

Shree Rajasthan Syntex Ltd. Vs Employees State Insurance Corporation and Others

Court: Rajasthan High Court

Date of Decision: Oct. 25, 2007

Acts Referred: Constitution of India, 1950 " Article 226
Employees State Insurance Act, 1948 " Section 44, 45, 45A, 45B, 75

Hon'ble Judges: Gopal Krishan Vyas, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Gopal Krishan Vyas, J.

By way of filing this writ petition, the petitioner has prayed for quashing order dated 19.10.1993 passed u/s 45A

of the Employees" State Insurance Act, 1948 and, that, the respondents may be restrained from recovering the amount mentioned in order dated

19.10.1993. It is also prayed that the respondents may be restrained from proceeding against the petitioner in relation to its employees at its

registered office at Udaipur in pursuance of the provisions of the Act of 1948 because the petitioner"s establishment at 4-D, New Fatehpura,

Udaipur is not a shop.

2. During the course of arguments, learned Counsel for the petitioner apprised this Court that as per the decision of the Division Bench of this

Court in D.B. Civil Special Appeal No. 6/2005, arising out of the judgment dated 25.03.2004 passed by the learned Single Judge in S.B. Civil

Misc. appeal No. 671/1996, the controversy with regard to liability under the Act of 1948 is finally decided and the petitioner firm is not disputing

the liability after final adjudication of the matter by the Division Bench. It is, however, vehemently argued by learned Counsel for the petitioner that

the petitioner company is a company registered under the Indian Companies Act, 1956 and the respondent Regional Director, ESI Department,

Jaipur issued notices on 21.02.1986 and 28.08.1986 u/s 44 of the Act of 1948 calling upon the petitioner company to deposit the contribution. It

is submitted that reply was filed to the noticed issued by the Regional Director in which it was prayed that the petitioner company was not liable to

deposit any contribution as demanded by the Department under the notices Annex.-2 and 3. The said action of the Regional Director was

challenged by way of filing suit by one Rakesh Yadav and the said suit was contested by the Regional Director on the grounds inter alia that Shri

Rakesh Yadav had no authority to file the suit on behalf of the petitioner's company. The Court ultimately held that Rakesh Yadav had no authority

to file the suit on behalf of the petitioner company and the judgment was given by the Court on other two issues relating to the merit of the claim.

The said judgment dated 15.11.1992 was challenged by the petitioner company by way of filing appeal before this Court and the learned Single

Judge of this Court finally decided the appeal vide judgment dated 25.03.2004 and upheld the order passed by the learned Civil Judge in ESI

Case No. 2/1986 dated 15.11.1992 by which the liability of the petitioner company for contribution was upheld. The judgment passed by the

learned Single Judge dated 25.03.2004 was further upheld by the Division Bench of this Court vide judgment dated 13.07.2005.

3. In these circumstances, there is no dispute with regard to liability to pay the contribution by the petitioner company but the petitioner company is

now challenging the notice which is issued u/s 45A by the Deputy Regional Director, ESI Corporation, Jaipur on the ground that under the

provisions of the Act, the Deputy Regional Director is determine the contribution. The power to determine the amount of contribution payable in

respect of the employees of the factory or establishment is left with the Corporation. Learned Counsel for the petitioner has invited my attention

towards Section 45A of the Act of 1948 which reads as under:

45A. Determination of contributions 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 subsection (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 under Sections 45C to 45-I.

4. It is further contended by learned Counsel for the petitioner that the controversy with regard to determination of the amount of contribution has

been decided by this Court in Employees" State Insurance Corporation, Jaipur v. Bharat Motors, Sriganganagar reported in 2001 LLR (Raj.) 49

and the Division Bench of this Court has held as under:

We are unable to countenance the submission made by Mr. Mathur that the opportunity of hearing is to be given only in those cases where no

returns, particulars, registers or records are submitted in accordance with the provisions of Section 44 of the Act. A reading of section 44 clearly

show that an opportunity shall be afforded to the employer before determining the contribution payable by the employer. No other provision is

available except the provisions of Section 45A for determination of the contribution payable by the employer. In our opinion, the Inspector has no

authority to determine the quantum of contribution payable by the employer and it is only the Regional Director of the Employees" State Insurance

Corporation who has jurisdiction to decide the contribution payable. At best, the inspection report submitted by the Inspector can be taken into

consideration while determining the contribution. Under such circumstances, the order passed by the Corporation without affording opportunity to

the employee u/s 45 is bad in law and therefore, the said order is liable to be set aside. The learned Single Judge has rightly rejected the contention

made by the Corporation. No interference is called for. Accordingly, this appeal is rejected. The order of the learned Single Judge is confirmed.

(emphasis supplied)

Thus, according to learned Counsel for the petitioner, the Regional Director of the Corporation alone has jurisdiction to determine the contribution

which is payable in accordance with Section 45A of the Act of 1948. Therefore, learned Counsel for the petitioner argued that the impugned

notices have been issued by incompetent authority having no jurisdiction to issue the same or to determine the contribution and, accordingly, it is

prayed that the same may be quashed. Learned Counsel for the respondents vehemently argued that this petition is not maintainable in view of the

fact that according to Section 75 of the Act of 1948 the matter is required to be decided by the ESI Court. It is contended that statutory remedy is

provided under the Act and, therefore, the present petition is not maintainable. I have heard learned Counsel for the parties and carefully perused

the record. In this writ petition, though notices have been issued to the respondents but no reply on merit has been filed by the respondents and

only preliminary objection is raised that there is remedy available u/s 75 of the Act of 1948 before the ESI Court and, therefore, the writ petition

deserves to be dismissed only on the ground of statutory remedy because the petitioner has not availed the statutory remedy. This writ petition is

pending since the year 1993. Apart from that, availability of statutory remedy by itself does not constrict the jurisdiction of this Court. In this

regard, reference may be made of the judgment of the Hon"ble Supreme Court in the case of A.V. Venkateswaran, Collector of Customs,

Bombay Vs. Ramchand Sobhraj Wadhvani and Another, , as well as judgment reported in Budhia Swain and Others Vs. Gopinath Deb and

Others, . If the order is without jurisdiction the writ petition cannot be thrown aside ereily on the ground of not resorting to adequate alternative or

statutory remedy. In exercise of jurisdiction under Article 226 of the Constitution of India, the order passed by the incompetent authority can be

quashed and it is not imperatively necessary to dismiss the writ petition on the ground of availability of the adequate alternative or statutory remedy.

Reference may also be made of the observations of their Lordships of the Supreme Court, in the case of Whirlpool Corporation Vs. Registrar of

Trade Marks, Mumbai and Others, , wherein vide para 14 and 15, it is held as under:

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the

Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo

warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for ""any other

purpose

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a

writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available,

the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a

bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where

there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act

is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of

the evolutionary era of the constitutional law as they still hold the field.

5. In this case, the liability of the amount of contribution has been finally adjudicated upon by the Division Bench of this Court while upholding the

judgment of the learned Single Bench. Save for choosing to raise the preliminary objection as to the maintainability of the writ petition on the

ground of alternative statutory remedy, the respondents have not come forward with any detailed reply to the averments of the petitioner in the writ

petition. Before this Court, the thrust of the petitioner's argument is that the impugned notices have been issued by the authority not empowered to

exercise the jurisdiction vested in the Corporation and, therefore, only the Regional Director of the Corporation is the competent authority to raise

the demand towards liability of the petitioner to pay contribution. There is force in the petitioner's submission that the Regional Director of the

Corporation is required under the jurisdiction vested in it to determine the quantum of contribution and, therefore, opportunity of hearing the

petitioner must also be afforded before the quantum of contribution is determined. The crux of the matter is that only the Regional Director of the

ESI Corporation has jurisdiction to decide the contribution payable and an order passed by the Corporation without affording opportunity to the

employer petitioner u/s 45A of the Act of 1948 is bad in law. Accordingly, the impugned notices having been issued by incompetent authority

without jurisdiction deserve to be quashed and set aside.

6. As a result, this writ petition is allowed. The impugned notices Annex.-2 and 3 as well as orders dated 19.10.1993 passed by respondent No. 2

are quashed and set aside. The Regional Director, ESI Corporation, Rajasthan, Jaipur is directed to determine the contribution which is payable by

the petitioner company and pass orders in accordance with Section 45A of the Act of 1948.

7. No order as to costs.