Gasket Radiators Pvt. Ltd.

Vs

Employees' State Insurance Corporation and Another

Civil Appeal No. 764 of 1972

(O. Chinnappa Reddy, E. S. Venkataramiah, R. B. Misra JJ)

28.02.1985

JUDGMENT

1. The question raised in this appeal concerns the vires of Chapter V-A of the Employees' State Insurance Act, 1948. The principal Act was enacted in 1948. Chapter V-A was inserted by Section 20 of Act No. 53 of 1951. The provisions of the Chapter, however, have ceased to have effect on and from July 1, 1973. That is the sequel to a notification issued under Section 73-I of the Act. Chapter V-A is headed "Transitory Provisions" and provides for the payment by the principal employer of a special contribution which shall be in lieu of the employer's contribution payable under Chapter IV in the case of factories or establishments situate in areas in which the provisions of both Chapters IV and V are in force. The special contribution is required to be such percentage, not exceeding five per cent. of the total wage bill of the employer, as the Central Government may specify. It is also provided that the employer's special contribution in the case of factories or establishments in areas in which the provisions of both Chapters IV and V are in force shall be fixed at a rate higher than that in the case of factories or establishments situate in areas in which the provisions of the said Chapters are not in force.

2. The Employees' State Insurance Act, 1948 was enacted to provide for certain benefits to employees in the case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto. It is an obvious social welfare legislation in tune with the Directive Principles of State Policy contained in Articles 41, 42 and 43 of the Constitution. It is a legislation which comes directly under Entries 23 and 24 of List III of the Seventh Schedule of the Constitution, which are, "social security and social insurance; employment and unemployment", and "welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits". The Act extends to the whole of India and comes into force on such date or dates as the Central Government may appoint, different dates being permissible for different provisions of the Act and for different States or for different parts thereof. It applies to all factories including factories belonging to the Government other than seasonal factories. Chapter II provides for the establishment of the Employees' State Insurance Corporation for administering the scheme of Employees' State Insurance in accordance with the provisions of the Act. The Corporation is to be a body corporate having perpetual succession and a common seal. There are detailed provisions for the Constitution of a Standing Committee and a Medical Benefit Council. Chapter III provides for Finance and Audit. Section 26, in particular, provides for the establishment of a Fund called the Employees' State Insurance Fund into which all contributions paid under the Act and all other money received on behalf of the Corporation shall be paid. The Corporation is authorised also to accept grants, donations and gifts from the Central or any State Government, local authority or any individual or body whether incorporated or not, for all or any of the purposes of the Act. Section 28 lists the purposes for which

the Fund may be expended and it includes among other items,

> (i) payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Act and defraying the charges and costs in connection therewith; and
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> #(ii) * * *(iii) * * *##
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> (iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families, their families;
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> Chapter IV provides for the manner of insurance of all the employees in factories or establishments to which the Act applies and the payment of contribution for that purpose. The contribution payable in respect of an employee shall comprise contribution payable by the employer called employer's contribution and contribution payable by the employee called employee's contribution. The contribution has to be paid at the rates specified in the First Schedule. Detailed provision is made for the method and payment of contribution. Chapter V deals with benefits. Section 46 specifies the benefits to which the insured persons, their dependents and others shall be entitled. There are other detailed provisions indicating the manner of working out the various benefits.

3. Quite obviously the scheme could not be implemented straight away throughout the country but could only be implemented by stages. It, therefore, became necessary for the Parliament to make certain transitory provisions, which it did by the introduction of Chapter V-A by Act 53 of 1951. The Statement and Objects and Reasons of Act 53 of 1951 may be usefully extracted here. The Statement is as follows :

> The Employees' State Insurance Act, 1948, was passed by the Domination Legislature in April 1948. It provides for certain benefits to industrial employees in case of sickness, maternity and employment injury. The Act permits the implementation of the scheme by stages.

It was intended that the scheme should be implemented in the first instance in Delhi and Kanpur, but regional implementation of such schemes is always attended with certain practical difficulties. The principal difficulties are the rise in the cost of production and the diminution of the competitive capacity of industries located in those regions. The main objections of the employers centered round the former difficulty and those of the Uttar Pradesh Government emphasised the latter. The Central Government have considered those objections and are anxious to avoid any competitive handicap to any region. This may be best achieved by an equitable distribution of the employer's contribution, even where implementation is effected only in certain areas, among the employers in the whole country - employers in regions where the scheme is implemented paying slightly higher contributions. This will minimise the contribution leviable from the employers and spread the incidence of the cost of the scheme equitably. This Bill is primarily intended to achieve this object.

4. The notes on Clause 20 of the Bill which provided for the introduction of Chapter V-A was to the following effect,

Clause 20-A new self-contained chapter is proposed providing for the collection of employer's special contribution throughout the Union. The rate of the contribution which may be varied from time to time is to be fixed by the Central Government after two months' notice by notification. The rate of the contribution shall be higher in areas where the scheme applied than in other areas. The manner of and time within which the special contribution is to be paid would be notified by the Central Government. Consequential provisions fitting the employer's special contribution into the existing scheme of the Act and other necessary provisions have been made in this Chapter. The Central Government is empowered to give directions or provide for such matters as may be necessary for the removal of any difficulty. The Chapter can be withdrawn from operation by the Central Government after giving three months' notice.

The desirability and the necessity for the implementation of the scheme by stages has been brought out by a Constitution Bench of this Court in Basant Kumar Sarkar v. Eagle Rolling Mills Ltd. (AIR 1964 SC 1260 : (1964) 6 SCR 913 : (1964) 2 LLJ 105 : 26 FJR 133), where it was stated :

> In the very nature of things, it would have been impossible for the Legislature to decide in what areas and in respect of which factories the Employees' State Insurance Corporation should be established. It is obvious that a scheme of this kind, though very beneficent, could not be introduced in the whole of the country all at once. Such beneficial measures which need careful experimentation have sometimes to be adopted by stages and in different phases, and so, inevitably, the question of extending the statutory benefits contemplated by the Act has to be left to the discretion of the appropriate Government. "Appropriate Government" under Section 2(1) means in respect of establishments under the control of the Central Government or a Railway administration or a major port or a mine or oil field, the Central Government, and in all others cases, the State Government. Thus, it is clear that when extending the Act to different establishments, the relevant Government is given the power to constitute a Corporation for the administration of the scheme of Employees' State Insurance. The course adopted by modern Legislatures in dealing with welfare scheme has uniformly conformed to the same pattern. The Legislature evolves a scheme of socio-economic welfare, makes elaborate provisions in respect of it and leaves it to the Government concerned to decide when, how and in what manner the scheme should be introduced.

5. In the present case the appellant company which was formed in 1965 and went into production the same year, was exempted from the provisions of Chapter V-A of the Act until the provisions of Chapter V of the Act were enforced in the area where the appellant's factory was situated. However this exemption was withdrawn with effect from May 31, 1969 by a notification of the Government. The appellant company questioned its liability to pay special contribution under Chapter V-A of the Employees' State Insurance Act by filing a writ petition in the High Court of Gujrat under Article 226 of the Constitution. The writ petition was dismissed by the High Court on September 7, 1971 and the present appeal has been filed pursuant to a certificate granted by the High Court under Articles 132(1) and 133(1)(c) of the Constitution. Meanwhile Chapter V-A has ceased to have effect on and from July 1, 1973. We are, therefore, concerned in this appeal with the question of the payment of special contribution under Chapter V-A by the appellant company for the period, May 31, 1969 to March 26, 1973. The main ground on which the appellant canvasses the correctness of the judgment of the High Court is that the contribution payable under Chapter V-A is a fee and its levy is illegal as the Act does not contemplate the rendering of any service or the conferment of any benefit to the appellant company or its employees as quid pro quo for the payment. The provisions

of Chapter V-A, therefore, according to the learned counsel, are ultra vires.

6. We are afraid that the very approach of the appellant to the problem at issue suffers from a basic defect. The appellant's argument proceeds on the fundamental misconception that the payment of contribution directed to be made by the employer under the Employees' State Insurance Act or other similar payment or benefit under various other social welfare legislations must either be labelled as a tax or a fee in order to attain legitimacy or not at all. The idea that such payment, contribution or whatever name is given to it should be so pigeon-holed and fitted in stems from a misunderstanding of the scheme of our Constitution in regard to social welfare legislation. Apart from the preamble which promises to secure to all its citizens, "justice, social, economic and political", the State is enjoined by the Directive Principles of State Policy to secure a social order for the promotion of the welfare of the people. In particular Articles 41, 42 and 43 enjoin the State to make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of any undeserved want, to make provision for securing just and humane conditions of work and maternity relief and to secure by suitable legislation or economic organisation in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. It is in pursuance of these Directive Principles that we find Entries 23 and 24 in List III of the Seventh Schedule of Constitution. Both Parliament and the Legislature of any State, subject to conditions with which we are not concerned, have power to make laws with respect to any of the matters enumerated in List III. It is pursuant to the power entrusted in respect of Entries 23 and 24 of List III that Parliament has enacted the Employees' State Insurance Act. In our understanding, Entries 23 and 24 of List III, of their own force, empower Parliament or the Legislature of a State to direct the payment by an employer of contributions of the nature of those contemplated by the Employees' State Insurance Act of the benefit of the employees. These contributions or for example contributions to provident funds or payments of other benefits to workers are not required to be and cannot be labelled as taxes or fees for the sole and simple reason that they are neither taxes nor fees. List I and List II contain several entries in respect of which taxes may be levied by the Parliament, by the Legislature of any State and by both. Entry 97 is a residuary clause which enables Parliament to legislate in respect of any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists. Entry 96 of List I enables Parliament to levy fee in respect of any of the matters in that list, but not including fee taken in any court. Similarly Entry 66 of List II enables the Legislature of a State to levy fee in respect of the matters in that list, but not including fees taken in any court. Again Entry 47 of List III enables Parliament and the Legislature of a State to levy fees in respect of any of the matters in that list but not including fees in any court. The payment of contribution by an employer towards the premium (what else is it ?) of an employee's compulsory insurance under the Employees' State Insurance Act falls directly within Entries 23 and 24 of List III and it is wholly unnecessary to seek justification for it by recourse to Entry 97 of List I or Entry 47 of List III in any circumlocutous fashion. We see no reason to brand or stamp the contribution as a tax or fee in order to seek to legitimise it. Legitimation need not be sought fictionally from Entry 97 of List I or Entry 47 of List III when legitimation is directly derived for the charge from Entries 23 and 24 of List III.

7. Even if the charge is to be construed as a fee as the High Court has done, it appears to us to be justifiable on that basis too. It is not disputed and indeed it is not capable of any controversy that services and benefits are indeed meant to be and are bound to be conferred on the employees and through them on the employer, in due course, when the scheme becomes fully operative in all areas. For a start the scheme is confined to a few areas and though special contribution is levied from all employers wherever they be, in the case of employers who straightway receive the benefits of the

insurance scheme, their rate of contribution is higher while in the case of employers, who do not yet receive the benefits of the scheme, their rate of contribution is lower. So far as the latter are concerned, the scheme is analogous to a deferred insurance policy which parents often take out on the lives of their children, but which are to be effective only from a future date after the children attain a certain age, though premium is liable to be paid right from the start. Merely because the benefits to be received are postponed, it cannot be said that there is no quid pro quo. It is true that ordinarily a return in presenti is generally present when fee is levied, but simultaneity or contemporaneity of payment and benefit is not the most vital or crucial test to determine whether a levy is a fee or not. In fact, it may often happen that the rendering of a service or the conferment of a benefit may only follow after the consolidation of a fund from the fee levied. Hospitals, for instance, cannot be built in a day nor medical facilities provided right from the day of the commencement of the scheme. It is only after a sufficient nucleus is available that one may reasonably expect a compensating return. The question of how soon a return may be expected or ought to be given must necessarily depend on the nature of the services required to be performed and benefits required to be conferred. In K. C. Sarma v. Regional Director, E.S.I. Corporation (AIR 1962 Assam 120 : (1962-63) 23 FJR 511), it was observed :

> It appears that the employers' special contribution is not a tax but a fee. This contribution goes to a fund known as the Employees' State Insurance Fund which is to be utilised for the benefits to Employees under the Act. The cost of these benefits will not be met from the general revenues of the State, but will be borne entirely from the aforesaid fund only .... the employers' contribution under the Act constitutes only a fee and not a tax .... [T]he Government cannot go on levying employers' contribution under Section 73-A of the Act without giving a service in return. But from this it does not follow that the service must be given as soon as the contribution is made. The object of the Act is that the benefits which it provides should become available to the employees in all factories throughout India (except Jammu and Kashmir) as soon as circumstances make it practicable. There are various steps that the Government have to take before such benefits can be given to employees. Statutory bodies have to be set up, various officers have to be appointed and arrangements have to be made for providing medical help. All these require time and money and in some areas the time required may be more than in other areas. Chapter V-A is for meeting the needs of the transitory period. When the whole Act is brought into force in the whole of India (excluding Jammu and Kashmir), it would not be necessary to retain this Chapter. Then all contributions will be made under Chapter IV. It may be noted that Chapter V-A was inserted, as pointed out above, by an amending Act only in 1951. The object of the amendment was to make an equitable distribution of contributions by all employers. It was not considered fair that only employers of those regions to which the benefit provisions were extended should alone make contributions and thereby help to set up a corporation. The benefit provisions will sooner or later be extended to all areas. Therefore, the amendment provides that employers of regions to which the benefit clauses are not extended must also make their contributions though at a lesser rate.

8. As anticipated by the Assam High Court, Chapter V-A has now ceased to have effect from July 1, 1973, as already mentioned by us earlier. If the charge was to be levied as a fee, we are satisfied that there was sufficient quid pro quo. The learned counsel for the respondent attempted to argue that simultaneity or contemporaneity of levy and service were of the essence of a fee and that it had been so laid down in Kewal Krishan Puri v. State of Punjab (AIR 1980 SC 1008 : (1980) 1 SCC 416 :

(1979) 3 SCR 1217). Inspiration for the argument was drawn from the statement in Kewal Krishan case (AIR 1980 SC 1008 : (1980) 1 SCC 416 : (1979) 3 SCR 1217) that the benefit should not be indirect and remote. The reference, there, to indirectness and remoteness was not made in connection with any delayed benefit from the point of view of time, but with reference to the very benefit itself and its connection with the levy. We once again have to reiterate what we were forced to point out in Amar Nath Om Prakash v. State of Punjab (AIR 1985 SC 218 : (1985) 1 SCC 345 : 1985 SCC (Tax) 92) that judgments of courts are not to be construed as Acts of Parliament. Nor can we read a judgment on a particular aspect of a question as a Holy Book covering all aspects of every question whether such questions and facets of such questions arose for consideration or not in that case. We must however, hasten to notice that the Madras High Court in Sakthi Pipe Ltd. v. Regional Director, E.S.I. Corporation (1978) Lab IC 410 : (1978) 2 Mad LJ 224) and the Kerala High Court in Gwalior Rayons Silk Manufacturing Co. v. E.S.I. Corporation (1975 Lab IC 1395) have upheld the levy of special contribution as a tax. Therefore, whether the special contribution is to be viewed as a tax. Therefore, whether the special contribution is to be viewed as a tax, fee or neither it has sufficient constitutional protection. The appeal is, therefore, dismissed with costs.

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