

# EMPLOYEES STATE INSURANCE CORPORATION, BHOPAL

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[M. H. BEG, C. J., A. C. GUPTA AND P. S. KAILASAM, JJ.]

*Employees State Insurance Act (Act 34 of 1948), 1948—Sections 45A, 75(1)(c), and 75(2) and 99A—Scope of.*

Section 75(1)(c) of the Employees State Insurance Act 1948 makes it obligatory on the Insurance Court to decide "the rate of contribution payable by a principal employer in respect of any employees", if such question or dispute arises. Section 75(2) also provides that "the claim for the recovery of contributions from the principal employer" shall be decided by it.

The appellant Corporation filed five applications under s. 75 of the Employees State Insurance Act before the Insurance Court, Bhopal (Civil Judge First Class) for recovery from the respondent of employees' contributions payable under s. 39 of the Act for different periods from 27-9-1959 onwards, working out the contribution payable on an "ad hoc basis" by taking the wages at Rs. 100/- per employee per month as indicated by the Central Government by their notification SRO 224 dated 15-1-1957 issued in exercise of their powers under s. 99A of the Act. The Insurance Court disallowed the claims on the ground that the claims have been made on an "ad hoc basis". The first appeals against that order were allowed by a single Judge of the Madhya Pradesh High Court (Jabalpur Bench) relying on s. 99A of the Act and on a further notification dated 16-1-1968 issued by the Central Government under s. 99A. The Letters Patent Appeals filed by the respondent were allowed by the Division Bench which held : (1) The power of the Central Government of issuing directions is not absolute and the directions cannot be inconsistent with the Act (22). When under section 45A of the Act a special procedure is prescribed regarding the method of calculation of the employees' contribution, no notification or order can be issued by the Central Government prescribing any other method on ad hoc basis which obviously becomes inconsistent with the other provisions of the Act, namely, section 45A.

Remanding the matter to the Insurance Court, the Court,

**HELD :**

(1) The nature of the proceedings under the Employees State Insurance Act 1948 was not properly understood either by the Employees Insurance Court or by the High Court when the matter was taken before these authorities. [37D]

(2) The scheme of the Act 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 s. 44 of the Act, determine the amount of contribution on the strength of such information as it may collect, make a demand and upon refusal come up before the Insurance Court under 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. The Insurance Court is under a duty to determine the basis of calculation itself. [36F-H]

(3) The notification of the Central Government under s. 99A of the Act was intended to overcome difficulties in determining the wages of the employees. This provision cannot be availed of for the purpose of supplying a defect or overcoming a difficulty in adjudication of a dispute for which the Employees Insurance Court is given ample powers under s. 75(1)(c) and 75(2). [37A-B]

**A** CIVIL APPELLATE JURISDICTION Civil Appeals Nos. 325-329 of 1977.

(Appeals by special leave from the Judgment and Order dated 1.12.1971 of the Madhya Pradesh High Court in L.P.A. Nos. 13—17 of 1969).

**B** *L. N. Sinha, Sol. Genl. and Girish Chandra* for the appellant.

*J. P. Goyal and Shreepal Singh*, for the respondent.

The Judgment of the Court was delivered by

**C** **BEG, C.J.**—This appeal by special leave arises out of the proceedings initiated on 12.7.1961 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 27.9.1959 and 31.3.1965, which they are liable to pay under section 40 of the Act.

**D** It appears that the respondents-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.

**E** Not only as 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.

**F** 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.

**G**

**H**

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 a 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.

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.

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.

Parties will bear their own costs.

S.R.

*Appeal allowed and case remanded.*