

M/s. Panesar Mechanical Works (P.) Ltd. v. Employees' State Insurance Corporation (Sandhawalia, J.)

I order accordingly. Civil Writ No. 3941 of 1970 is accepted only to that extent and fails for the rest. The other two petitions are dismissed in their entirety. There shall be no order as to costs in any of the three cases.

B.S.G.

APPELLATE CIVIL

Before S. S. Sandhawalia, J.

M/S. PANESAR MECHANICAL WORKS (P) LTD.,—*Appellant.*

versus

EMPLOYEES STATE INSURANCE CORPORATION,—*Respondent.*

First Appeal From Order No. 193 of 1965.

April 29, 1971.

Employees' State Insurance Act (XXXIV of 1948)—Sections 73-A, 73-B and 75—"Special Contribution" payable by a principal employer—Liability and quantum of—Insurance Court—Whether can adjudicate upon.

Held, that the provisions of section 73-B(1) of Employees' State Insurance Act, 1948, are clear and unequivocal. In unqualified language it is laid down that any question or dispute in the context of the Employers Special Contribution is to be determined by the two forums specified therein. These two forums are in express terms the Employees' Insurance Court having jurisdiction and in its absence such authority as the Central Government may specify. The plain language of the section namely "*If any question or dispute arises in respect of the Employer's Special Contribution*" is obviously of the widest amplitude. Such language would fully cover the question both of the liability in principle of the employer to pay as also the quantum that may be assessed in this regard. The Special Contribution is levied and assessed under the provisions of section 73A which falls within Chapter VA of the Act. The moment there is either a total refusal to pay the Special Contribution or a challenge as to the amount thereof it would clearly raise a question or dispute in respect of the Employers' Special Contribution which is payable or recoverable under the provisions of Chapter VA. The Statute, therefore, proceeds further and provides that such a question, or dispute can be agitated

in two forums only noticed above. The primary forum appears to be the Employees Insurance Court where the same has been constituted and is functioning. Only in the absence of such a Court is the matter to go to a specified authority created by the Central Government in this behalf. Hence section 73B (1) gives jurisdiction to the Employees' Insurance Court alone if it has been constituted and exists to adjudicate upon all matters in connection with Employers' Special Contribution under section 73A. Moreover, the language of section 75(1)(g) of the Act is of equally wide connotation. It gives jurisdiction to the Court in any of the matters which is in dispute between an employer and the Corporation in respect of any contribution or benefit or other dues payable or recoverable under the Act. Now it does not admit of any challenge that the "Special Contribution" is firstly well covered by the words "contribution, or benefit or other dues" and further that such special contribution is recoverable under the Act. The denial of liability by the principal employer to pay the assessed Special Contribution is thus obviously a matter of dispute between the Corporation and the Employer and consequently would fall well within the ambit of section 75(1)(g) of the Act. Once that is so it follows that the Employees' Insurance Court would have jurisdiction to decide the same under section 75(1) of the Act.

(Paras 4 and 5).

First Appeal from the order of the Court of Shri B. L. Mago, Senior Sub-Judge as Judge Employees Insurance Court, Ludhiana, dated the 14th October, 1965, ordering that the court has no jurisdiction, both the applications are returned to the applicant for presentation to the proper authority, and leaving the parties to bear their own costs.

R. K. AGGARWAL, ADVOCATE, for the appellant.

K. L. KAPUR, ADVOCATE, for the respondent.

JUDGMENT

Sandhawalia, J.—(1) Whether the Employees Insurance Court has jurisdiction to adjudicate regarding the liability and the quantum of the "special contribution" payable by a principal employer under section 73A of the Employees' State Insurance Act, 1948, is the only question that falls for determination in this appeal.

(2) The appellants had presented an application to to the Employees' State Insurance Court at Ludhiana seeking a declaration that they were not liable to pay the Employers Special Contribution assessed under section 73A of the Employees' State Insurance Act (hereinafter referred to as the Act). A certificate had been

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issued for the recovery of the amount assessed and had been forwarded to the Collector, Ludhiana for execution. The application above-said was first contested on a preliminary objection by the respondent Corporation that the Court had no jurisdiction to go into the matter. The following issue was hence framed and tried as a preliminary one—

“Whether this Court has jurisdiction to try the case ?”

No evidence was led by the parties and only legal contentions on the point of jurisdiction were agitated. The Court below has come to the conclusion that it has no jurisdiction to deal with the matter of “Special Contribution” and consequently returned the application to the appellants for presentation to the proper authority. It is above said decision of the trial Court which is the subject-matter of challenge in this appeal.

(3) It is first necessary to set down the provisions of Sections 73-A (1) and 73-B of the Act which fall for construction and around the language whereof the present controversy revolves:—

“Chapter V A (Transitory Provisions):

73-A(1) For so long as the provisions of this Chapter are in force, every principal employer shall, notwithstanding anything contained in this Act, pay to the Corporation a special contribution (hereinafter referred to as the employer's special contribution) at the rate specified under sub-section (3)

(2) * * *

(3) * * *

(4) * * *

(5) * * *

73-B(1) If any question or dispute arises in respect of the employer's special contribution payable or recoverable under this Chapter and there is no Employees' Insurance Court having jurisdiction to try such question or dispute, the question or dispute shall be decided by such authority as the Central Government may specify in this behalf.

- (2) The provisions of sub-section (1) of section 76, sections 77 to 79 and 81 shall, so far as may be, apply in relation to a proceeding before an authority specified under sub-section (1) as they apply in relation to a proceeding before an Employees' Insurance Court."

(4) As is inevitable in construing a statutory provision, resort must first be had to the plain language of the statute. To my mind the provisions of section 73-B(1) appear to be clear and unequivocal. In unqualified language it is laid down that any question or dispute in the context of the Employers Special Contributions is to be determined by the two forums specified therein. These two forums are in express terms the Employees' Insurance Court having jurisdiction and in its absence such authority as the Central Government may specify. The plain language of section 73-B(1) abovequoted "if *any* question or dispute arises in respect of the Employer's Special Contribution" is obviously of the widest amplitude. Such language would fully cover the question both of the liability in principle of the employer to pay as also the quantum that may be assessed in this regard. The Special Contribution is levied and assessed under the provisions of section 73-A which falls within Chapter VA of the Act. The moment there is either a total refusal to pay the Special Contribution or a challenge as to the amount thereof it would clearly raise a question or dispute in respect of the Employers' Special Contribution which is payable or recoverable under the provisions of Chapter VA. The Statute, therefore, proceeds further and provides that such a question, or dispute can be agitated in two forums only noticed above. The primary forum appears to be the Employees Insurance Court where the same has been constituted and is functioning. Only in the absence of such a Court is the matter to go to a specified authority created by the Central Government in this behalf. I am hence of the view that section 73-B(1) gives jurisdiction to the Employees' Insurance Court alone if it has been constituted and exists to adjudicate upon all matters in connection with the Employers' Special Contribution under section 73-A. The view, which I take, receives support by analogy from *P. P. Works and Co. v. Union of India* (1), *East Asiatic Co. v. Regional Director, E.S.I. Corporation* (2); and *Kandaswami Weaving*

(1) A.I.R. 1956 Saurashtra 96.

(2) A.I.R. 1964 Mad. 360.

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Factory v. Regional Director, E.S.I. Corporation Madras (3). In all these three cases the matter in dispute was the liability of the principal employer to pay the special contribution. In the respective jurisdictions no Employees' Insurance Court was functioning and hence such a dispute was adjudicated upon by the authority specified by the Central Government. It follows, therefore, that if the authority has jurisdiction to adjudicate upon a matter pertaining to Special Contribution, the Employees' Insurance Court, if extant, would equally and in fact have primary jurisdiction to decide such an issue.

(5) In the alternative it appears to me that the provisions of section 75(1)(g) would equally cover the matter and give express jurisdiction to the Court in the matter of the Special Contribution. The provisions abovesaid are in the following terms:—

“75(1) if any question or dispute arises as to:—

- (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.

such question or dispute shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.”

Again the language above-said is of equally wide connotation. It gives jurisdiction to the Court in any of the matter which is in dispute between an employer and the Corporation in respect of any contribution or benefit or other dues payable or recoverable under the Act. Now it does not admit of any challenge that the “Special Contribution” is firstly well covered by the words “contribution, or benefit or other dues” and further that such special contribution is recoverable under the Act. The denial of liability by the principal employer to pay the assessed Special Contribution is thus obviously a matter of dispute between the Corporation and the Employer and

consequently would fall well within the ambit of section 75(1)(g) of the Act. Once that is so it follows that the Employees' Insurance Court would have jurisdiction to decide the same under section 75(1) of the Act.

(6) Mr. K. L. Kapur, learned counsel for the respondent, had sought to argue that when section 75(1)(g) above-said was originally enacted in 1948 the provisions of Chapter 5-A had not yet formed part of the statute. It was, therefore, sought to be contended that the contribution as referred to in section 75(1)(g) would, therefore, not include the 'Special Contribution' introduced subsequently by way of amendment and incorporated by way of Act 53 of 1951. I find myself unable to accede to this contention. When the language of the statute is comprehensive and the words "contribution or benefit or other disputes" have been used without any qualification, it would be idle to argue that the subsequent amendment which introduced the special contribution would not be covered by the words abovesaid.

(7) The Court below appears to have been influenced by the contention that Chapter V A introduced in 1951 by way of amendment was a self-contained one and hence section 75 would have no application thereto. Assuming only for a moment for the sake of argument that it may be so it has already been noticed that section 73 B contained in the same Chapter expressly gives jurisdiction to the Employees' Insurance Court to adjudicate on all issues relating to the Special Contribution by the principal employer. That apart it is an equally well-settled cannon of interpretation that a statute has to be taken and construed as a whole. I am unable to agree that Chapter 5 A stands independent and sacrosanct without being connected to or influenced by the provisions contained in the other Chapters of the Act. Merely because it has been introduced subsequently by amendment would not exclude it from being governed by the relevant provisions contained in the other parts of the statute.

(8) An argument was also sought to be sustained on the premises that the heading of Chapter VA is 'Transitory Provisions' and further a power was given to the Central Government by section 73(1) to issue notifications directing that the provisions of this Chapter would cease to have effect from a specified date. Nevertheless it deserves

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notice that Chapter VA has remained an integral part of the statute for a period of well-nigh 20 years and was incorporated in the Act only three years after its promulgation in 1948. With respect to a contrary view (which will be noticed hereafter) it appears to me that as long as this Chapter remains part and parcel of the statute and is not repealed by the legislature or withdrawn by the Central Government, its provisions have to be given full effect to. I am unable, therefore, to hold that merely because of the fact that the provisions of the Chapter have been labelled as transitory provisions would not in any way materially affect the construction to be placed on the language of its various sections.

(9) Primary reliance on behalf of the respondents in the Court below (and which weighed with it) was placed on the decision of the learned Single Judge in *G. T. R. Co. v. Certificate Officer* (4). A close persusal of the said authority, however, would show that it is at first distinguishable. In that case the employer who had filed objections before the Certificate Officer regarding the issuance and recovery therein had failed to appear at the time of the hearing before the authority and the matter was thus disposed of *ex parte* against him. An application was then made on behalf of the employers for review but this also failed. Thereafter no appeal was preferred but a resort was had to the extraordinary writ jurisdiction of the Court by the employer. It was in this context that the learned Judge made observations that the employer having unfortunately failed to appear before the Certificate Officer still had other remedies under the Bengal Public Demands Recovery Act or under the provisions of the Revenue Recovery Act. For these reasons the learned Single Judge discharged the rule. It is significant that the specific point whether the Employees Insurance Court would have jurisdiction to decide the matter under section 73 was never directly in issue in the above-said case. A reading of the judgment would specifically disclose that the attention of the learned Judge was not drawn to the provisions 75(1)(g) also did not come in for construction. The primary issue in the case thus appears to be an entirely collateral one as to whether the employer in that particular case was entitled to relief after he had been sorely remiss in pursuing his procedural remedies under the various statutes. Nevertheless it is undeniable that there are some

(4) A.I.R. 1964 Cal. 285.

observations in the judgment above-said which would lend support to the argument on behalf of the respondents. With the greatest deference to the learned Single Judge in this respect if the decision is to be interpreted to mean that the Employees Insurance Court has no jurisdiction to decide matters pertaining to Special Contribution under section 73A then I would respectfully dissent from such a view.

(10) For the foregoing reasons this appeal succeeds and is allowed. The case is remanded to the Court below for a decision on the application made by the appellants on merits.

K. S. K.

APPELLATE CIVIL

Before Gopal Singh, J.

MIAN MOHINDER SINGH,—*Appellant*

versus

PALLA SINGH,—*Respondent.*

Second Appeal from Order N. 9 of 1971.

April 30, 1971.

High Court Rules and Orders, Volume I, Chapter 1-K—Rule 4—Proceedings adjourned due to the absence of the Presiding Officer—Party to the proceedings failing to appear on the adjourned date—Such proceedings—Whether can be dismissed in default.

Held, that adjournment of a proceeding to another date under Rule 4 in Chapter 1-K of the High Court Rules and Orders, Volume I, does not imply that a party to that proceeding must appear on that date and if the party does not appear, the proceedings can be dismissed in default of appearance. Under that rule, a proceeding stands adjourned to the next date of a working day for the limited purpose of the passing of an order by the Court fixing the next date of hearing and for ascertainment of that date by the parties or their counsel. If either the parties or their counsel do not appear on the date to which a proceeding stands adjourned under Rule 4 to the next date, the Court even in the absence of appearance on behalf of the parties or their counsel on that date has got to fix another date as the date of hearing and to issue a notice to the parties or their counsel