

(2007) 09 AP CK 0108

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 266 of 2005

The Regional Director, Employees State Insurance Corporation APPELLANT
Vs

Zuari Cement Ltd. (formerly known as Zuari Cement A RESPONDENT
Division of Zuari Industries Limited) The General Manager
Commercial A.R.K. Shastri, Commercial, Zuari Cement Ltd.,
The State of A.P. and Trexmaco Ltd., Cement Division
Employees Union

Date of Decision : 21-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Employees State Insurance Act, 1948 — Section 54A(2), 55A, 68, 70, 74

Citation : (2008) 1 LLJ 835

Hon'ble Judges : G.V. Seethapathy, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : Pushpinder Kaur, in Civil Miscellaneous Appeal No. 266 of 2005, B.G. Ravindra Reddy, SC in Civil Miscellaneous Appeal No. 4045 of 2003 and William Burra, in Civil Miscellaneous Appeal No. 89 of 2006, for the Appellant; M. Radha Krishna Murthy in Civil Miscellaneous Appeal Nos. 266 of 2005, 4045 of 2003 and 89 of 2006, Ch. Ramesh Babu in Civil Miscellaneous Appeal No. 266 of 2005 and K. Pinekapani, in Civil Miscellaneous Appeal Nos. 4045 of 2003 and 89 of 2006, for the Respondent

Judgement

B. Prakash Rao, J.—These appeals are at the instance of the Employees" State Insurance Corporation, Hyderabad, u/s 82 of the Employees" State Insurance Act, 1948 (for short "the Act"), aggrieved by the orders passed in E.I. Case Nos. 85 of 2002, 101 of 2001 and 69 of 2001 respectively, dated 18.10.2004, 16.05.2003 and 18.10.2004 respectively, on the file of the Employees" Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad, allowing the petitions filed by respondent No. 1 herein u/s 75(1)(g) of the Act seeking declaration of exemption from the applicability of the Act and the scheme thereunder for the periods mentioned in the respective petitions and consequently to set aside the respective demand notices issued by the appellant demanding certain amounts

towards contribution and also interest thereon.

2. Heard Sri B.G. Ravindra Reddy, Smt. Pushpinder Kaur, Sri William Burra, learned Standing Counsel appearing on behalf of appellant-Corporation and Sri M. Radha Krishna Murthy, Sri Ch. Ramesh Babu and Sri K. Pinaka Pani, learned Counsel appearing on behalf of the contesting respondents.

3. Since all the matters are on similar facts, the facts as stated in C.M.A. No. 266 of 2005 are being taken into consideration for disposal of the appeals.

4. The brief facts of the case which gave rise to the present proceedings and which are not in dispute are that respondent No. 1, who is the petitioner before the Employees' Insurance Court, claims to be a purchaser of the industry situated at Yerraguntla in Kadapa district, in the year 1982 from respondent No. 3 who was original owner earlier and they are carrying on the business of manufacturing and sale of cement. The said area was brought under the coverage of the E.S.I, scheme with effect from 01.03.1986. However, in exercise of powers u/s 87 of the Act, the Government issued the proceedings in G.O.Rt. No. 133, dated 08.02.1993, exempting the said industry from the operation of the provisions of the Act and the scheme for the period covering from 01.04.1991 to 31.03.1993. The said document was marked as Ex.P.9. The said industry was exempted even from 13.01.1986. Subsequently, respondent No. 1/ petitioner has applied for similar such exemption from operation of the said Act in the scheme with effect from 01.04.1993. However, the said request was rejected as per the order in Ex.P.19 issued by the Director of Insurance Medical Sciences informing them that the Government by proceedings, dated 19.03.1999, have rejected their request for grant of exemption. This was followed by the demand notice, dated 16.04.1999. Thereupon, respondent No. 1 herein has filed the present application purporting to be u/s 75(1)(g) of the Act seeking for the reliefs that they are entitled for exemption on the similar such grounds, as granted earlier, especially where they are providing all such benefits which are more superior and more advantageous than the one which could have been availed by the employees under the E.S.I, scheme.

5. The case of respondent No. 1 in the said application before the primary authority rested on the ground that they have spent substantial amounts and established the hospitals and other pheripernal and providing far better facilities and therefore, they need to be exempted from the coverage of the E.S.I, scheme. Since the Government has already exempted for the earlier period up to 31.3.1993, similar such benefit should also be extended and therefore, the order of rejection is not valid, more so, when it does not contain any valid reasons.

6. The said order of rejection by the Government was challenged by the respondent No. 1 in W.P. No. 15956 of 1999, which was disposed of by a Division Bench of this Court along with a Batch of cases observing that the respondent No. 1/petitioner can approach the E.S.I. Court constituted u/s 74 of the Act by filing appropriate application and all questions including the question of

applicability of the Act can be raised before the said Court. Accordingly, the present application has been filed raising several contentions and virtually assailing the order of rejection of exemption by the Government.

7. The said application was contested by the appellant herein inter alia on various grounds and especially to the effect that having regard to the fact that since exemption was rejected, respondent No. 1/petitioner is liable for the contribution as demanded and is not entitled for any such indulgence to seek exemption. Further, it was also pointed out that it is only after due examination by the Committee constituted under the Act, the Government rejected the application for exemption and therefore, there are no merits in any of the pleas raised by the respondent.

8. During the course of enquiry in the Tribunal, both sides let in only documentary evidence without any oral evidence in support. Exs.P. 1 to P.26 were marked on behalf of the respondent No. 1/petitioner and Exs.R.1 to R.5 were marked on behalf of the appellant and Exs.C.1 to C.3 were marked by the Court. It transpires that during the course of the said enquiry, the Court below has appointed an Advocate Commissioner to make inspection of the premises and report back as to the existence of any such benefits in the industry, whereupon the said Advocate-Commissioner, after making local inspection, submitted a report in Ex.C.1 along with photos in Ex.C.3. Ex.C.2 is the Warrant of Commission. Considering the said documents as produced from both sides, the Court below took the issues framed earlier, namely,

1. Whether the medical benefits provided and extended by the petitioner company to its employees for the past period from 1.4.93 to 31.3.2001 and also at present are superior than the benefits available under the ESI scheme?

2. Whether the provisions of the SI Act and the scheme thereunder are not applicable to the petitioner company and its employees for the period from 1.4.93 to 31.3.2001?

3. Whether the petitioner is not liable to pay any amount as demanded by the ESI Corporation?

4. To what relief?

9. Narrowing down the said issues to point Nos.1 to 3 to the effect as to whether the petitioner (respondent No. 1 herein) has provided any medical benefits to its employees, secondly, whether the petitioner is entitled for exemption from the applicability of the provisions of the Act and thirdly whether the petitioner is entitled for exemption from the applicability of the provisions of the Act, having regard to the evidence as available on record and as evident from the report of the Commissioner in Ex.C.1 which disclosed that the industry is having a full pledged hospital with medical officers, paramedical staff etc. and the amounts which are being spent towards such benefits, and there being no rebuttal evidence by the appellant, it is held that respondent No. 1 is providing due

benefits to all the employees. Coming to the second question, it is held that the said benefits being providing by respondent No. 1 are far better in comparison. On the aspect of exemption, the Court below virtually proceeded to consider the said application as if the order of rejection by the Government fall well within its competence to assail, and stated that the principles of natural justice having not been complied with, since no opportunity was given to respondent No. 1 and no speaking order with reasons has been passed by the Government and further having regard to the exemption already granted, though such restriction for a period of one year every time not being sustainable and no such restriction can be imposed and since the employer, employee, Corporation and the Government are before the Court, it was held that the said Court can give suitable direction for exemption to such employer and the said Court is also amply empowered with all the powers u/s 75 of the Act to give such directions and the judicial power is higher than any administrative action and thus, ultimately held that this is a fit case to exempt respondent No. 1 from paying contribution to the Corporation as long as it continues to provide superior medical benefits and further it also held that respondent No. 1 need not approach the Government every year for exemption. Thus, ultimately, the Court below allowed the application exempting the industry from the application of the provisions of the said Act. Hence, these appeals.

10. Sri B.G. Ravindra Reddy, learned Standing Counsel, who led the arguments on behalf of the Corporation, mainly submitted that having regard to the specific provision vesting the power of exemption with the Government, the Tribunal or Court acting u/s 75 of the Act has no power to effect any exemption nor is there any justification to hold that respondent No. 1 is entitled for exemption. Thus, it is the main contention that the Court below has acted beyond the powers conferred on it and the entire exercise is totally without jurisdiction.

11. The learned Counsel appearing on behalf of the respondent No. 1/petitioner sought to sustain the findings of the Court below mainly on the ground that since it has already provided all such benefits in a far better way and the Government having already granted exemption for the earlier period, there is absolutely no justification for denying the same for the subsequent period, more so, when it is not the case that any such facilities are either withdrawn or being denied to the employees. Even otherwise, the order of rejection for exemption is being violative of the principles of natural justice, as rightly held by the Court below, cannot be sustained and no valid reasons are given in support.

12. Considering all these and other submissions as made across the Bar and on perusal of the entire material on record, the core aspect which requires serious concern in these appeals is as to,

Whether, on the facts and circumstances, the Court as constituted u/s 74 of the Act can go into or sit over in judgment or orders of rejection of exemption by the Government, in an application filed u/s 75 of the Act by the management concerned?

13. There is no dispute as stated in the preceding pars to the fact that respondent No. 1/petitioner, who was a purchaser from respondent No. 3, was granted exemption by the Government from 13.01.1986 onwards, and under Ex.P.9, dated 08.02.1993, for the period from 01.04.1991 to 31.03.1993. It is only for the subsequent period it applied for exemption on the ground that similar such benefits in a far better way are being provided for and the same was rejected as communicated to it under the proceedings in Ex.P.19. Though the said order was challenged in a batch of cases, it led to filing of the present application u/s 75 of the Act with the aforesaid reliefs. No doubt, respondent No. 1/petitioner approached this Court by way of writ petition under Article 226 of the Constitution of India assailing the said order of rejection of exemption, however, the said batch of cases was disposed of by a Division Bench of this Court with liberty to the said industries to approach the authority constituted u/s 75 of the Act by filing appropriate applications where all questions including the question of applicability of the Act was permitted to be raised. However, on a reading of the said order, it is quite evident that this Court did not go into nor is there any consideration in regard to the correctness or validity of the proceedings on any ground assailed including violation of principles of natural justice or otherwise. Apparently, the applicability of the Act to the industry was in question and therefore, this Court directed them to approach the said authority. Now in the present application which has been filed, the entire allegations do not confine to the question as to the applicability of the Act, but virtually make an attack against the order of rejection by the Government. It is this aspect which now becomes very relevant to be addressed, to see as to whether in the application filed u/s 75 of the Act, the Court below can go into the correctness of the order of rejection made by the Government u/s 87 of the Act. For convenience sake, the provisions of Section 75 and 87 of the Act are extracted below.

75. Matters to be decided by Employees' Insurance Court:

(1) If any question or dispute arises as to

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

1 [(ee) any direction issued by the Corporation u/s 55A on a review of any

payment of dependants' benefits, or]

(f) 2 [x x x], or

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, 3 [or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act],

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

(2) [Subject to the provisions of Sub-section (2A), the following claims] shall be decided by the Employees' Insurance Court, namely:

(a) claim for the recovery of contributions from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer;

(c) 4 [xxx]

(d) claim against a principal employer u/s 68;

(e) claim u/s 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and

(f) any claim for the recovery of any benefit admissible under this Act.

5 [(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under Sub-section (2) of Section 54A in which case the Employees Insurance Court may itself determine all the issues arising before it.]

6 [(2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation:

Provided that the Court may, for reasons to be recorded in writing, waive or

reduce the amount to be deposited under this sub-section.]

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by 7 [a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.]

14. Section 87 of the Act reads as under:

87. Exemption of a factory or establishment or class of factories or establishments:- The appropriate Government, may, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time.

15. The application which has been filed as contemplated u/s 75 falls under Chapter VI of the Act which contemplates adjudication of disputes and claims. u/s 74 of the Act, the State Government by issuance of notification in the Official Gazette constitute the Employees' Insurance Court for such local area and any aggrieved party can raise a dispute or any question by way of application u/s 75 of the Act. There is no dispute to the fact that the provisions of the Act applies to the local area as contemplated u/s 74(1) and (4) of the Act. However, as provided for in Sub-clauses (a) to (g) of Section 75, the powers of the State Employees' Insurance Court have been specifically detailed. Therefore, it is only such question which can fall within the ambit of any of these sub-clauses alone can form part of the subject-matter of the lis or dispute which can be gone into by the said Court and not beyond. There is no power specifically conferred thereunder to provide any sort of remedy like appeal, revision or review to fall well within the powers of jurisdiction u/s 75 of the Act to consider, go into or sit over any decision or order which has been taken u/s 87 of the Act. The power of exemption is provided for in a different Chapter i.e., Chapter-VIII. The said power is specifically conferred on the Government to decide on the question of exemption of an industry from the operation of the Act. The reasons could be many, especially, including the benefits which the employer provides are substantially similar or superior to the benefits which the Act provides. However, as against the said order, either way, granting or refusing to grant exemption, no remedy by way of appeal or revision has been provided for under the Act. Therefore, any order passed therein becomes final unless taken in appropriate proceedings under Article 226 of the Constitution of India by way of writ. Thus, a reading of these two provisions amply shows that the ESI Court acting under the powers as conferred u/s 75 of the Act has no jurisdiction to take up or sit over the decision given u/s 87 of the Act. Even if it is found that the employer is providing far better benefits or similar benefits, it would not also constitute any basis or ground to interdict the decisions u/s 87 of the Act by the Court u/s 75 of the Act. Irrespective of the fact whether the order passed u/s 87 of the Act is in

any way can be assailed by way of appropriate grounds, be it for want of reasons or lacunae or violation of principles of natural justice, it is not for the Employees' Insurance Court acting u/s 75 of the Act to assail or set aside the same. The said order granting or rejecting exemption u/s 87 of the Act is very much binding and conclusive on the Employees' Insurance Court as constituted u/s 74 of the Act. Therefore, the entire approach of the Court below in proceeding to consider the correctness of the order of refusal to grant exemption in favour of respondent No. 1-employer is totally outside the scope of the powers and totally without any jurisdiction. The Court below could not have proceeded to have any look at those orders irrespective of the fact that better benefits are conferred by the employer or any principles of natural justice are violated. Though the learned Counsel appearing on behalf of the respondents herein sought to base their contentions on the directions given by this Court in the earlier batch of cases directing them to approach the authority constituted u/s 74 of the Act where all such questions can be gone into, however, the fact remains that it is only the applicability of the Act, on the facts and circumstances of each case of employer, which alone can form part of the adjudication, but not beyond it. Especially, where a Court or Tribunal or authority has no jurisdiction in any manner, whatsoever, as per the scheme of the Act, it would not confer on it any such power in terms of the liberty which is given by the Court to approach the said authority. Any such direction would always be subject to the powers, authority and jurisdiction as conferred, available or provided for under the particular statute and it would not in any way extend, wide open or confer anything which is not available on such authority, Court or Tribunal to take up all such questions which are beyond its purview.

16. Further, it is well established that where specific provisions are being made conferring certain powers, any such exercise should be in the manner in which it is specifically provided for under the statute and the question of one taking over the other is wholly impermissible and in fact, runs contrary to the very scope, object and jurisdiction as conferred under the respective provisions for the respective powers like adjudication, exemption etc.

17. In view of the aforesaid reasons, we hold that the Court below was not right in holding that the order of exemption is not sustainable and the Court acting u/s 75 of the Act is empowered with all the powers and further giving directions by itself granting exemption without approaching the Government seeking for exemption are wholly unsustainable and accordingly are set aside on all the counts.

18. The Civil Miscellaneous Appeals are accordingly allowed. The orders in E.I. Case Nos. 85 of 2002, 101 of 2001 and 69 of 2001, dated 18.10.2004, 16.05.2003 and 18.10.2004 respectively, on the file of the Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad are set aside. No order as to costs.

1 Substituted by Act No. 44 of 1966, Section 32, w.e.f. 28.01.1968.

- 2 Omitted by Act No. 44 of 1966, Section 32, w.e.f. 28.01.1968.
- 3 Inserted by Act No. 44 of 1966, Section 32, w.e.f. 21.01.1968.
- 4 Omitted by Act No. 44 of 1966, Section 32, w.e.f. 21.01.1968.
- 5 Inserted by Act No. 44 of 1966, Section 32, w.e.f. 21.01.1968.
- 6 Inserted by Act No. 29 of 1989, Section 29, w.e.f. 20.10.1989.
- 7 Substituted by Act No. 44 of 1966, Section 32, w.e.f. 28.01.1968.