

(2013) 09 P&H CK 0447

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 637 of 1986

Employees State Insurance
Corporation

APPELLANT

Vs

M/s. Tulsa Singh and Sons and
Another

RESPONDENT

Date of Decision: Sept. 19, 2013

Citation: (2014) 173 PLR 414

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Judgement

Paramjeet Singh, J.

Instant appeal arises from the order dated 06.05.1986 passed by the Employees Insurance Court, Phagwara whereby application moved by respondent No. 1-applicant u/s 75 of the Employees State Insurance Act, 1948 (in short "the Act") has been allowed. Shorn of unnecessary details, the facts relevant for disposal of the present petition are to the effect that vide order dated 19.12.1977, petitioner-Employees State Insurance Corporation (in short "the Corporation") u/s 45A of the Act raised a demand of contribution of Rs. 4114.05 from respondent No. 1 for the period w.e.f. 1976-77 and vide order dated 14.09.1979 raised a further demand of contribution of Rs. 3,826.80 for the period w.e.f. November, 1977 to October, 1978. Against the said orders, respondent No. 1 preferred an application u/s 75 of the Act which was allowed vide impugned order dated 06.05.1986 holding that the Corporation cannot effect recovery of any amount by way of employees state insurance contribution in pursuance to the demand in question. Vide impugned order dated 06.05.1986, the demands raised by the petitioner were quashed. The petitioner was restrained from effecting recovery on the basis of disputed demand notices, however, liberty was granted to the petitioner to proceed further in accordance with law.

2. The Employees Insurance Court, Phagwara framed the following issues:

1. Whether the impugned demand is illegal, invalid and not binding on the applicant? OPA
2. Whether the applicant is entitled to the injunction prayed for? OPA
3. Relief.

3. While dealing with issues No. 1 and 2, the Employees Insurance Court, Phagwara recorded the following finding:

11. For the aforementioned facts and circumstances coupled with the abovesaid provisions of law, to me, the corporation could not enforce the recovery without seeking an adjudication of the dispute from the Insurance Court, and thus, it is held that it is found that the impugned demand order is illegal, invalid and not binding on the petitioner. It is further held that the applicant is entitled to the injunction prayed for. Both issues No. 1 and 2 are hereby found and determined in favour of the applicant and against the respondents.

While dealing with issue No. 3, the finding recorded reads as under:

12. In the result, as an upshot of my findings under the aforementioned issues No. 1 and 2 above, to me, the application of the applicant succeeds and is consequently, allowed and it is thus, ordered that the Corporation cannot effect the recovery of any amount by way of E.S.I. Contribution in pursuance to the demands in question which are hereby quashed. The corporation is thus, restrained from effecting any recovery from the petitioner on the basis of the disputed notice. The corporation may, however, proceed afresh in the matter to determine the amount of contribution, if any due from the petitioner in accordance with law. The counsel's fee is hereby assessed at Rs. 100/-. Memo of costs be prepared accordingly. File, complete in all respects, be consigned to the record-room.

Hence, this revision petition.

4. I have heard learned counsel for the appellant and perused the record.
5. From the perusal of record and pleadings, the question arises for consideration is as to who will approach the Insurance Court for adjudication and determination of a dispute with regard to demand of contribution raised u/s 45A of the Act.
6. Admittedly by official notification, the provisions of the Act have been made applicable to all the 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 point of 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. u/s 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 deposit contribution, both the employer's contribution and the employee's contribution in respect of every employee in the first instance whether he is employed directly by him or through an immediate employer. 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 in cases 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 45A 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 no 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 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties u/s 45, the Corporation may, on the basis of information available to it, by order determine the amount of 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 u/s 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45B [or the recovery u/s 45C to section 45I].

7. Section 45B 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 u/s 45C 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 u/s 55A of a review of any payment of dependants' benefits, or

(f) [xxxx]

(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) [xxxx]

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

(e) claims 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.

(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 the 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 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.

(2-B) 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.

8. As per above provisions, it is the statutory obligation of the concerned factory or establishment to which this Act applies to register itself with the Corporation and keep depositing employer's and employee's contribution within period specified therein. Here in this case, the assessment was made u/s 45A of the Act and thereafter demand was raised vide notices dated 19.12.1977 and 14.09.1979. The assessment made u/s 45A of the Act is in the nature of best assessment on the basis of information collected by the Inspector. The dispute raised by the respondent before Employees Insurance Court, Phagwara was whether such a recovery can be effected by the Employees State Insurance Corporation without raising a dispute before the Employees Insurance Court. The Employees Insurance Court allowed the application moved by respondent No. 1 recording a finding that it is for the Employees State Insurance Corporation to approach the Court.

9. In [Regional Director, Employees State Insurance Corporation Vs. Fibre Bangalore \(P\) Ltd.,](#) the Full Bench of the Hon'ble Karnataka High Court has held as under:

6. 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 the 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 u/s 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.

10. In [Employees" State Insurance Corporation Vs. M/s. F. Fibre Bangalore \(P\) Ltd.,](#) , the Hon"ble Supreme Court had the occasion to consider the decision rendered in Regional Director, E.S.I. Corporation (supra) by the Full Bench of the Hon"ble Karnataka High Court. The Hon"ble Supreme Court set aside the finding with regard to the later part and came to the conclusion that for all intents and purposes, when the assessment is made by the authorities of Employees State Insurance Corporation under the provisions of the Act, it is for the employer to approach Employees State Insurance Court and there is no need for the Corporation to seek adjudication before the Employees State Insurance Court. The Apex Court had not only upheld the validity of assessment made u/s 45A of the Act, but also upheld that assessment made in all other cases holding that the Corporation is not required to seek adjudication before the ESI court.

11. The Hon"ble Supreme Court had also made similar observations in [E.S.I.C. Vs. C.C. Santhakumar,](#) which read as under:

25. Section 45A of the Act contemplates a summary method to determine contribution in case of deliberate default on the part of the employer. By Amendment Act 29 of 1989, Sections 45C to 45I were inserted in the Principal Act, for the purpose of effecting recovery of arrears by attachment and sale of movable and immovable properties or establishment of the principal or immediate employer, without having recourse to law or the ESI Court. Therefore, it cannot be said that a proceeding for recovery as arrears of land revenue by issuing a certificate could be equated to either a suit, appeal or application in the court. u/s 68(2) and Sections 45C to 45I, after determination of contribution, recovery can be made straightway. If the employer disputes the correctness of the order u/s 45A, he could challenge the same u/s 75 of the Act before the ESI Court.

12. From the perusal of Section 45A of the Act, facts of the case stated above, findings of courts below and law laid down by the Hon"ble Supreme Court in M/s. Fibre Bangalore (P) Ltd. (supra), it is clear that if the employer disputes the correctness of the order/demand for contribution u/s 45A of the Act, he could challenge the same u/s 75 of the Act before the Employees State Insurance Court and ESI authorities are not required to approach the Employees State Insurance Court. Though Section 75 of the Act does not envisage as to who has to approach the Employees" 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 him, it is for the employer 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 Employees' Insurance Court and have the dispute adjudicated. Otherwise the Act would become unworkable and its object and purpose would be defeated. In view of reasons recorded above, the impugned order dated 06.05.1986 is set aside and the instant appeal is allowed.

No order as to costs.