

(1992) 08 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 14532 of 1992

Workmen of Bharat Heavy Electricals Ltd.	APPELLANT
Vs	
Union of India and others	RESPONDENT

Date of Decision : 05-08-1992

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (9), 95
Employees State Insurance Rules, 1950 — Rule 50
Industrial Disputes Act, 1947 — Section 2 (1), 2 (s) (4)
Payment of Bonus Act, 1965 — Section 11, 2 (13)
Payment of Gratuity Act, 1972 — Section 2 (e), 3 (3)
Workmens Compensation Act, 1923 — Section 4

Citation : (1992) ILR (Kar) 2689 : (1992) 3 KarLJ 610 : (1993) 1 LLJ 833

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : K. Subba Rao, for the Appellant; Bapu Heddur Shetty, Smt. D. Bhoopathy, M. Panna and Cariappa, for the Respondent

Judgement

1. The workmen of Bharat Heavy Electricals Limited, represented by their Association, are calling in question the constitutional validity of Section 2(9) of the Employees' State Insurance Act, 1948, as amended by Act, 29 of 1989 (hereinafter referred to as "the Act") and also the notification issued pursuant to the said provision framing a rule by which employees whose wages exceed a limit fell outside the definition of Section 2(9) of the Act.

2. Several other writ petitions are also filed on behalf of the workmen by various trade unions seeking for similar relief. Some of the managements, who have been impleaded as respondents, supported the petitioners, while others supported the other respondents. The managements in this and other connected matters are public sector undertakings, both of the State and the Union. All these matters have been heard together and contentions in all the cases are considered in this petition for purposes of convenience.

3. The Act provides for certain benefits to employees in case of sickness,

maternity and employment injury and makes provision for certain other matters in relation thereto. The Act has also to be looked at from the point of view of the Directive Principles of State Policy contained in Articles 39(e), 41, 42 and 43 of the Constitution of India, the emphasis being on securing health and strength of workers and to provide assistance in case of old age, sickness, disablement and creating conditions congenial to functioning in an establishment. The Act provides that it may be made applicable to different areas on different dates and even in different areas where the Act is made applicable in the first instance to certain factories and thereafter to other factories.

4. The term "employee" is defined to mean, in a very broad sense, so as to cover every one of the employees employed for wages in or in connection with the work of a factory or establishment, even including those directly employed and employed incidentally, or in connection with any preliminary work or connected with any work of the factory or establishment. It covers even employees who are engaged by or through intermediate employees or those whose services are temporarily lent and includes, even trainees not being apprentices. However, this definition, though broad, does not include members of the Armed Forces and/or any person whose wages (excluding remuneration for overtime work) exceed such monthly wages as may be prescribed by the Central Government. The proviso thereto also sets out that an employee whose wages exceed such monthly wages as may be prescribed by the Central Government, 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. Prior to the amendment of Section 2(9) of the Act, the said provision included within its sweep all types of employees referred to earlier, but excluded (apart from the members belonging to the Armed Forces) an employee whose monthly wages (other than remuneration for overtime work) exceeded one thousand six rupees. Section 2(9) of the Act came to be amended by Act 29 of 1989 as aforesaid. Prior to the new Act coming into force, Rule 50 of the Employees' State Insurance (Central) Rules, 1950, provided that the employees whose wages exceeded Rs. 1,600 would not be covered by the Act. Now, with effect from February 1, 1992, the Central Government has issued a notification on March 27, 1992, amending Rule 50 of the said Rules whereby in the proviso thereof, for the words "one thousand and six hundred" the words "three thousand" have been substituted. The validity of Section 2(9) of the Act and the modified rule is called in question in this petition and connected matters.

5. It is urged on behalf of the petitioner that :

- (i) Section 2(9) of the Act results in excessive delegation of the essential functions of the Legislature and is, therefore, invalid;
- (ii) modification of the rule impugned is not made after due formalities being observed as provided in Section 95 of the Act;
- (iii) before issuing the impugned notification the Central Government had not

applied its mind to the benefits enjoyed by employees not covered by the Act, and the capacity of the Employees' State Insurance Corporation to provide such facilities, or of the State Government, as enjoined under the Act.;

(iv) there is no due application of mind to enhance the wage limit to Rs. 3,000 from Rs. 1,600 in identifying employees covered by the Act.

Certain contentions are also raised as to the scope of (i) the exemptions available under Chapter VIII of the Act; and (ii) the proviso to Section 1(4) of the Act.

6. It is brought to my notice by learned counsel appearing for the parties that in various enactments in relation to labour welfare and disputes arising thereto, the definition of "workman" has been set out particularly with reference to the financial limits of wages, by the Legislature itself, and the following are some of the enactments :

1. The Cine Workers and Cinema Theatre Workers (Regulation and Employment) Act, 1981, where Section 2(c) defining "cine workers" in sub-clause (2) fixes Rs. 1,600 per month as the upper limit.

2. The Industrial Disputes Act, 1947, where Section 2(s)(iv) defining "workman" prescribes an upper limit of wages at Rs. 1,600 per month.

3. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, where Section 2(i) defining "workman" fixes Rs. 500 per mensem in the case of those employed in supervisory capacity, similar to the Industrial Disputes Act.

4. The payment of Bonus Act, 1965, where Section 2(13) defining "employee" limits it to those employees drawing wages not exceeding Rs. 2,500. Section 11 thereof also fixes the maximum payable bonus.

5. The Payment of Gratuity Act, 1972 where Section 2(e) defining "employee" fixes a maximum of Rs. 2,500. Section 3(3) thereof provides that the amount of gratuity payable to an employee shall not exceed Rs. 50,000.

6. The Payment of Wages Act, 1936, where Section 1(6) provides that nothing in the said Act will apply to wages payable in respect of wage period which, over such wage period, average one thousand six hundred rupees or more per month.

7. The plantation Labour Act, 1951, where Section 2(k) defines "worker" as any person employed in the plantation whose monthly wages does not exceed Rs. 750 per month.

8. The Sales Promotion Employees (Conditions of Service) Act, 1976, where Section 2(d)(i) provides that a sales promotion employee is one who being employed in a supervisory capacity draws wages less than Rs. 1,600 per month.

9. The Working Journalists and Other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955, where Section 5 states that the

gratuity payable shall not exceed twelve and a half months pay.

10. The Workmen's Compensation Act, 1923, wherein Section 4, Explanation 2, provides that the salary shall not exceed Rs. 1,000 per month.

7. In the Act, prior to the amendment in question, the definition provided the exclusionary clauses and the wage limit as to the class of employees who are covered by the Act and those excluded. It is on this basis learned counsel for the petitioner urged that the definition clause in an enactment is clearly a matter of policy of the Legislature and must be set out in the enactment itself and cannot be left to the discretion of an executive body by delegation. Number of decisions have been referred to as to the ambit of power of the Legislature to delegate matters in respect of which rules could be framed or result in subordinate legislation. In this regard two sets of decisions have been cited, one set holding that delegation is excessive and the other set holding that the delegation is excessive and the other set holding that the delegation was in order and did not exceed the limits of delegation. In this context it is not necessary for me to refer to the said decisions but to make a reference as as to the position in law as summarised therein, which is as follows : The Legislatures have the plenary power in matter of legislation and consistent with such power it has been held that they possess wide powers of delegation. However, this power is subject to the limitation that the Legislature cannot delegate its essential legislative functions which consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of contract. It is made clear that the Legislature cannot delegate uncanalised and uncontrolled power and the power delegated must be confined and not vagrant. The legislature must declare the policy of law by laying down standards for guidance of those on whom the power to execute the law is conferred. Delegation is valid only when the legislative policy and guidelines to implement it are adequately laid down and the delegate is only empowered to carry out the policy within the guidelines laid down by the Legislature. This position in law has been brought out by the Supreme Court in *Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others*, *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others*, and *Ajoy Kumar Banerjee and Others Vs. Union of India (UOI) and Others*, What is, therefore, permitted is delegation of ancillary or subordinate legislative functions or what is usually called, a power to fill up the details after laying down the legislative policy. In ascertaining the legislative policy the courts will have not only to look to the provisions by which the delegation is made but also to every provision of the enactment including the preamble and the facts and circumstances and background in which the enactment is made as laid down by the Supreme Court in *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, Therefore, to test in the present case whether there has been excessive delegation or not, what I have to look to is whether there is a discernible policy available in the statute and consistent with such power whether the delegate can fill up the details as indicated in the policy. In addition, I have to bear in mind

that the Legislature has retained its control over the subordinate legislation to be made by calling upon the concerned Government after framing the rules to lay the same before the Legislature before Parliament, and for a certain period when it is in session or in different sessions and Parliament retains the power to annual or modify any rule framed. Thus there is a provision under the enactment also to exercise control over delegatee.

8. A perusal of the definition clause would make it clear that the Act is applicable to all classes of employees in the principal clause of the definition clause whether engaged by the establishment as principal employer or through an intermediate employer in connection with any work incidental or otherwise and also includes trainees who are not apprentices. Exception made is only in respect of armed forces and persons whose wages exceed a certain limit. That limit is to be fixed by the appropriate Government. In this respect is brought to my notice the decision of the Supreme Court in *Hyderabad Asbestos Cement Products Ltd. Vs. Employees Insurance Court and Another*, The Supreme Court considered exhaustively the effect of the definition clause and explained that every class of employee is covered by the Act. Therefore, there is no difficulty in identifying the persons to whom the Act is applicable. However, considering the limitation of resources available to most of the States and to the Corporation, it was made applicable to certain categories of employees thereof and one of the tests adopted was fixing the remuneration of an employee who would be covered by the Act. Therefore, it cannot be said that the Legislature has delegated an essential function. Moreover, the wage structure depends upon several factors particularly in these days of tremendous inflation. I do not think the Legislature is unwise in delegating that particular function to define or provide the limits of wages of such employees who would be covered under the Act by the Rules. Besides, when the Central Government is entrusted with certain powers it must be expected to take note of the purposes of the Act, the background in which it is enacted and the constitutional mandate referred to earlier in Articles 39, 41 and 42 of the Constitution and also the various provisions of the enactment in question. Further, the State is enjoined to consult the Employees' State Insurance Corporation in making a rule. Control is retained by the Legislature to modify and annual any rule by requiring that every rule be placed before the Legislature over a period of time. Hence, it cannot be said that conferment of power on the Central Government to make a rule as provided in Section 2(9) of the Act in any Way results in excessive delegation.

9. The contention advanced on behalf of the petitioner in regard to the validity of the notification issued under the aforesaid section, namely, Section 2(9) read with Section 95 of the Act, may now be adverted to. It is contended that there has been no consultation with the Employees' State Insurance Corporation, but material has been placed before me by learned counsel for the Corporation that there has been due consultation in this regard and in fact the whole idea emanated from the Corporation itself having discussed in its various meetings as to the amendment of the said rule. In its meeting held on December 17, 1991,

this matter is considered at Serial No. I/3, Viz., enhancement of wage ceiling for coverage under the Employees' State Insurance Act has been discussed in very great detail and a committee has been appointed to go into the question and to make appropriate recommendations and the committee made the report and thereafter the recommendations were made by the Employees' State Insurance Corporation in this regard. Therefore, it cannot be said that there is no effective consultation, much less consultation. It is also contended that the requirement of laying the Rules before Parliament has not been complied with. The Corporation in its statement of objections has set out on what dates and for what period the said amended rule has been placed before Parliament as required u/s 95(4) of the Act and there having been neither modification nor annulment of the said rule by Parliament, there is due compliance with the provision thereof.

10. It was also urged on behalf of some of the petitioners that there has been no due consideration by the Corporation or by the Central Government before making the rule enhancing the limit from Rs. 1,600 to Rs. 3,000. In fact, it was stressed that there is no particular magic in the figure "three thousand" and, therefore, it was also stated that why it should not be any sum other than Rs. 3,000. However, considering the deliberations of the Corporation in this regard to which I have adverted earlier and having taken a decision to revise the wage fixation so far as ceiling for the purpose of coverage of the Act, a committee having been appointed, that committee having made a report, the matter was discussed at length by the Corporation and thereafter the matter was referred to the Government, the Government called for certain clarifications from the Corporation and thereafter only this figure is adhered to. In doing so the authorities took into consideration the actual facilities available in the Corporation and it was noticed that there is under-utilisation. It has also noticed the inflationary trends in the country and the diminution of the rupee value. It is stated that it is on the basis as aforesaid that it was decided to enhance the ceiling limit for ESI coverage to employees drawing monthly wages up to Rs. 3,000. In such matters the State has to take several matters into consideration and it is not proper for this Court to set any yard-stick in regard thereto. When a decision has been taken after taking into consideration all relevant facts, I do not think this Court can taken any exception thereto. On this ground also it cannot be said that the rule framed is in any way invalid.

11. It is contended that State Government has been granting arbitrary exemptions as provided under Chapter VIII of the Act and the considerations taken note of by them had no relevance to the Act. The question before me is whether Section 2(9) of the Act is valid or not or the notification issued amending the rule in question is ultra vires the Act or otherwise invalid, which is already answered. If and when exemptions are granted or refused by the Government arbitrarily, it is certainly open to the aggrieved party to question the same in appropriate proceedings. Thus I do not think that the contention has any relevance to the present case at all. The proviso to Section 1(4) of the Act excluding the applicability of the Act to factories or establishments belonging to

or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the Act is concerned, is again an argument that has no relevance to the facts of the case. If and when the Corporation makes the provisions of the Act applicable to establishments or factories covered by the proviso to Section 1(4) of the Act, the matter can be agitated in appropriate proceedings. At this stage it is not necessary for me to consider this contention.

12. A sordid picture was painted before me as to the state of facilities provided by the Corporation and State Government. Much argument was advanced on both the sides taking diametrically opposite views that due or reasonable facilities are available in E.S.I. hospitals/other places. Learned counsel appearing for the State as well as the Corporation placed before me several statistics and pamphlets to show the nature of service rendered by the Corporation. On behalf of the employees, it was submitted that they have developed a rapport with the medical personnel made available by their employers and that they have faith in them and, therefore, if that state of affairs is disturbed they will be in jeopardy. These arguments have no relevance while considering the constitutional validity of the provision. If adequate facilities are not available it is certainly open for the petitioner and others to approach this Court and seek its aid to enforce the provisions of the Act by the concerned authorities and if they fail to do so, what other action should be taken would be considered by this Court. Where better or equivalent facilities are available, certainly the employees or their establishments can seek exemption under the relevant provisions of the Act. I do not think these aspects have any relevance while considering the validity of the Act or the Rules. I am afraid these arguments are totally irrelevant.

13. This Court, while entertaining the matters, granted an interim order in favour of the workmen injuncting the employers from recovering the amount from them and thereafter making contributions to the Corporation. Since this petition is liable to be dismissed, the law will take effect from the date of notification of the amendment coming into effect. If that is so, for the period when the order of stay was in force also, the employers will become liable to make good the payments in respect of employees who fall within the category drawing Rs. 1,600 to Rs. 3,000 as monthly wages even though they could not avail of the benefits during that period. It is stated that employers would be put to grave hardship as they cannot recover the amount from the employees who have not been able to avail of the benefits under the Act and it would be too much to expect them to make the payments. At the instance of employees this Court made an interim order and any order of this Court should not result in prejudice to any person in any manner. Extending the doctrine that the "act of the Court shall prejudice no man", the Employees' State Insurance Corporation is restrained from recovering the amounts till today from the employers in respect of employees whose monthly wages are Rs. 1,600 to Rs. 3,000, but, in case the employers have already recovered such amount from the employees this part of the order shall not apply to them.

14. Consequently, subject to the reservation made regarding recoveries to be effected by the Employees' State Insurance Corporation aforesaid in favour of the employers, this petition stands dismissed. Rule discharged.