
**Employees State Insurance Corporation Vs Vidyut Carbon Products Pvt.
Ltd.**

None

Court: Uttarakhand High Court

Date of Decision: Aug. 21, 2007

Acts Referred:

Employees State Insurance Act, 1948 " Section 45A, 45B, 45C, 82

Citation: (2008) 3 LLJ 663

Hon'ble Judges: Rajesh Tandon, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rajesh Tandon, J.

Heard Sri C.K. Sharma, Counsel for the appellant and Sri Sudhir Kumar, Counsel for the respondent.

2. By the present A.O. filed u/s 82 of the Employees" State Insurance Act, 1948, appellant has prayed for setting aside the order dated February

5, 2002 passed by the Employees State Insurance Court, Haridwar in O.S. No. 142/1996 Vidyut Carbon Products Private Ltd. through

Managing Director, B.H.E.L. Ancillary Estate, Ranipur, Haridwar, Uttaranchal v. State.

3. Briefly stated, a suit was filed by the respondent being O.S. No. 142/1996 Vidyut Carbon Products Private Ltd. through Managing Director,

B.H.E.L. Ancillary Estate, Ranipur, Haridwar, Uttaranchal v. State challenging the Notice No. K.R.O. 578 dated December 11, 1991/December

19, 1991 (Ref. No. K/lns/III/21-9342-90) and recovery of Rs. 3,759.00 which has been wrongly levied from the plaintiff along with interest @

18% per annum.

4. According to the plaintiff/respondent he is engaged in manufacturing and selling of: Carbon Brushes as a Small Scale Unit established by the

Engineer Entrepreneur Mr. Manoj Kumar in the self employment scheme promoted by U.P.S.I.C. and the B.H.E.L. Factory of the plaintiff-

respondent is situated in: the B.H.E.L. Ancillary Estate, Ranipur Haridwar, which is registered under the Factory Act as well as under the E.S.I.

Act. The Regional Director E.S.I. Kanpur allotted a code number 21/9242/90 to the applicant in October 1980. Opposite party No. 1 has a

district office at Hardwar headed by its Manager.

5. Since the time of registration, the applicant is maintaining all the necessary records and registers required under the E.S.I. Act and Rules and

submitted all the required periodical returns and statement in time and always paid the required contribution and never gave the department any

opportunity to raise any objection.

6. On January 4, 1992, the plaintiff received a letter (K.R.O. 578 dated December 11, 1991/December 19, 1991 Ref. No. K/Ins/III/21-9342-

90), in which the plaintiff had been directed that he will deposit a sum of Rs. 2,947 for the insurance contribution for the period from May, 1990 to

March, 1991.

7. After receiving the aforesaid letter, plaintiff sent a registered A.D. letter No. 9201/2525 dated January 11, 1992 to the opposite party requiring

the copy of the Inspector Note made by the Inspector for filing the appeal and representation.

8. After a long period, plaintiff received a registered letter No. K./Ins/III/21-9342-90 dated. November 4, 1992 on November 20, 1992, which

was registered from Sarvodaya Nagar Post Office, Kanpur on November 18, 1992 and was entered in the Dispatch Register of the opposite

party at Sl. No. 124 of November 17, 1992.

9. The plaintiff replied the aforesaid letter on May 5, 1993 vide letter No. 9394/684 again requiring report of the Inspection.

10. On April 11, 1994, plaintiff received a copy of the application No. K/Insp.H/B/21-9342-90 dt. February 24, 1994 written by the Authorised

Officer of Employee State Insurance Corporation, Kanpur to the Recovery Officer, Employee State Insurance, Kanpur for recovery of an amount

of Rs. 2,947.00 as contribution, Rs. 740.00 as interest and further interest @ Rs. 0.99 per day.

11. Under protest, the plaintiff on April 12, 1994 prepared a Challan for Rs. 3,759 and paid the same in the State Bank of India, Ranipur Branch

on the very same day.

12. On April 14, 1994, the plaintiff sent a representation to the claimant of the standing committee of Employees' State Insurance Corporation, but

of no avail. After a period of four days after the payment, plaintiff received a letter from the Recovery officer on April 16, 1994 containing dated

March 18, 1994 which had been registered in the Post Office at April 3, 1994.

13. Plaintiff has stated that Regulation 102-A(ii) requires that a note of all irregularities and illegalities found at the time of Inspection made by the

Inspecting Authority indicating therein the action, if any, proposed to be taken against the Principal Employer together with the order for their

remedy or removal passed by Inspector or any other officer of the corporation shall be sent to the Principal Employer but no such note was ever

sent after inspection and even after requests for the same.

14. Plaintiff has further stated that the order and recovery certificate were illegal and unenforceable for non-compliance of the mandatory

provisions of Regulation 102-A(ii).

15. Plaintiff has stated that the provisions of Section 45-A are not applicable to this case.

16. Appellant has filed a written statement stating in the additional pleas that the suit is not maintainable on failure of the complaint of the demand

notice dated January 4, 1992 then the Corporation has issued a recovery notice to employer.

17. On the pleadings of the parties, the Civil Judge/E.S.I. Court has framed following issues:

(Vernacular matter omitted)

18. On behalf of the plaintiff, some papers were produced. In oral evidence, Mr. A.K. Goel has been examined as P.W. 1.

19. On behalf of the opposite party, two documents, which are public documents have been produced. In oral evidence, one Baldev Raj -

Insurance Inspector has been examined as D.W.I. Opposite Parties No. 2 and 3 did not appear.

20. While deciding the Issue No. 1 as to whether the proceedings of recovery against the applicant under Sections 45-C and 45-1 E.S.I. Act are

void and liable to be rejected, claims Tribunal has relied upon the statement of A.K. Goel and Sri Baldev Raj and has recorded a finding that in the

inspection no hurdle was placed by the plaintiff, which shows that the plaintiff has not any mistake in filing returns, therefore, the provisions of

Section 45-A of the E.S.I. Act are not applicable in the present case and if any payment is still to be done by the plaintiff, proceedings u/s 75-B

read with Section 76 should have been initiated. Further it has been stated that issuance of recovery certificate against the plaintiff is void as no

opportunity of hearing was ever given to the plaintiff. Further relying upon judgments referred by the plaintiff; The Commissioner of Coal Mines

Provident Fund, Dhanbad and Others Vs. J.P. Lalla and Sons, , B.M.K. Industries v. E.S.I.C. 1979 Lab IC (Bom) 942, Employees" State

Insurance Corporation Vs. Asian Paints India Ltd. and another, , Free India Pvt. Ltd. v. E.S.I.C. 1993 II LLJ 584 (Mad), the Employees

Insurance Court has stated that from the cases cited above, the case of the plaintiff gets strong and finds force and has stated that from the

aforesaid observation, it gets clear that the recovery certificate issued by the opposite party is void and illegal and is liable to be rejected.

21. While deciding the Issue No. 2 as to whether the plaintiff is entitled to get Rs. 3,759/- along with interest @ 18% per annum from the opposite

party, the Employees State Insurance Court has recorded a finding that the plaintiff was not given any opportunity of hearing, therefore, in

compulsion, he deposited the amount and therefore, he is entitled to recover Rs. 3,759/- along with interest. This point was decided against the

opposite party.

22. While deciding the Issue No. 3 as to whether the opposite party Nos. 2 and 3 have wrongly been impleaded as a party, the Employees State

Insurance Court has recorded a finding that opposite party Nos. 2 and 3 i.e. Sri O.P. Verma Recovery Officer and Sri J.K. Dagar Deputy

Regional Director have worked without jurisdiction and therefore, they have harassed the plaintiff and the impleadment of both opposite parties

No. 2 and 3 was necessary.

23. While deciding the Issue No. 4 as to whether the application is time barred, Employees State Insurance Court has recorded the finding to the

following effect:

(Vernacular matter omitted)

24. While deciding the Issue No. 5 regarding compensation, Employees State Insurance Court has recorded a finding that since the recovery

certificate has already been held to be void. It also appears that the plaintiff had deposited a sum of Rs. 3,759/- under pressure of the opposite

party on April 12, 1994, therefore, the plaintiff is entitled to recover the amount deposited by him along with interest.

25. Section 45-A of the Employees' State Insurance Act reads as under:

45-A. Determination of contributions in certain cases.- (1) Where in respect of a factory or establishment no returns, particulars, registers or

records are submitted, furnishes 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 Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the

amount determined under Sections 45-C to 45-I.;

26. Sections 75, 76 and 77 of the Employees' State Insurance Act provide as under:

75. Matters to be decided by Employees' Insurance Court.-(1) If any question or dispute arises as to-

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

(ee) any direction issued by the Corporation u/s 55-A on a review of any payment of dependants' benefit, or

(g) any other 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, namely:

(a) claim for the recovery of contributions from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer;

(d) claim against a principal employer u/s 68;

(e) claim u/s 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and

(f) any claim for the recovery of any benefit admissible under this Act.

(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical

appeal Tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question

before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter

proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal

Tribunal, as the case may be, except where an appeal has been filed, before the Employees' Insurance Court under Sub-section (2) of Section

54-A in which case the Employees Insurance Court may itself determine all the issues arising before it.

(2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be

raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him

as claimed by the Corporation:

Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

(3) No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or

under this Act is to be decided by (a medical board, or by a medical appeal Tribunal or by the Employees' Insurance Court).

76. Institution of proceedings, etc.- (1). Subject to the provisions of this Act and any Rules made by the State Government, all proceedings before

the Employees" Insurance Court shall be instituted in the Court appointed for the local area in which -the insured person was working at the time

the question or dispute arose.

(2) If the Court is satisfied that any matter arising out of any proceedings pending, before it can be more conveniently dealt with by any other

Employees" Insurance Court in the same State, it may, subject to any Rules made by the State Government in this behalf, order such matter to be

transferred to such other Court for disposal and shall forthwith transmit to such other Court the record connected with that matter.

(3) The State Government may transfer any matter pending before any Employees" Insurance Court in the State to any such Court in another State

with the consent of the State Government of that State.

(4) The Court to which any matter is transferred under Sub-section (2) or Sub-section (3) shall continue the proceedings as if they had been

originally instituted in it.

77. Commencement of proceedings.- (1) The proceedings before an Employees" Insurance Court shall be commenced by application.

(1A) Every such application shall be made within a period of three years from the date on which the cause of action arose.

Explanation. For the purpose of this sub-section,-

(a) the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants" benefit,

the dependants of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period of twelve

months after the claim became due or within such further period as the Employees" Insurance Court may allow on grounds which appear to it to be

reasonable;

(b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal

employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time:

Provided that no claim shall be made by the Corporation after five years of the period to which the claim relates:

(c) the cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be

deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulation.

(2) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be

prescribed by Rules made by the State Government in consultation.

27. Counsel for the appellant Sri C.K. Sharma has referred the judgment of Ambikanathan P.S. Vs. Employees" State Insurance Corporation,

where it has been observed as under:

9. In am of the view that the ESI Court committed a very grave error of the law in entertaining the petition in ESI OP No. 26/1983 itself. Such an

error I feel is but the resultant product of the application of mind, and at the time of entertaining the petition, in the light of the provision adumbrated

in the Act.

10. Section 45-A(1)(as it stood relevant point of time), dealing with determination of contribution present where in respect of factory or

establishment no returns, particular registers or...are submitted, furnished or maintained in accordance with the provisions of any inspector or other

official....

28. As will appear from the facts of the case of the (supra), it has been stated in paragraph 2 of the said judgment that factory in; question was

covered under the Employees" State Insurance Act and there has been regular payment of contribution till the year, 1974, and thereafter consistent

default appeared to have been/committed by the factory concerned in making such contribution for the period between November 27, 1976 to

June 29, 1982. The facts of the present case are quite different inasmuch as in the present case the factory has been registered under the

Employees" State Insurance Act, and has been continuously paying its contribution for the said period for which the demand has been made. Only

the dispute is on certain items i.e. with regard to the over-time allowance, conveyance allowance, regular presence and milk allowance. Therefore,

it cannot be said that the factory in question was not paying its contribution regularly and therefore, the aforesaid case law is not applicable in the

present case.

29. On the other hand, Counsel for the respondent Sri Sudhir Kumar has referred the judgment of B.M.K. Industries Pvt. Ltd. v. Employees"

State Insurance Corporation and Ors. (supra), where the controversy was with regard to the applicability of Section 45-A of the Employees"

State Insurance Act. In paragraph 10 of the said judgment, it has been stated that the scheme of the Act after amendment is that in cases where

there is an omission on the part of the employer to maintain records in accordance with the provisions of Section 44 or where the employer fails to

submit or furnish necessary returns or where the Inspector is not allowed to exercise his function or discharge his duties, the corporation should

determine the amount on the basis of such information as it may collect. The same is introducing Section 45, which provides the guidelines and its

ingredients are, attracted. The observations are quoted below:

This Section was introduced by Act No. 44 of 1966. The Scheme of the act after amendment is that in cases where there is omission on the part

of employer to maintain records in accordance with the provision of Section 44 or where the employer fails to submit or furnish necessary returns

etc. or where the Inspector is not allowed to exercise his function or discharge his duties, the Corporation itself should determine the amount on the

basis of such information as it may collect. Thus, the Statute itself has laid down the classes of cases which are governed by Section 45-A of the

Act. The object of introducing this new provision discloses a definite legislative policy, which has been sought to be achieved by a somewhat

different procedure as incorporated in Section 45-A of the Act. This was considered necessary to cope up with abnormal situation, arising out of

omissions or obstructions on the part of the defaulting employers. To remove the lacuna and to provide for a speedy procedure and remedy

Section 45-A was introduced by amending Act No. 44 of 1966. It also lays down the purpose behind it. It also provides the guidelines as to the

class of cases in which procedure prescribed by Section 45-A is to be resorted to. This provides sufficient guidelines for the authorities on whom

the power has been conferred.

31. Relying upon the judgment of The Employees State Insurance Corporation, Bhopal Vs. The Central Press and Another, , in the aforesaid

judgment it has been held that where there is omission on the part of the employer to maintain the records in accordance with Section 44 of the

Act, determination of the amount of contributions compensation shall be on the strength of such information as it may collect it. Relevant

observations are quoted below at p. 480 of LLJ:

3. The powers of the Corporation are given in Section 45-A of the Act, introduced by Act 44 of 1966 whereby the Corporation may on the basis

of the information available to it determine the amount of contributions payable and make necessary demands. Apparently the scheme of the Act

after the amendment is, that the Corporation itself should in a case where there is omission on the part of the employer to maintain records in

accordance with Section 44 of the Act, determine the amount of contributions on the strength of such information as it may, collect it. It can then

make the demand. If the employer refuses to comply with the demand so made the matter can come up before the Employees Insurance Court u/s

75 of the Act. The Court should give the Corporation a direction to perform its duty where it considers that this should be performed by the

Corporation. It cannot decline to perform its own duty because the Corporation has failed to discharge its function.

32. In Hegde and Golay Limited Vs. Esic and Another, interpreting the provisions of, Section 45-A, it has been held as under at pp. 51 & 52:

73. Here, it is not the case of the Regional Director that the Employer had obstructed the Inspector or any other official of the Corporation in

exercising his functions or discharging his duties. Sri Papanna urged that the first of the aforesaid alternative conditions was satisfied in the present

case. We shall examine whether that condition was satisfied. The Employer had submitted a return in respect of its employees, but had not

included therein the names of persons whom it claimed to be apprentices. Sri Papanna contended that there was failure on the part of the Employer

to submit a return since the return did not include the names of such persons. We are unable to accept this contention of Sri Papanna. If the

Employer had submitted a return showing the names of only those persons whom it claimed to be its employees, it cannot be said that it was a case

of no return merely because such return did not include persons about whose nature of employment there was a dispute between the Employer and

the Corporation. What Sub-section (1) of Section 45-A contemplates is the total omission to submit a return and not a case where the return

submitted does not include persons about whose nature of employment there is a dispute.

33. The Court below, therefore, has. observed while deciding the Issue No. 1 that provision of Section 45-A are not applicable as the regular

returns were being submitted by the employer, however, the employer should have approached the Court under Sections 75 and 76 of the

Employees State Insurance Act. The Civil Judge, is therefore, directed for the refund of the amount along with the interest at the rate of 12% per

annum.

34. So far as the interest is concerned, if the claim has to be determined under the provisions of Section 39 of the Employees State Insurance Act,

there cannot be any question of refund and the interest.

35. However, the Corporation will be at liberty to initiate the proceedings in accordance with law.

36. In view of the above, the appeal is dismissed.

37. No order as to costs.