3) of this section lays down that 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. Section 76 provides for institution of proceedings of this Act and any rules made by the State Government, all proceedings before the Employees' Insurance Court shall be instituted in the Court appointed for the local area in which the insured person was working as the time the question or dispute arose. Section 77 lays down that the proceedings before an Employees' Insurance Court shall be commenced by application and every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State Government in consultation with the Corporation. The powers of Employees' Insurance Court are laid down in Section 78 and I may read that section:

Section 78. Powers of Employees' Insurance Court.-(1) The Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such Court shall be deemed to be a Civil Court within the meaning of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

(2) The Employees' Insurance Court shall follow such procedure as may be

prescribed by rules made by the State Government.

(3) All costs incidental to any proceeding before an Employees' Insurance Court shall subject to such rules as may be made in this behalf by the State Government, be in the discretion of the Court.

(4) An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil Court.

Then there are provisions for appeal. u/s 82 an appeal lies to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

16. A review of these provisions discloses: (1) that for matters arising under the Act & as are laid down in Section 75 of the Act, an Employees' Insurance Court alone has jurisdiction & the jurisdiction of a Civil Court is barred; (2) the proceedings before the Employees' Insurance Court could be commenced by an application. (3) According to Section 78, only some of the powers under the CPC like summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence, have been conferred on an Employees' Insurance Court, otherwise such Court is required to follow such procedure as may be prescribed by rules made by the State Government. Thus, the Employees' Insurance Court, to my mind, is not a Court as such, but only an administrative tribunal having some of the trapping of a Court. Its jurisdiction is exclusive in matters to be dealt with by it. The proceedings before such a Court commenced by an application u/s 77 of the Act cannot be assimilated to a suit as contemplated by Section 271 of the Municipal Act. That being so, there is no good reason to hold that any notice is required to be given to the Municipal Council before filing an application u/s 77 of the Act, nor would the rule of limitation embodied in Section 271 of the Municipal Act be attracted. The Employees' Insurance Court (Civil Judge) was, therefore, in error in holding that the application was barred by time.

17. Learned Counsel for the respondents than urged against the findings recorded by the learned Civil Judge on other issues. He submitted in the first instance, that Municipal Water Works was not a factory. His argument is that no manufacturing process is involved in the storing and supply of water by the Municipality. The group of sections commencing from Section 98 of the Municipal Act lay down the primary and secondary functions of Municipal Boards. Section 98 which lays down the duties of the Municipal Boards, inter alia, makes it the duty of every Municipal Board to make responsible provision for obtaining a supply of water, proper and sufficient for preventing danger to the health of inhabitants from the insufficiency or unwholesomeness of existing supply. It is, therefore, evident that by maintaining the Water Works the Municipality is discharging its statutory functions of supplying water with a view to preventing danger to the health of inhabitants from the insufficiency or unwholesomeness of the supply. Section 2(12) of the Act defines the term "factory" as under:

"factory" means the premises including the precincts thereof whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinary so carried on but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed.

For the meaning of the expression "manufacturing process" and "power" one has to turn to the Factories Act, 1948. The term "manufacturing process" according to Section 2(k) thereof means any process for: (1) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or (2) pumping oil, water or sewage; etc. There is no manner of doubt that in the Water Works the process of cleaning the water is involved so that it may be rendered proper and sufficient for preventing danger to the health of inhabitants from the insufficiency as unwholesomeness. Then water has to be pumped. Therefore, the treatment of water as also the act of storing and supplying it by pumping will undoubtedly constitute a manufacturing process within the meaning of Section 2(k) of the Factories Act, 1948. The term "power" as defined in this Act means "electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency. There is, therefore, no substance in the contention that the Water Works maintained by the Municipal Council were not a factory within the meaning of the Act.

18. Now the learned Counsel has taken me through the statements of D.W. 2 Harcharandas examined by the respondents. He has clearly stated that there were 4 buildings in the Water Works premises and in each building 2 workers were kept at a time and then there were 3 shifts of 8 hours each. Apart from anything else, this shall undoubtedly take the number of workers to be more than 20 for each day. Besides this the learned Civil Judge has referred to a number of documents and I have no reason to disturb the conclusions arrived at by him on a question of fact concerning the number of workers employed on each day, Learned Counsel raised a contention that the Assistant Engineer has to work in the Office of the Municipality & so also the Overseer and then there was the clerical staff and they should not have been included among the employees for the purposes of holding the establishment to be a factory. He relied on Employees" State Insurance Corporation with its Regional Office at Coimbatore Vs. Ganpathia Pillai and Others, . Since even after exclusion of other employees the number of employees engaged in the Water Works itself is more than 20, I need not consider the question at any great length. Suffice it to say that the Employees" State Insurance Corporation with its Regional Office at Coimbatore Vs. Ganpathia Pillai and Others, is distinguishable. The persons employed in the Managing Agent's Office of a mill who were concerned purely with the administrative side of the mills and sale of finishing products and who were not in any way connected with the manufacturing process or with the work of the

factory, were not held to be employees within the meaning of Section 2(9)(i) of the Act. One cannot place an Engineer or an Overseer in the same category as persons employed purely on the administrative side. An Engineer or an Overseer are skilled hands and do participate in the actual operation of the Water Works. It is they who guide the actual operations and also look after the maintenance of Water Works. Any way, as I have already observed, in the present case even according to the evidence adduced by the respondents the Water Works were employing more than 20 workers on each day.

19. Learned Counsel then contended that the amount of the wage bill i. e. Rs. 2,64,779.29 paise included the salary and leave period allowance of the other staff as well and that has to be excluded, I may reproduce the relevant paragraphs of the application and reply in juxtaposition in this behalf:

Para 5 of the application: Para 5 of the reply: 5. That the actual amount 5 That para No. 5 of the of wages paid to the Employees petition is admitted to the ex-covered under the Employees" tent an amount of Rs. State Insurance Act, 1948 for the 2,64,779.29 np. were paid to period from 1-4 1960 to 30-9-1965 the workers and other staff as intimated by the opposite par- employed in connection with ties comes to Rs. 2,64,779 29 p. the water works and the supply as per details furnished in Sche- of drinking water, It is denied dule "C" appended to this that this amount comes under application. the terms "Wages" as defined ni Section 2(22) of the Employees State Insurance Act because it includes salary paid to the employees of the opposite party No. 2.

The first part of the reply paragraph clearly contains an admission that the amount of Rs. 2,64,779.29 paise were paid to the workers and the other staff employed in connection with the Water Works and the supply of drinking water. Therefore, there is no dispute that the wage bill was in respect of the employees of the respondent for the Water Works. In the second part of the reply paragraph the respondent, no doubt, denied that this amount comes under the terms "Wages" as defined in Section 2(22) of the Employees State Insurance Act, because it includes salary paid to the employees of the opposite party No. 2. Here also the respondent is labouring under a mis-conception. He thinks that "salary" would not be covered by the definition of the term "Wages" under the Act. I may, therefore, read that sub-clause:

Section 2(22) "Wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include-

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entitled on him by the nature of his employment; or

(d) any gratuity payable on discharge.

The definition of the term "Wages" is quite comprehensive and includes all remunerations paid or payable in cash to an employee. Therefore, wages may be a payment on a daily basis or on any periodical basis. Therefore, one cannot necessarily hold that where to an employee salary is paid on monthly basis, it would not be included in the term "Wages". If the respondent wanted to raise a dispute then it should have done so in explicit terms so that the Employees' Insurance Court would have adjudicated upon it. This question in the present form cannot be allowed to be agitated in this Court for the first time, as appeal to this Court lies only if the order of the Employees' Insurance Court involves a substantial question of law. This is not substantial question of law.

20. Learned Counsel also contended that the employees of the Rest House should not have been included amongst the employees of the Water Works. Here again, I have to say the same thing, such employees should have specified and then a decision should have been sought. A perusal of Ex. 1 as also the schedule of workers on its reverse show that the respondents themselves have included therein a few "Beldars" i.e., persons employed for bringing or removing clay or earth. They appear to be some of the persons employed at the Rest House attached to the Water Works. I am, therefore, not inclined to take a view different from that taken by the learned Civil Judge regarding issues other than that of limitation. In para No. 7 of the application the Corporation has averred that the contribution would come to Rs. 6619 48 paise only as per details furnished in schedule "C" appended to the application. Para No. 7 of the reply contains only a general denial. It is stated therein "that para No. 7 of the petition is denied. The petitioner is not entitled to any contribution claimed by him as non-petitioner No. 3 is not a "Factory". Contribution even if due (which claim is emphatically denied) can be claimed on the basis of the wages for the days actually worked in the given period, but the above amount includes salary as well as wages for leave period & holidays and so no contribution can be claimed on whole of this amount. All the workers and other employees connected with the water works are holding salaried appointments since 1-9-62 ". The respondents have failed to specify as to how much amount has been wrongly included in this amount. Their obsession is: (1) that the establishment was not a factory and (2) that all the workers and other employees were holding salaried appointments. As I have already observed, the term "wages" is wide enough to include salary and further the establishment is a factory. In such a situation it was the duty of the respondents to indicate how much amount has been wrongly included. Therefore, I am inclined to hold that the appellant's claim for an amount of Rs. 6619.48 paise as employee" contribution should be allowed.

21. The result is that I allow this appeal, reverse the order of the learned Civil Judge and award the appellant a decree for a sum of Rs. 6619.48 paise against

the respondents. The appellant shall get his costs for this Court only.