Regional Director, E.S.I. Corporation Vs T. Ramadas Reddiar

Court: High Court Of Kerala

Date of Decision: Sept. 20, 1979

Acts Referred: Employees State Insurance Act, 1948 â€" Section 38, 39, 40, 44, 45A
Limitation Act, 1963 â€" Section 28
Public Premises (Eviction of Unauthorised Occupants) Act, 1958 â€" Section 3, 7

Hon'ble Judges: Subramonian Poti, J; Janaki Amma, J

Bench: Division Bench

Advocate: C. Sankaran Nair, for the Appellant; P. Krishnamoorthy, for the Respondent

Judgement

Subramonian Poti, J.
The question raised before us in these appeals is one covered by the Division Bench decisions of this Court in

M.F.A. 62 of 1978 and M.F.A. 378 of 1968. We would not have considered it necessary to go into the question over again had it not been for

the fact that the question before us is an interesting one and learned Counsel for the Respondents in these cases attempted to throw fresh light on

the question. In fairness to counsel Sri Krishnamoorthy, we felt we should discuss the matter again in these appeals.

2. The question is no doubt simple. It concerns the applicability of the period of limitation to claims enforceable under the provisions of the

Employees" State Insurance Act. Applications were moved by the Respondents in these cases before the Employees Insurance Court challenging

the orders of the Employees State Insurance Corporation made u/s 45A of the Act in regard to liability for contribution under the Act for certain

periods. One of the points urged in the applications was that the Corporation, in passing the orders u/s 45A, had acted erroneously in that those

orders were passed in respect of contributions due for periods more than 3 years prior to the date of the orders themselves. Though this contention

had not been raised as such in the petitions before the Insurance Court, it seems to have been urged at the hearing and has been dealt with by the

court. According, to counsel just as Section 77(1A) of the Act provides for a period of 3 years for filing an application before the Insurance Court,

such period to commence from the date when the cause of action arose, there should be read a period of 3 years within which alone the

Corporation could pass an order u/s 45A. If it passes an order in respect of a period more than three years prior to the date of the order such

order would be bad in that the amounts due as contribution would have become irrecoverable by that time and for that reason would not be a

contribution enforceable by passing an order u/s 45A.

3. It is not the contention of learned Counsel for the Respondents that there is any specific provision in the Act prescribing a period of time within

which alone an order u/s 45A could be passed. It is also not his case that Section 77(1A) in terms applies to the passing of an order u/s 45A.

4. The contention raised by the Respondent on the question of limitation succeeded before the Insurance Court consequent upon which the

corporation is before us in these two cases as Appellant.

5. It may be necessary to advert to the scheme of the relevant provisions of the Act to appreciate the contentions of the Respondents here. Section

38 of the Act provides that all employees in factories or establishments to which the Act applies shall be insured in the manner provided by the

Act. The provision for payment of contributions is made in Section 39 of the Act. Who should pay the contribution is specified in Section 40. The

obligation to pay such contribution is imposed on the principal employer. How he is to recover the employees, contribution is also laid down in that

section. The corporation is empowered to make regulations in any matter relating or incidental to the payment and collection of contributions. The

manner and time of payment, the date by which evidence of such payment is to be received by the Corporation and such other matters are to be

prescribed by the above said regulations. Section 44 of the Act obliges the employers to furnish returns and maintain registers in certain cases.

Section 74 of the Act provides for constitution of Employees'' Insurance Court by notification by the Government. Normally the question of

contribution may become subject of controversy between the employer and the Corporation or the employee and the Corporation and possibly

between the employer and the employee. Section 75 provides for determination of such disputes by the Court. The Act as it stood prior to

amendment by Act 44 of 1966 by incorporation of Section 45A therein conceived only of resort to Section 75 of the Act by the Corporation for

recovery of contribution in the event there is no voluntary payment. Possibly finding that this may make the functioning of the Corporation

cumbersome in that in every case of nonpayment resort may have to be made to the Insurance Court, a special provision was envisaged

whereunder adjudication is to be made by the Corporation itself. Section 45A of the Act enabled the Corporation, on the basis of information

available to it, to determine the question of payment of contribution by a factory or an establishment. By reason of incorporation of Section 45A

with effect from 17th June 1967 it became possible for the Corporation to have determination of the question binding on the principal employer

without resorting to the Insurance Court. When a decision is reached by the court such decision is enforced as envisaged in Sub-section (4) of

Section 78. That sub-section provides that the order of the Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil

Court. But in regard to adjudications made u/s 45A provision had necessarily to be made for enforcement. Section 45B was simultaneously

brought into the Act by the same amendment and that provided that any contribution payable under the Act may be recovered as arrear of land

revenue.

6. It is therefore clear that under the scheme of the Act as it now stands an adjudication may be made as to the amount of contribution payable

under the Act by the Corporation itself and that adjudication could be enforced by resort to recovery as arrear of land revenue. It is no doubt open

to a party who challenges the determination made u/s 45A to resort to the court by an application made u/s 75 of the Act challenging such

adjudication. The right of the Corporation to move u/s 75 for determination of an issue by the Insurance Court does not in any way abridge the

right u/s 45A. In practice there will be very little occasion for the Corporation to resort to Section 75, for, in the normal course the Corporation

may prefer to adjudicate u/s 45A and seek to recover u/s 45B rather than seek an adjudication u/s 75 of the Act. But that is not to say that the

Corporation has no such power to seek adjudication u/s 75 of the Act. May be in a case where the Corporation genuinely feels difficulty in

adjudicating on a question u/s 45A or determining a controversial point which may call for more expertise for a proper decision it may approach

the Court seeking adjudication. We are only pointing out that there is nothing preventing the Corporation from doing so, though it is not obliged to

do so. In these circumstances it cannot be said that the adjudication u/s 45A is not final. It is final in the sense it can be, enforced. But it may be

said to be provisional in the sense that it is open to challenge at the instance of the aggrieved party who can resort to a petition u/s 75. In that sense

it can be properly said that the order is provisionally final. That the order is of that character has been noticed by a learned Judge of this Court in

E.S.I. Corporation v. S.N. Transports 1978 KLT 852.

7. Section 77(1A) prescribes a period of limitation. But that operates only to bar an application u/s 75 after the expiry of the period of 3 years

from the date on which the cause of action arises. A cause of action would arise by reason of the demand by the Corporation. Where it is the

order u/s 45A that is the, cause of action naturally resort to the Court must be made within a period of 3 years of such order. There is no provision

in the statute, as we have already pointed out, which deals, with any period within which an order u/s 45A has necessarily to be passed. We must

therefore necessarily reverse the decision of the Insurance Court.

8. Learned Counsel for the Respondents sought to sustain the decision on the question of limitation on a different approach. According to counsel,

under the general law the contribution would cease to be recoverable on the expiry of a period of 3 years of the date on which the contribution

becomes due and when once it ceases to be recoverable automatically the amount must be found to have ceased to be payable. It is said that

consequently when adjudicating u/s 45A the Corporation must find that no amount is due. In other words, according to learned Counsel for the

Respondents any amount not recoverable under law must be found to be not due and if not due there cannot be any adjudication as if such amount

is due. The basis of the decision u/s 45A must necessarily be the liability for payment of contribution and when once under Jaw that liability is

extinguished any adjudication as if such amount is due should be found to be bad. Evidently learned Counsel derives inspiration for his contention

from the decision of the Supreme Court in New Delhi Municipal Committee Vs. Kalu Ram and Another, . It may be helpful to advert to the facts

of that case to understand the context in which the observation relied on by learned Counsel here has been made by the Supreme Court in that

case. The Respondent in the appeal before the Supreme Court was a pavement vendor in Connaught Place, New Delhi. A stall in the Irwin Road

was allotted to him as a displaced person. When the allottee fell into heavy arrears of rent the New Delhi Municipal Committee proposed to take

steps to recover the dues. The Estate Officer u/s 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 was asked to take

steps to recover the amount in arrears u/s 7 of the above said Act. The arrear claimed was for the period from May 1950 to April 1957.

Overruling the objection that the claim was barred by limitation the Estate Officer passed an order. The Civil Court was moved and ultimately the

matter reached the Supreme Court. The New Delhi Municipality which was the Appellant before the Supreme Court took up the stand that the

High Court was wrong in holding that the amount of arrears could not be recovered u/s 7 of the Act because the time for instituting a suit to

recover the same had expired. No doubt no suit had been filed for recovering the arrears on the date the Estate Officer made his order u/s 7 of the

Act. But the stand taken by the Appellant before the Supreme Court was that though a suit would be barred, Section 3 of the Public Premises

(Eviction of Unauthorised Occupants) Act having provided for a different and special mode of recovery, recovery pursuant to that mode was

available. The court noticed that the statute of limitation bars the remedy without affecting the right except in cases in which Section 28 of the

Limitation Act applies. That evidently applies only to cases of recovery of possession of immovable property. This was not one such case. The

Supreme Court further found that if the creditor had any other legal remedy permitting him to enforce his claim he would be free to avail of it. The

court further observed thus:

But the question in every such case is whether the particular statute permits such a course.

Reference was made to Section 7 which used the term ''payable'' in relation to the rent of any public premises. The Supreme Court was of the

view that when once the amount could not be recovered through suit it ceased to be payable for that reason and therefore within the meaning of

Section 7 of the Act it was not one of those claims for which an order u/s 7 could be passed. Evidently the Supreme Court has used the term

''payable'' in the sense ''recoverable''. We are not concerned with a similar case here. In the case before the Supreme Court the question was not

whether any claim arising under a special statute would be barred by reason of the provisions of the Limitation Act. The claim sought to be

enforced in that case by resort to the special Act was a claim arising not by reason of the provision of the Act. The foundation for that claim could

only be traced to the general law and therefore recovery would normally be only by an action in a court. It is in that sense that the court held that

the amount ceased to be payable on the expiry of the period of limitation.

9. It is well settled as observed by the Supreme Court that the law of limitation bars only the remedy and does not extinguish the right of parties

except to the extent the statute specifically chooses to say so. Had there been no law of limitation in our statute book all rights would have survived

and a credit or would have been free to exercise his right to enforce recovery of the debt at any time. He would have been free to sue as he chose

at any point of time or to appropriate amounts belonging to the debtor coming into his hands or seek to hold it for appropriation towards the debt

due to him. The law of limitation makes a difference and that is to the extent of barring the remedy that the creditor has by resort to a court by way

of a suit. The law of limitation is confined in its application to suits, appeals and applications and where a creditor does not seek to enforce a claim

by resort to a suit the law of limitation has no part to play. In other words his rights if any other than the right to take action in court continues to be

operative. Thus in a case where a right to enforce does not depend on resort to civil court by a civil suit the law of limitation will have no

application at all. There are many statutes which create rights and obligations as for example, many of the taxation statutes. Unless the statute itself

limits the period for recovery by processes envisaged by the statute itself there would be no scope for applying the law of limitation. In other

words, the law of limitation being confined to actions in courts will have no application where a statute creates a right and does not envisage an

action in court for enforcing the right. That would be the position in a case such as the one arising under the Employees'' State Insurance Act. The

obligation to pay contribution imposed on the principal employers and the right of the Corporation to recover such contributions are creations of

the statute and do not exist independent of the statute. The mode of recovery is prescribed in the statute itself. It is either by resort to Section 45B

or by resort to Section 75 read with Section 78(4). It is evident therefore that the right to recover such contribution would not in any way be

affected by any law of limitation otherwise than what is provided in the statute itself, if there be any. The law of limitation will have, no scope for

operation in respect of any claims arising u/s 45A of the Act. For that reason it must necessarily be said that the case before the Supreme Court in

New Delhi Municipal Committee Vs. Kalu Ram and Another, is distinguishable. The right adjudicated here is a right created by the Employees''

State Insurance Act. Therefore there is no scope for the plea that the claim had become barred when the adjudications were made u/s 45A. In this

view the Appellant Corporation must succeed on the question of limitation. We are called upon to reverse the decision of the Insurance Court.

10. There is another contention raised before us and that is relevant because we are reversing the decision of the Employees'' Insurance Court. It is

said that there are overlapping claims in the two cases. The contributions adjudicated in the two cases u/s 45A are said to cover contributions for

the identical periods. No doubt this contention was taken before the Insurance Court. But on that there was no adjudication. Therefore it is said for

the Respondents that in the event this Court reverses the orders of the Insurance Court, that court must be asked to look into this contention. This

contention calls for consideration. But in view of the undertaking by counsel for the Corporation that the Corporation is prepared to look into this

question again, that if any contribution for the same period is claimed in the two orders only one would be enforced and that this undertaking may

be made a part of the order of this Court, we make it clear that in the event the Respondent submits a statement to the Corporation within 2

months from today detailing what according to it is the duplication in the claim for contribution the Corporation shall duly consider it, check it up

with its own records, consider whether there has been duplication, pass an order on the question and communicate the same to the Respondent. It

is only after such communication giving the reasons for its decision that any further enforcement shall be made in accordance with law. The

Corporation shall anxiously consider the plea of duplication with reference to the records before coming to a conclusion. If the Respondent feels

aggrieved then he may seek appropriate reliefs. The appeals are disposed of as above. No costs.