

Ashok Kumar Sinha Vs The Union of India and Others

Court: Patna High Court

Date of Decision: May 20, 2011

Acts Referred: Employees State Insurance (General) Regulations, 1950 " Regulation 29, 31
Employees State Insurance Act, 1948 " Section 2(12), 2A, 39(5), 45, 45A

Citation: (2011) 131 FLR 553 : (2012) 2 LLJ 87 : (2011) 3 PLJR 674

Hon'ble Judges: S.N. Hussain, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.N. Hussain, J.

This writ petition has been filed by the Petitioner for quashing the entire proceeding of Certificate No. 3587 forwarded

vide letter No. P/42-5299/Ins.1 dated 16.9.2002 (Annexure-6) by the Authorized Officer, Insurance Branch, Employees State Insurance

Corporation (hereinafter referred to as "the Corporation" for the sake of brevity), Regional Office, Patna (Respondent No. 5) to the Recovery

Officer of the Corporation, Patna (Respondent no.6) for recovery of contribution, under Sections 45C to 45I of the Employees State Insurance

Act, 1948 (hereinafter referred to as "the Act" for the sake of brevity) for a period from 20.1.1989 to 31.3.1994 and for directing the

Respondents to decide whether the establishment of the Petitioner is covered under the Act and also for declaring that the coverage

letter/certificate wrongly brought the Petitioner's factory within the purview of the Act on the basis of wrong inspection report dated 31.10.1990

taking freight and carriage charges of Rs. 50.00 as the payment made to casual worker and partners of the Industry and further for directing the

Respondents to refund Rs. 75,330.00 withdrawn from the Bank Account of the Petitioner in Punjab National Bank, Muzaffarpur.

2. Learned counsel for the Petitioner submitted that he had a small scale industry at Industrial Estate, Bela, Muzaffarpur in the name of M/s Sarvo

Plast, which was a partnership firm and its premises was inspected on 31.10.1990 (Annexure-1) and a preliminary enquiry report was submitted

that including salary paid partner, 10 persons were found employed in the Industry and one casual labour was engaged from 15.1.1990 for

unloading work and hence the establishment be treated as covered u/s 2(12) of the Act and, accordingly, final coverage certificate was issued by

the Regional Director (Respondent No. 2) allotting code on 12.3.1991 (Annexure-2).

3. It was also claimed that when the Petitioner came to know about the said inspection and certificate, he filed an application before the Regional

Director (Respondent No. 2) on 16.1.1992 (Annexure-3) stating that only 6 persons were employed in the establishment and the report about 10

persons working there was wrong, whereafter the Regional Deputy Director (Respondent No. 3) issued letter dated 10.4.1992 (Annexure-4)

holding that on verification of records of the Petitioner's concern, it was found that 10 employees including one casual worker were found working

and hence advised the Petitioner to comply with the directions.

4. Learned counsel for the Petitioner further submitted that for the first time demand for contribution to the employees' insurance was made by the

authorities of the Corporation vide letter dated 16.9.1996 (Annexure-5) in accordance with Regulation 29, read with Regulation 31 of the

Employees' State Insurance (General) Regulations, 1950 (hereinafter referred to as "the Regulations" for the sake of brevity), failing which interest

at the rate of 12% per annum will become payable u/s 39(5) of the Act, which will be recovered under Sections 45C to 45I of the Act. The said

direction having not been complied, the Authorized Officer of the Corporation sent letter dated 16.9.2002 (Annexure-6) to the Recovery Officer

of the Corporation, on the basis of which recovery proceeding was initiated by the Recovery Officer on 1.11.2002.

5. It was also claimed by learned counsel for the Petitioner that in the said circumstances letter dated 27.3.2003 (Annexure-7) was sent by the

Petitioner to the Regional Director of the Corporation under Sections 45F(1) and 77(1)(b) of the Act for withdrawal of the certificate proceeding

and first deciding the matter regarding coverage of establishment under the Act, but no response was given by the Corporation and much

subsequently letter dated 20.8.2009 (Annexure-8) was sent to the Petitioner by the Revenue Recovery Officer of the Corporation directing him to

appear and show cause as to why he be not committed to the civil prison in execution of Certificate No. 3587 forwarded vide letter dated

16.9.2002 by the Authorized Officer of the Corporation. It was also stated that the Petitioner filed his reply on 1.9.2009 (Annexure-9) and

requested to supply certain documents, which were supplied to the Petitioner through his lawyer on 6.1.2010 (Annexure-10).

6. However, in the meantime the Revenue Recovery Officer issued two letters dated 30.11.2009 (Annexures-11 & 12) prohibiting the Sr. Branch

Manager of Punjab National Bank, Industrial Area, Bela Branch, Muzaffarpur from making any payment from the account of the Petitioner and

directed him to remit the amount claimed by the Respondents from the personal account of the Petitioner. After recovery of the said amount from

the Bank, the said prohibitory order was withdrawn by the Revenue Recovery Officer of the Corporation vide letter dated 13.1.2010 (Annexure-

13) and Petitioner was intimated vide letter dated 22.2.2010 (Annexure-14) that the amount of certificate i.e. Rs. 75,330.00 has been received but

the interest on contribution and cost, totaling Rs. 30,175.00 is still pending, which should be deposited soon.

7. Learned counsel for the Petitioner argued that the application dated 16.9.2002 (Annexure-6), sent by the Authorized Officer of the Corporation

to the Recovery Officer for initiating recovery proceeding against the Petitioner, was violative of the provision of Section 77(1)(b) of the Act. It

was also argued that no opportunity of hearing was given to the Petitioner u/s 45A of the Act before recovery order dated 12.3.1991 (Annexure-

2) was passed by the Regional Director of the Corporation. He further submitted that recourse to Section 45A of the Act can be taken only when

no document is produced and the Inspector is prevented from entering into the factory premises. He also averred that the Respondents have

violated the principle of natural justice also, for which he relied upon a decision of Full Bench of Karnataka High Court in case of Regional

Director, E.S.I. Corporation v. M/s Fibre Bangalore (P) Ltd., reported in AIR 1980 Kar 86 (FB). He also relied upon another decision of a

Division Bench of Karnataka High Court in case of M/s Hegde and Golay Limited & Another v. Employees State Insurance Corporation,

Bangalore, reported in 1981 Lab I.C. 1664.

8. On the other hand, learned counsel for the Respondents submitted that the entire allegation raised by the Petitioner is absolutely false and

frivolous as in spite of having knowledge about the final coverage certificate of 1991 and even after receiving letter from the Regional Deputy

Director of the Corporation in 1992, he never raised any objection with respect thereto and hence there is no occasion for him to rake up that

issue now after passage of so many years. Learned counsel for the Respondents further stated that the Act is a beneficial legislation for the

workers, but the inspection report as well as the enquiry and communication between the parties reveal that neither a card was issued for the

employees nor the names of their respective fathers were mentioned nor their dates of birth had been reported. He also argued that in the facts and

circumstances of this case, the Petitioner cannot legally take advantage of the provision of Section 45 of the Act.

9. It was also submitted by learned counsel for the Respondents that the Petitioner's letter dated 27.3.2003 (Annexure-7) to the Regional Director

of the Corporation clearly showed that it was u/s 45F(1) read with Section 77(1)(b) of the Act and hence he had full knowledge of the entire facts

and procedure but in spite of that he did not take any step in that regard in accordance with the specific provisions of law.

10. Learned counsel for the Respondents further argued that whatever grievance the Petitioner may have, he has a forum to raise all such disputes

u/s 75(1)(g) of the Act, namely, Employees' Insurance Court and if the said Court decides the matter an appeal is provided u/s 82 of the Act

before the High Court and hence the High Court being the court of appeal under the provisions of the Act cannot legally act as an original court to

decide issues, which were to be decided by the Employees' Insurance Court.

11. From the arguments raised by learned counsel for the parties as well as from the facts and materials of the case, it is quite apparent that proviso

to Section 45A(1) was added by Act 29 of 1989, which came into effect from 20.10.1989 and in that proviso it was 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. In the said circumstances, the case laws relied upon by learned counsel for the Petitioner in case of

Regional Director, E.S.I. Corporation (supra) as well as in case of M/s Hegde and Golay Limited (supra), which were of 1978 and 1981 with

respect to Section 45A of the Act, will not be applicable in the facts of this case.

12. Furthermore, it is apparent from the discussion of the parties and the materials on record of the case that due information's had been regularly

sent by the authorities concerned to the Petitioner with respect to every development, but it was the Petitioner himself, who could not take proper

step at the relevant time. Hence principle of natural justice cannot be said to be attracted in the instant case.

13. So far the question of alternative remedy is concerned, specific provision u/s 75(1)(g) of the Act has been provided in the Act. which specifies

that if any question or dispute arises as to any 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 (2A), shall be

decided by the Employees' Insurance Court in accordance with the provisions of this Act. Section 2A, which deals with the question of

registration, not being involved in the instant case, the Petitioner has a proper, adequate and efficacious remedy by raising such disputes before the

Employees' Insurance Court.

14. Furthermore, the High Court being the appellate authority under the provision of Section 82(2) of the Act, there is no occasion for this Court

to entertain the instant writ petition raising such dispute and points, which would have been legally considered and decided by the original court

provided under the Act.

15. In the said circumstances, this Court does not find any reason to interfere into the instant matter and, accordingly, this writ petition is dismissed.