

The Employees State Insurance Corporation, Bhopal

Vs

The Central Press and Another

Civil Appeal Nos. 325-329 of 1977

(CJI M.H. Beg, P.S. Kailasam, A.C. Gupta JJ)

21.02.1977

JUDGMENT

BEG, C.J. –

1. This appeal by special leave arises out of the proceedings initiated on July 12, 1961 by the appellant Corporation, under Section 75 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act), claiming contributions from the respondents for various periods between September 27, 1959 and March 31, 1965, which they are liable to pay under Section 40 of the Act.
2. It appears that the respondent-employers failed to maintain the registers or records and to submit returns of wages paid as required under Section 44 of the Act. Hence, the Insurance Court, which was called upon to adjudicate under Section 75(1)(c) of the Act, on the matter in dispute, found itself unable to decide the question in issue. It dismissed the application on the ground that there was no provision for deciding such a dispute on an "ad hoc basis". We fail to understand what is precisely meant by "ad hoc basis". We find that Section 75(2) of the Act provides, inter alia, that a claim for the recovery of contributions shall be decided by the Employees' Insurance Court. Not only is the mandatory duty cast upon it to decide such disputes, but it is armed with the powers of a Civil Court, including summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, under Section 78 of the Act.
3. The powers of the Corporation are given in Section 45A 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 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 under Section 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.
4. The matter having come up before that Court, the claim by the Corporation was rejected erroneously merely on the ground that there was difficulty in determining the basis of wages in a particular factory so as to enable a calculation of the amount of contributions to be made by the employer. It seems that the notification of the Central Government under Section 99A of the Act, also introduced by Act 44 of 1966, was intended to overcome such a difficulty in determining the

wages of the employees. After having considered the provisions of Section 99A of the Act, we doubt whether this provision can be availed of for the purpose of supplying a defect or overcoming difficulty in adjudication of a dispute for which the Employees' Insurance Court is given ample powers. Moreover, the Corporation has itself to collect the information initially and make a provisional demand on the basis of that information under Section 45A in such a case.

5. The learned single Judge, before whom the matter went up in appeal, thought that the notification of the Central Government fixing wages, presumably on the strength of some notion as to what prevailing wages in such cases are, could be used for this purpose. The Corporation itself should have gathered information under Section 45A. The Employees' Insurance Court should be apprised of this information and is under a duty to determine the basis of calculation itself. It cannot expect the Central Government to overcome such a difficulty by an order or direction under Section 99A of the Act. We think that the nature of the proceedings was not properly understood either by the Employees' Insurance Court or by the High Court when the matter was taken before these authorities. Hence, the Division Bench, which accepted the appeal from the decision of the single Judge had, while invalidating the notification under Section 99A of the Act, failed to give a direction that the Employees' Insurance Court should itself perform its duties.

6. In the light of the foregoing statement of the legal position, we allow this appeal, set aside the judgments of the Division Bench as well as of the learned single Judge and orders of the Employees' Insurance Court. We remand the matter to the Employees' Insurance Court for determination in accordance with law as explained by us above.

7. Parties will bear their own costs.

</html