**(1977) 07 CAL CK 0026**

**Calcutta High Court**

**Case No:** Criminal Revision No. 141 of 1969

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| A.M. Ghosh | | APPELLANT |
| | Vs | |
| Employees'' State Insurance Corporation | | RESPONDENT |

**Date of Decision:** July 1, 1977

**Acts Referred:**

- Employees State Insurance Act, 1948 - Section 2(17), 44, 44(1), 44(2), 73E

**Citation:** (1978) 1 ILR (Cal) 114

**Hon'ble Judges:** Anil K. Sen, J

**Bench:** Single Bench

**Advocate:** N.C. Banerji, A.K. Dhar and B.N. Banerjee, for the Appellant;S.M. Sanyal and Debesh Mukherji, for Opposite Party No. 1, for the Respondent

**Judgement**

Anil K. Sen, J.

An order of conviction u/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. The 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. 1 under Sections 44 and 73E of the said Act read with a notification No. RS9/52B dated February 16, 1952, 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 December 26, 1963, 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 u/s 85(g) of the said Act. The complaint was lodged on March 5, 1964, on a prior sanction of the Regional Director u/s 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 Section 2(17)(i) of the said Act. Evidence was alto led to 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 December 26, 1963, he failed and neglected to comply with the said requisitions.

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 was barred by limitation and that the prosecution did not rest on a valid sanction.

5. The learned Presidency Magistrate overruled all the defence pleas and convicted the Petitioner u/s 85(g) of the said Act. In overruling the plea of limitation the learned Magistrate held that the two general notifications issued u/s 73F respectively dated February 16, 1952 and September 23, 1952, 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 September 23, 1952, 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 notification dated February 16, 1952, since under the said notification such return was to be filed within 21 days from the issue of the form which was issued on December 26, 1963. The learned Magistrate found the sanction to be quite in accordance with law.

6. Mr. Banerji 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. Banerji, the learned Magistrate failed to take note of the fact that the first notification dated February 16, 1952, was materially modified by the later notification dated September 25, 1952, in regard to the time within which the returns were to be furnished in Form Sc. I so that what was operative in the field was only the second notification dated September 23, 1952, which provided that such return was to be filed within 21 days of the date of issue of notification or the date of registration of the factory whichever was later. Since the prosecution

was not launched within 6 months from either of the dates, as aforesaid, it has been contended by Mr. Banerji that the prosecution is barred under the provisions of Section 86(3) of the said Act.

7. The point thus raised by Mr. Banerji has been contested by Mr. Sanyal appearing on behalf of the State and by Mr. Mukherji 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. Banerji and I am of the view that the learned Magistrate had not read the two notifications correctly nor had he appreciated the true import thereof. On February 16, 1952, two notifications were issued u/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 u/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 u/s 73E of the said Act on September 23, 1952. This notification incorporated in it, the standard Form Sc. 1 and further provided that all principal employers were 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 employers for filing returns within 21 days of the date of issue of such form. In my view, Mr. Banerji is right in his contention that on the issue of the later notification dated September 23, 1952, the earlier notification dated February 16, 1952, 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 September 23, 1952, that both could not have been held to be operative on the field as held by the learned Magistrate. There is no dispute that when the complaint was lodged on March 5, 1964, it was so done much beyond 6 months from October 4, 1952, the date of issue of the notification dated September 23, 1952 and January 13, 1962, the date of registration of the factory of which the Petitioner was the principal employer. It must, therefore, be held that if the limitation was 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 Section 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 the 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 December 26, 1963, 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 therefore, the complaint lodged on March 5, 1964, 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 Section 73E of the Act. In contesting the point so raised by Mr. Sanyal, Mr. Banerji 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. Banerji, unless this provision is so interpreted, the limitation provided for in Section 86(3) would be entirely nugatory, because even in respect of a default which has become barred u/s 86(3) a fresh point of limitation can be made out by issue of successive special orders. Mr. Banerji has contended that, if I interpret the provision in Section 73E in the manner contended for by Mr. Banerji, 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 chap. VA which provides for transitory provisions for levy and realisation of the 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 Section 73E in chap. IV is Section 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 Section 73E, but Sub-section (2) of Section 44 further provides that where in respect of any factory the Corporation has reason to believe that the return under Sub-section (1) should have been submitted but has not been so 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 Section 73E. On the scheme of Section 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 fulfil the same object underlying the two sub-sections. 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 Section 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 fulfil 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. Banerji. 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 Section 73E as contended for by Mr. Sanyal though I may agree with Mr. Banerji 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 Section 73E. Such being the position, I accept the contention of Mr. Sanyal that the requisition made by the Corporation on December 26, 1963, 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 of

reasons given by the learned Magistrate.

12. Mr. Banerji had next contended that the requisition dated December 26, 1963, 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 authorised to issue any special order u/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 annEx. 1 to the affidavit-in-opposition filed on behalf of the Corporation that all Assistant Insurance Commissioners were authorised to issue special orders u/s 73E and there is no dispute that Shri Malhotra was an Assistant Insurance Commissioner renamed as the Deputy Regional Director. Incidentally, it was further contended by Mr. Banerji that when the aforesaid requisition dated December 26, 1963, 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. Banerji.

13. Lastly, Mr. Banerji 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 Sections 44 and 73E of the said Act read with the notification dated February 16, 1952, which was sent to him on December 26, 1963, in blank form along with a covering letter and whereas such default is an offence punishable u/s 85(g), the sanctioning authority in exercise of his powers u/s 86(1) read with the authorisation granted the sanction. In challenging the sanction, as aforesaid, Mr. Banerji has contended that non-compliance with Sections 44 and 73E are different offences and there could be no composite sanction and in any event a composite sanction of the present nature betrays non-application of mind by the sanctioning authority. I am unable to accept this contention of Mr. Banerji. 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 Sections 44 and 73E which constitute an offence u/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 it 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. Banerji.

14. Before I conclude I must, however, point out that no case of contravention of Section 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 u/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 Section 73E but the Form Sc. I not being the prescribed form for the return contemplated by Section 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 Section 44(1). Section 44(1) contemplated returns in the 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 December 26, 1963, be considered to be a simultaneous requisition u/s 44(2) as contended for by Mr. Mukherji on behalf of the Corporation because Section 44(2) contemplates the issue of a requisition when it is believed that a return u/s 44(1) should have been submitted but had 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 u/s 73E and the special requisition made thereunder on December 26, 1963, which clearly makes out a case of noncompliance with the provision of Section 73E only. This, however, does not alter the situation in any manner because non-compliance with either of the two provisions of Section 44 or Section 73E would constitute an offence u/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.