

A. M. Ghosh Vs Employees" State Insurance Corporation and Another

Court: Calcutta High Court

Date of Decision: July 1, 1977

Acts Referred: Employees State Insurance Act, 1948 " Section 2(17)(i), 44, 44(1), 44(2), 73E

Citation: 81 CWN 1019

Hon'ble Judges: Anil Kumar Sen, J

Bench: Single Bench

Advocate: N.C. Banerjee, S.K. Dhar and B.N. Banerjee, for the Appellant; S.M. Sanyal for the State and Debesh Mukherjee for opposite party No. 1, for the Respondent

Final Decision: Dismissed

Judgement

Anil Kumar Sen, J.

An order of conviction under S. 85(g) of the Employees State Insurance Act, 1948 (hereinafter referred to as the said Act) is the subject matter of challenge in this Rule obtained on a revisional application.

2. On a petition of complaint lodged by the opposite party, Employees State Insurance Corporation, the petitioner who is the manager cum partner

of Messrs. Bengal Box Manufacturing Company was prosecuted for having committed an offence under the aforesaid provision. Complainant's

case shortly was that the petitioner was the principal employer in respect of the factory of Messrs. Bengal Box Manufacturing Company of No. 4,

Raj Kumar Chatterji Road, Calcutta, which is covered by the said Act, and as such, he was liable to submit returns in Form Sc. I under S. 44 and

S. 73E of the said Act read with a notification No. RS9/52B dated 16.2.52 within 21 days from the date of issue of the said form; though such

forms were issued on several occasions and in spite of repeated requests the petitioner failed to submit any such return; that on 21.12.63 one such

blank form was issued with a covering letter asking the petitioner to furnish the particulars by filing a return and though the petitioner received the

said letter on the day following yet he failed and neglected to file any return or furnish the particulars called for, and as such, he committed an

offence under S. 85(g) of the said Act. The complaint was lodged on 5.3.64 on a prior sanction of the Regional Director under 86(1) of the said

Act.

3. At the trial before the Learned Presidency Magistrate, the complainant-opposite party led evidence to prove that the petitioner as the manager

cum occupier of the factory was the principal employer in respect thereof within the meaning of S. 2(17)(i) of the said Act. Evidence was also led t

prove that though a return and particulars were called for from the petitioner in Form Sc. I from time to time and more particularly on 26.12.63 he

failed and neglected to comply with the said requisition.

4. The petitioner pleaded not guilty but as it appears he did not dispute the complainant's allegation that though called upon to file a return in Form

Sc. I and furnish the particulars he failed to do so. A plea was, however, raised at the trial to the effect that the prosecution is barred by limitation

and that the prosecution does not rest on a valid sanction.

5. The Learned Presidency Magistrate overruled all the defence pleas and convicted the petitioner under S. 85(g) of the said Act. In overruling the

plea of limitation the learned Magistrate held that the two general notifications issued under S. 73E respectively dated 16.2.52 and 23.9.52 would

have independent application when the former was not repealed by the latter and though the prosecution may be considered to be beyond 6

months if calculated with reference to the notification dated 23.9.52 which required furnishing of a return in Form Sc. I within 21 days from the

date of issue of the notification or the date of registration of the factory whichever is later (the complaint not having been lodged within 6 months

from either of the aforesaid two dates), it was well within time with reference to the earlier be filed within 21 day from the issue of the form which

was issued on 26.12.63. The Learned Magistrate found the sanction to be quite in accordance with law.

6. Mr. Banerjee appearing in support of this Rule has seriously assailed the Learned Magistrate's finding on the issue as to limitation and the

reasons given by him in that respect. According to Mr. Banerjee, the learned Magistrate failed to take note of the fact that the first notification

dated 16.2.52 was materially modified by the later notification dated 23.9.52 in regard to the time within which the returns are to be furnished in

Form Sc. I so that what was operative in the field was only the second notification dated 23.9.52 which provided that such return was to be filed

within 21 days of the date of issue of the notification or the date or registration of the factory whichever is later. Since the prosecution was not

launched within 6 months from either of the dates, as aforesaid, it has been contended by Mr. Banerjee that the prosecution is barred under the

provisions of S. 86(3) of the said Act.

7. The point thus raised by Mr. Banerjee has been contested by Mr. Sanyal appearing on behalf of the State and by Mr. Mukherjee appearing on

behalf of the complainant Corporation.

8. Carefully considering the respective contentions on the point I find some substance in the contention raised by Mr. Banerjee and I am of the

view that the Learned Magistrate had not read the two notifications correctly or had he appreciated the true import thereof. On 16.2.52 two

notifications were issued under S. 73E of the said Act. In one, the Form Sc. I was set out and the other required all principal employers to furnish

the information in Form Sc. I within 21 days from the date of issue of the form to the authority as specified in the said notification. Undoubtedly,

under this notification the principal employer is to furnish the return in Form Sc. I within 21 days from the date of issue of the form to him so that

the limitation under S. 86(3) would count only from the expiry of 21 days from the day when such a form is issued to the particular principal

employer. But the entire scheme was altered by an amending notification issued under S. 73E of the said Act on 23.9.52. This notification

incorporated in it the standard Form Sc. I and further provided that all principal employers are required to furnish information, if not already done,

in Form Sc. I as incorporated in the notification itself within 21 days from the date of issue of the very notification or the date of registration of the

factory whichever is later, to the authority specified in the notification. The notification itself recites that it was being issued in partial modification of

the earlier notification dated February 16, 1952, which contemplated issue of the form individually to the employees for filing returns within 21 days

of the date of issue of such form. In my view Mr. Banerjee is right in his contention that on the issue of the later notification dated 23.9.52 the

earlier notification dated 16.2.52 stood modified so that the starting point for counting 21 days would no longer be the date of issue of the form

since such a requirement was totally omitted but would be as prescribed in the later notification, namely, from the date of issue of the notification or

the date of registration of the factory whichever is later. What was prescribed earlier was necessarily repealed by the modification and to the extent

thereof by the later notification dated 23.9.52 so that both could not have been held to be operative on the filed as held by the Learned Magistrate.

There is no dispute that when the complaint was lodged on 5.3.64 it was so done much beyond 6 months from 4.10.52, the date of issue of the

notification dated 23.9.52 and 13.1.62, the date of registration of the factory of which the petitioner was the principal employer. It must, therefore,

be held that if the limitation is calculated with reference to these notifications the prosecution was time barred.

9. Mr. Sanyal appearing on behalf of the State has, however, raised an important point in this respect with reference to the provisions of S. 73E

Section 73E reads as follows:

73E. Without prejudice to the other provisions contained in this Act, the Corporation may, for the purpose of determining whether the employer's

special contribution is payable under this Chapter or for determining the amount thereof, by general or special order, require any principal or

immediate employer or any other person to furnish such information or returns to such authority in such form and within such time as may be

specified in the order.

10. Referring to this provision Mr. Sanyal has contended that the Corporation had a right to issue a general as well as a special order requiring the

principal employer to furnish information or returns contemplated by this provision. According to him, the two notifications above referred to

between them no doubt constitute a general order requiring all principal employers to furnish the information or returns contemplated by the said

provision but issue of such a general order does not exhaust the power of the Corporation to require furnishing of such information or returns and

the section itself provides that the Corporation can issue special order for the said purpose. Such being the Corporation's right, according to Mr.

Sanyal, the requisition made on 2.12.63 constitutes a special order on the petitioner requiring him to file a return in Form Sc. I and when by the

said requisition the petitioner was directed to furnish the return within 21 days from the receipt thereof the complaint lodged on 5.3.64 must be held

to be well within 6 months from the date on which the offence had been committed. Undoubtedly, the point thus raised by Mr. Sanyal is an

important one and involves interpretation of S. 73E of the Act. In contesting the point so raised by Mr. Sanyal, Mr. Banerjee has contended that

the Corporation's right to issue general or special order should be construed to be one in the alternative so that if the Corporation issues a general

order there is no scope for issue of any special order. According to Mr. Banerjee unless this provision is so interpreted the limitation provided for

in S. 86(3) would be entirely nugatory because even in respect of a default which has become barred under S. 86(3) a fresh point of limitation can

be made out by issue of successive special orders. Mr. Banerjee has contended that if I interpret the provision in S. 73E in the manner contended

for by Mr. Banerjee it would give rise to creation of a continuing offence not contemplated by the Act and wholly inconsistent with the prescription

as to limitation.

11. Section 73E is a provision in Chapter VA which provides for transitory provisions for levy and realization of employer's special contribution.

Chapter IV on the other hand incorporates the general provision regarding the ordinary contribution both by the employer and the employee. The

provision comparable to S. 73E in Chapter IV is S. 44. Section 44(1) provides that an employer shall submit to the Corporation or to such officer

of the Corporation as it may direct returns in such form and containing such particulars as may be prescribed by the Regulation. This stands for the

general order prescribed by S. 73E but sub-s. (2) of S. 44 further provides that where in respect of any factory the Corporation has reason to

believe that the return under sub-s. (1) should have been submitted, the Corporation may require specifically furnishing of such particulars as it may

consider necessary for the purpose of enabling the Corporation to decide whether the factory is a factory to which the Act applies. This provision

stands for a special order as prescribed by S. 73E the scheme of S. 44(1) and (2) there can be no doubt that notwithstanding a general regulation

requiring an employer to submit returns and furnish particulars contemplated by the provision the Corporation can issue specific orders calling upon

an employer to furnish such particulars as may be required to fulfill the same object underlying the two subsections. Therefore, the general

regulation would not oust the authority of the Corporation to issue a specific requisition in respect of the same matter and I find no reason why

same should not be the construction of S. 73E which provides the same thing more succinctly with reference to the employer's special

contribution. The object of issue of the general or the special order requiring the employer to furnish a return is to determine firstly whether the

employer's special contribution is payable and secondly the amount thereof. A social legislation as the said Act is, is to provide certain benefits to

the employees and it could never have been the intention of the legislature that once there has been a default on the part of the employer to furnish

a return contemplated by this provision in terms of a general notification no special requisition for such a return could be issued on him to fulfill the

object of the enactment. Such being the position, I feel inclined to accept the construction of the material part of this provision contended for by

Mr. Sanyal and not the one suggested by Mr. Banerjee. In my view, issue of a general order does not exhaust or take away the authority of the

Corporation to issue a special order or successive special orders for due compliance with the requirement of this provision by the employer.

Section 86(3) which provides for limitation is a general provision in respect of all offences under the Act. That provision in my view, is not

frustrated by acceptance of the interpretation of S. 73E as contended for by Mr. Sanyal though I may agree with Mr. Banerjee that limitation if

counted from one default may be avoided by issue of a fresh order but that cannot be avoided since non-compliance with each such order is an

independent offence by itself and the law contemplates that for enforcement of the contribution the Corporation may issue successive orders calling

for returns. Any other interpretation in my view, may frustrate the object of the enactment and frustrate the two determinations contemplated by S.

73E. Such being the position, I accept the contention of Mr. Sanyal that the requisition made by the Corporation on 26.12.63 is a special order

made by the Corporation and since the prosecution was launched within 6 months from the date of non-compliance with the said requisition the

prosecution was well within time. Thus, the objection as to limitation raised by the petitioner must fail though not for reasons given by the Learned

Magistrate.

12. Mr. Banerjee had next contended that the requisition dated 26.12.63 was issued by one M. R. Malhotra acting for and on behalf of the

Regional Director and there is nothing on record to show that the said Shri Malhotra was authorized to issue any special order under S. 73E of the

said Act on behalf of the Corporation. This is an objection which was not raised at the trial and it has no substance either since it would appear

from the delegation of powers disclosed in annexure 1 to the affidavit in opposition filed on behalf of the Corporation that all Assistant Insurance

Commissioners were authorized to issue special orders under S. 73E and there is no dispute that Shri Malhotra was an Assistant Insurance

Commissioner renamed as Deputy Regional Director. Incidentally, it was further contended by Mr. Banerjee that when the aforesaid requisition

dated 26.12.63 was addressed to the company it cannot be considered to be a special order on the principal employer. In my view, such an

objection is too technical to be of any real substance. Admittedly, the petitioner was the manager cum partner of the company and a requisition

addressed to the company is necessarily addressed to its partner cum manager. Moreover, the requisition enclosed a copy of the Form Sc. I which

required the principal employer to furnish the particulars. Such being the position, I find no substance in this objection raised by Mr. Banerjee.

13. Lastly, Mr. Banerjee has challenged the validity of the sanction granted by the Regional Director. The sanction recites that whereas the

petitioner had failed to submit return in Form Sc. I as required under S. 44 and S. 73E of the said Act read with the notification dated 16.2.52

which was sent to him on 26.12.63 in blank form along with a covering letter and whereas such default is an offence punishable under S. 85(g), the

sanctioning authority in exercise of his powers under s. 86(1) read with the authorization granted the sanction. In challenging the sanction, as

aforesaid, Mr. Banerjee has contended that non-compliance with S. 44 and s. 73E are different offences and there could be no composite sanction

and in any event a composite sanction of the present nature betrays on application of mind by the sanctioning authority. I am unable to accept this

contention of Mr. Banerjee. Read in its substance the offence spoken of is the failure to submit return in Form Sc. I. That default is described as

contravention of S. 44 and S. 73E which constitute an offence under S. 85(g) of the said Act. This is not really a composite sanction in respect of

two offences. Nor do I find any substance in the objection that if a person has been found guilty of two contraventions of two provisions of the Act

constituting two offences the sanctioning authority cannot sanction his prosecution for such two offences by one sanction. Reading the sanction is

quite evident that the sanctioning authority did really apply his mind and specified the relevant facts constituting the offence in the sanction itself

while granting the same. Such being the position, I find no merit in the last objection raised by Mr. Banerjee.

14. Before I conclude I must, however, point out that no case of contravention of S. 44 of the said Act has been made out either in the petition of

complaint or by the evidence on record. The entire prosecution rests on the fact that the petitioner had failed to submit a return in Form Sc. I.

Form Sc. I is the form prescribed for filing returns under s. 73E. Such alone being the allegation made and proved in course of the trial it can be

said that the petitioner is guilty of contravention of S. 73E, but the Form Sc. I not being the prescribed form for the return contemplated by S.

44(1) of the Act it cannot be said that by not filing a return in Form Sc. I the petitioner had contravened the provision of S. 44(1). Section 44(1)

contemplates returns in Form and with particulars to be prescribed by the regulations framed under the Act but the Form Sc. I is not such a form

particularly at the material point of time. Nor can the requisition dated 26.12.63 be considered to be a simultaneous requisition under S. 44(2) as

contended for by Mr. Mukherjee on behalf of the Corporation because s. 44(2) contemplates issue of a requisition when it is believed that a return

under S. 44(1) should have been submitted but has not been submitted and the requisition, as aforesaid, was never issued on that basis. On facts

alleged in the petition of complaint and proved by the evidence adduced the only case made out against the petitioner was non-compliance of the

general order incorporated in the notification issued under S. 73E and the special requisition made thereunder on 26.22.63 which clearly makes

out a case of non-compliance with the provision of S. 73E only. This, however, do not alter the situation in any manner because non-compliance

with either of the two provisions of S. 44 or S. 73E would constitute an offence under S. 85(g) of which the petitioner has been convicted. The

conviction and the sentence must, therefore, be upheld.

15. The application fails. The Rule is discharged.