

PETITIONER:
EMPLOYEES' STATE INSURANCE CORPORATION

Vs.

RESPONDENT:
M/S. F. FIBRE BANGALORE (P) LTD.

DATE OF JUDGMENT: 07/11/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:

THE 7TH DAY OF NOVEMBER 1996

Present:

Hon'ble Mr. Justice K. Ramaswamy
Hon'ble Mr. Justice G. BN. Pattanaik
R. Venugopal Reddy, Sr. Adv., S.A. Wasim Qadri, Mrs.
Anil Katiyar, Advs, with him for the appellant
M.N. Shroff, Adv. for the Respondent
O R D E R

The following Order of the Court was delivered:

This appeal by special leave arises from the judgment dated 20.2.1979 of the Division Bench of the Karnataka High Court which in turn had followed the ratio of judgment of the Full Bench in M.F.A.No.147/74, dated 19.4.1978. The Full Bench had held as under:

"In the result, we answer the question referred to us as follows:
Where, in cases to which provisions of Section 45A of the 'Act' are attracted, the Corporation by an order made in accordance with that section determines the amount of contributions payable and that claim is disputed by the employer, it would not be necessary for the Corporation to seek a resolution of that dispute before the Insurance Court. Such a claim is recoverable as arrears of land revenue. If the employer disputes the claim it is for him to move the Insurance Court for relief. In other cases - other than cases where determination of the amount of contributions under Section 45A is made the Corporation, if its claim is disputed by the employer, should seek an adjudication of the dispute before the Insurance Court, before enforcing recovery."

The question that arises for consideration is: whether

the view taken by the Full Bench of the High Court is correct in law? Section 1(4) of the Employees' State Insurance Act, 1948 (for short, 'the Act') envisages that the Act shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories. Section 1(5) gives power to the appropriate Government after consultation with the Corporation, to notify in the official Gazette extending the provisions of the Act to any of other establishments or class of establishments, industrial, commercial, agricultural or otherwise. Section 1(6) envisages that a factory or an establishment to which this Act applies shall continue to be governed by the provisions of the Act notwithstanding that a number of persons employed therein at any time falls below the limit specified by or under the Act or the manufacturing process therein ceases to be carried on with the aid of power. After its application under Chapter IV, all employees in factories, or establishments to which the Act applies, shall be insured in the manner provided by this Act. Under Section 39 (1), the contribution payable under the Act in respect of an employee, shall comprise contribution payable by the employer and contribution payable by the employee shall be paid to the Corporation; the manner and details of payment and interest for the delay in payment and the rate of interest and the procedure for recovery are not material for the purpose of this case. Hence, they are omitted. Section 40 envisages that the principal employer is enjoined to pay contribution in respect of every employee in the first instance whether he is employed directly by him or through an immediate employer, both the employer's and the employees' contribution. Sub-section (2) thereof provides with a non obstante clause, that subject to the provisions of the Act and the regulations, if any, made thereunder, the principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by deduction from his wages and not otherwise. The recovery has been provided in Section 41 of the Act. The method of payment of contribution has been adumbrated in Section 43 where the contribution has not been paid as envisaged in Section 42 of the Act. Section 44 deals with the obligation of the employer to furnish returns and maintain registers in certain cases. Section 45 gives power to the Inspectors appointed by the Corporation to inspect the premises etc., the details of which are not material. Section 45-A gives power to the Corporation to determine contribution in certain cases. It read as under:

"45-A. Determination of contribution in certain cases. 1. Where in respect of a factory or establishment on returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44 or any Inspector or other official of the Corporation referred to in sub-section (2) of Section 45 in [prevented in any manner] by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under Section 45, the Corporation may, on the basis of information

available to it, by order determine the amount to contributions payable in respect of the employees of that factory or establishment.

Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.

2. An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under Section 75 or for recovery of the amount determined by such order as an arrear of land revenue under Section 45-B **[or the recovery under section 45C to section 45-I]"

Section 45-B provides for the contribution to be recovered as arrears of the land revenue. In case it is not recovered, a certificate is required to be given under Section 45-C to the recovery officer for recovery thereof as arrears of land revenue in the manner contemplated therein; the details thereof are not necessary for the purpose of this case. When a dispute is raised in that behalf, Section 75 of the Act envisages determination by the Insurance Court as under:

"75. Matters to be decided by Employees' Insurance Court. 1. If any question or dispute arise as to-

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

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

(c) the rate of contribution payable by the 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 pay benefit and as to the amount and duration thereof, or

(ee) any direction issued by the Corporation under Section 55-A of a review of any payment of dependants' benefits, or

(f) [xxx]

(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, 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 provisions of sub-section (2-A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

2. Subject to the provisions of sub-section (2-A), 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) [xxx]

(d) claim against a principal employer under Section 68;

(e) claims under Section 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.

2(A). 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 Employee 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 of 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 54-A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

(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 a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.

It would thus be seen that the employer, on making the provisions of the Act applicable to the factory or the establishment, as the case may be, is statutorily under an obligation to register itself with the Corporation and keep depositing the employer's and employee's contribution within the period specified therein. The question is: as to who would approach the Insurance Court for adjudication and determination of a dispute whether the establishment of the employer is attracted by the provisions of the Act and/or what is the number of employees it has employed etc.? It is seen that Section 45-A is in the nature of best assessment judgment on the basis of the information collected by the Inspector. In the impugned order the High Court holds that it is for the employer to challenge it and seek adjudication. When there was dereliction of duty on the employer to either register itself with the Corporation under the Act or when there is failure to deposit the contribution with the Corporation under the Act or failure to deposit the contribution with the account of the Corporation towards employer's and employee's contribution as envisaged hereinbefore, the Corporation is empowered to make best assessment judgment under Section 45-A and call upon the employer to deposit the amount with the Corporation.

The Full Bench of the High Court has held that in a case where the order under Section 45-A becomes final, there is no need for the Corporation to seek adjudication before the Insurance Court. In all other cases, the Corporation is required to go to the Insurance Court, have it adjudicated and then make a demand. We are of the view that the Full Bench of the High Court is clearly in error to reach that conclusion. Though Section 75 of the Act does not envisages as to who has to approach the Insurance Court, by necessary implication when the employer denies the liability or applicability of the provisions of the Act or the quantum of the contribution to be deposited by the employer, it is for him to approach the Insurance Court and seek adjudication. It is not for the Corporation in each case whenever there is a dispute, to go to the Insurance Court and have the dispute adjudicated. Otherwise; the Act would become unworkable and defeat the object and purpose of the Act.

Under these circumstances, we are of the view that the Full Bench judgment of the High Court is clearly unsustainable and it is accordingly set aside. The Division Bench having followed the Full Bench judgment fell into the same error. Under these circumstances, that part of the judgment of the Full Bench and of the Division Bench which is not consistent with the declaration of law above, stands set aside. The Insurance Court is directed to determine the contribution payable by the respondent within a period of three months from the date of the receipt of this order. The respondent is directed to pay the amount as a condition. If it decides to go to the High Court and file an appeal, it

should first deposit the entire amount with interest payable in that behalf and thereafter approach the High Court, If so advised challenging the order of the Insurance Court.

The appeal is accordingly allowed. No costs.

JUDIS