T.V.S. Suzuki Employees' Union

vs

Regional Director, E.S.I.

Madras High Court

8 January 1998

Citations: (1999) IILLJ 766 Mad

Bench: D Raju, V Kanakaraj

JUDGMENT

D. Raju, J.

1. The above three writ appeals may be dealt with together since learned senior counsel for the appellant in all these cases made submissions in common on account of the identical nature of the issues involved for consideration.

2. The appellant in Writ Appeal No. 1685 of 1997 has filed Writ Petition No. 2578 of 1997 seeking for the issue of a writ of certiorari to quash the notification, dated December 23, 1996 published in the Gazette of India, Part II Section 3, Sub-section (i) in so far as the appellant is concerned. The appellants in Writ Appeals Nos. 20 and 21 of 1998 have also filed Writ Petitions Nos. 2584 and 2583 of 1997 respectively seeking for similar relief so far as they are concerned. The impugned notification dated December 23, 1996, has been issued in exercise of the powers of the Central Government under Section 95 of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act"), introducing several amendments of which the one with which we are concerned is in respect of Rule 3(1) of the Employees' State Insurance (Central) (Second Amendment) Rules, 1996, which have been declared to come into force from January 1, 1997. The sum and substance of the amendment is to modify rule 50 of the Employees' State Insurance (Central) Rules, 1950, and its proviso and the amendment introduced substituted the words "six thousand and five hundred" for the existing words "three thousand". Rule 50 prior to substitution provided as follows:

"50. Wage limit for coverage of employee under the Act. - The wage limit for coverage of an employee under Sub-clause (b) of Clause (9) of Section 2 of the Act shall be three thousand rupees a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed three thousand rupees a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of that period."

Consequently, by virtue of the amendment, the words "six thousand and five hundred" have to be read in all places in the rule as also the proviso. The object and role of the said rule is to provide the wage limit for coverage of an employee for the purposes of the definition clause in Section 2(9)(b) which defined the word "employee" for the purposes of the Act and the

definition operated not to include any person so employed, whose wages excluding remuneration for overtime work exceed such wages as may be prescribed by the Central Government, a month.

3. The appellants have challenged the amendment introduced enhancing the wage limit for the coverage under the Employees' State Insurance Act, 1948, and the inevitable consequence of the same being to bring under the coverage of the Act a large number of persons who until the date of the coming in to force of the amendment in question, were outside the umbrage of the Act. Mr. S. Ramasubramanian, learned senior counsel appearing for the appellants in all these cases, while reiterating the stand taken before the learned single Judge, contended that the impugned notification constituted a colourable legislation mainly intended to recover the difference in costs incurred by the Corporation for- service already rendered to the existing employees and not with the object of rendering health delivery services to the persons sought to be covered by the present impugned notification and that in substance the increase in the amount of wages for determining the coverage under the Act had been made solely with a view to augment the revenue of the Corporation to cover up the gap which had occurred in rendering the services to the employees already covered under the Act even prior to the amendment and, therefore, it constituted abuse of the rights conferred upon the rule-making authority to determine the ceiling of income or wages for coverage from time to time. Argued learned counsel further that the impugned notification practically takes away the fundamental rights of the individual citizen to make his own arrangements regarding his and his family's health in the manner decided upon by him according to his own best judgment and compulsprily thrust unwanted services of the Corporation while at the same time appropriating large amount every month towards such fanciful services. In support of the above, it was contended that the progress and improvements of infrastructure made by the Corporation since the commencement of the Act in 1948 and the availability of alternative methods of health delivery system has not been properly taken due note of and considered, and if the substandard and unsatisfactory nature of services rendered by the Employees' State Insurance Authorities is compared and contrasted with reference to the better and more effective similar services available by way of private arrangements like medical insurance, etc., the wide coverage said to be brought in by enhancing the wage limit should be held unjustified, illegal, arbitrary and unconstitutional.

4. The learned Judge, who heard and disposed of the writ petitions, was of the view that the legislation in question being a welfare legislation meant for the benefit of the workmen employed in the covered establishments, no exception could be taken to the enhancement in order to extend or widen the coverage under the Act, having regard to the real value of money and the overall commitments of the Corporation in undertaking measures and extending effective relief under the scheme to the large number of employees. While dealing with Writ Petition No. 2578 of 1997, the learned single Judge has also adverted to the fact that the validity of the notification was upheld by several other High Courts including the Karnataka High Court and that the learned Judge was in respectful agreement with the view taken by the Karnataka High Court. Learned senior counsel for the appellants apart from reiterating the contentions on merits as noticed above, also contended that the learned single Judge omitted to effectively and objectively consider the grievance as to whether the rule making power has been exercised in the case for the purpose for which it is given and not exercised for a collateral purpose, in the light of the rights secured under the Constitution. The stand taken in this connection is that the right to health is also a fundamental right secured to a citizen under the Constitution. Our attention has been invited to the decisions in Indian Express Newspapers (Bombay) Private Ltd., v. Union of India, ; Consumer Education and Research

Centre v. Union of India (1995-II-LLJ-768) (SC); Air India Statutory Corporation v. United Labour Union, (1997-I-LLJ-1113 & 1151) (SC), and the unreported judgment of a Division Bench of the Karnataka High Court in Writ Appeal No. 1436 of 1997 - Employees' State Insurance Corporation v. Workmen of ITI Limited.

In the decision reported in Indian Express Newspapers (Bombay) Private Ltd. v. Union of India (supra), strong reliance has been placed which reads as follows:

"Customs Act (52 of 1962), Section 25 -Notification under - A piece of subordinate legislation - Can be tested on question of its being unreasonable, ie., manifestly arbitrary - Subject to certain exceptions, notification is not beyond reach of administrative law - Administrative law -Administrative orders; Constitution of India, Articles 14, 226, 245."

In our view, though their Lordships of the Apex Court have laid down in the said decision the general principles on which a piece of subordinate legislation can be tested indicating at the same time that such test should be on the question of unreasonableness alone, have also specifically pointed out that such an exercise cannot be done merely on the ground that it is not reasonable or that it has not taken into account the relevant circumstances which the Court considers relevant but in the sense that it is manifestly arbitrary. That was a case wherein the validity of a notification withdrawing or modifying an exemption from duty earlier granted, resulting in an increased rate of customs duty was under challenge and the unreasonableness of the same was tested vis-vis its restriction on the fundamental rights secured under Articles 19(1)(a) of the Constitution of India for the reason that the notification withdrawing or modifying the exemption resulting in the increase of customs duty was considered to have a direct impact on the exercise of the fundamental right to freedom of speech and expression, on the peculiar circumstances of the case secured under Article 19(1)(a) of the Constitution of India. So far as the case on hand is concerned, the Employees' State Insurance Act, 1948, itself has been enacted for providing certain benefits to employees in case of sickness, maternity and "employment injury" and to make provision for certain other incidental matters in relation thereto. The very purpose of having a provision in Section 2(9)(b) of the Act to provide for the clause "employee" with reference to their wage limit for coverage under the Act to be fixed from time to time by prescription is only to keep abreast with crying needs depending upon several varying factors including the value of the money increase in wages, inflation, improvement in the infrastructure, etc., and if the Central Government has chosen to make an amendment in exercise of its undoubted powers under Section 95(1) and (2) as also the enabling power available under Section 2(9)(b) of the Act and that too after publishing the draft of the rules inviting and after taking into account and considering the representations received, representations from those concerned finalised the rules thereafter. Unless any monstrous exercise of power in gross abuse for any colourable or collateral or extraneous purpose is demonstrated on the face of it, it is not given to anyone to challenge the statutory rules as if a challenge could be directed against an administrative order to deny the rule-making authority of the discretion and the right to review the situation and provide for the actual requirements depending upon exigencies of the time from time to time as also to reconsider the need for widening the scope of coverage under the Act to make the scheme framed under the Employees' Provident Funds Act an effective one by extending the required benefits and services to all those required to be provided with under the scheme. In our view, the general principles enunciated in the decision in Indian Express Newspapers (Bombay) Private Ltd. v. Union of India, (supra), do not in any way undermine the competency of the rule-making authority in this regard to make the amendment providing for an enhanced wage limit, so as to bring within the scope of the Act and the Scheme made

thereunder, a large number of persons, as long as the rules or regulations in question fall within the scope of the rule or regulation making power conferred under the Act.

6. The decision of the Division Bench of the Karnataka High Court has exhaustively considered the case-law on the subject including the decision in Indian Express Newspapers (Bombay) Private Ltd. v. Union of India, (supra), and upheld the validity of the impugned notification. We have gone through the decision of the Karnataka High Court particularly the various factual materials noticed therein, the consideration undertaken and the conclusions arrived at and we are in respectful agreement with the same and in our view the reason assigned by the Division Bench of the Karnataka High Court in Paragraphs 10.1 to 12.5 of the unreported judgment to sustain the validity of the impugned notification are well merited and have our concurrence too.

7. The challenge made to the notification on the basis of a claim that the amendment introduced impinges upon the fundamental right to health secured to a citizen/employee does not appeal to us for our acceptance. In our view, the observations in the decision in Consumer Education and Research Centre v. Union of India, (supra), are sought to be taken out of their context for reliance to claim a right in a different context altogether. The emphasis made therein that the health and strength of the worker is an integral facet of right to life and the denial thereof denudes the workman the finer facets of life, violating Article 21 of the Constitution declared in the context of securing to them better conditions of service cannot be used for the purpose of challenging a scheme envisaged to extend really and effectively proper medical care and health conditions, extending medical facilities to protect the health of the workers to keep physically fit and mentally alert, for leading a successful life, economically, socially and culturally. The consideration of these aspects by the learned Judges of the Karnataka High Court in paragraphs 7.1 to 7.7 and the conclusion arrived at by them are acceptable to us and we have our respectful agreement with the same.

8. In our view, the Act as also the Scheme framed thereunder has been accepted and upheld by the Courts in our country to be welfare-oriented and in the best interests of the employees to make the life of the worker meaningful and livable with human dignity. Social justice has been held to be not a simple or single idea of society but is an essential part of complex social change to relieve the poor, etc., from handicaps, penury to ward off distress and to make their life livable, for greater good of the society at large and in other words, the aim of social justice is said to be to attain substantial degree of social, economic and political equality. In judging the requirements of social justice and the utility of the welfare schemes formulated and enforced by the State, individual likes or dislikes or choice has no place whatsoever and what is required to be considered is the overall needs and calls of the society for whose benefit the scheme is envisaged for being enforced. If these aspects are kept in the background of the consideration, in our view, the charge that the widening of the coverage by enhancing the wage limit is for the collateral purpose of augmenting the resources or revenue of the Corporation cannot be countenanced at all. The formulation as also the perpetuation of a scheme and revising the policy from time to time to keep it abreast with the needs and requirements of the crying trends in the society to make the scheme effectively workable as also economically viable is as much essential as the formulation of the scheme itself. Consequently, merely because one of the objects proclaimed, even if it be to augment the resources of the Corporation, it should not be overlooked, that such augmentation is to make the scheme effectively workable and economically viable and such a move can, by no stretch of imagination, be castigated as being one for collateral purposes or for the benefit of the Corporation. Therefore, we do not see any merit whatsoever in the challenge made to the

statutory amendment introduced under the notification under challenge. The writ appeals, therefore, fail and shall stand dismissed. C.M.P. Nos. 18999 of 1997, 185 and 186 of 1998 are dismissed.