*Before Dr. Sarojnei Saksena, J.*

M/S NARULA ENTERPRISES,—*Appellant.*

*versus*

THE EMPLOYEES' STATE INSURANCE CORPORATION AND OTHERS,—*Respondents.*

*FAO No.* 176 *of* 80.

19th November, 1996.

*Employees' State Insurance Act,* 1948—*Ss.* 39, 40, 75(*i*) (*g*) & 82(2)—*Employees' State Insurance (General) Regulations,* 1950—*Reg.* 10(*B*)—*Liability to deposit contribution arises from date of applicability of Act—Employer is under statutory obligation to make deductions and contributions—Delay of Corporation in issuing code number will not absolve prior liability and payment of interest for the back period—Plea that certain employees have left service is no ground to exempt employer from depositing contributions.*

*Held,* that the respondent-Corporation allotted a code number to the applicant-appellant on April 12, 1978, but under its garb the applicant-appellant cannot get itself absolved from its liability to deposit employer's as well as employees' contributions from December 1, 1975, to April, 1978. In this case the respondent-Corporation gave a demand notice on April 16, 1978, demanding deposit of contribution for the aforesaid period. But in my considered view, even without receiving the demand notice the applicant-appellant was under a statutory duty to deposit the employer's as well as employees' contribution under Sections 39 & 40 of the Act with the Corporation. Code number is allotted to a factory or establishment to facilitate, to locate their correspondence as well as documents, but neither the Act nor the Regulations provide that till code number is not allotted to the factory/establishment, it is not under any statutory obligation to deposit employer's as well as employees' contribution under the Act.

(Para 19)

Ramesh Kunar, Advocate, *for the Appellant.*

H. N. Mehtani, Advocate, *for the Respondent.*

JUDGMENT

*Dr. (Mrs.) Sarojnei Saksena, J.*

(1) Applicant-appellant has filed this appeal under section 82(2) of the Employees' State Insurance Act, 1948 (in short, the Act) against

the impugned order dated January 14, 1990, whereby its petition filed under section 75(i) (g) of the Act was dismissed.

(2) Brief resume of the facts of the case is that the applicant-appellant started running its establishment from December 1, 1975. As more than 30 persons were working in this establishment applicant-appellant sent a letter on January 15, 1976, to the respondent-Corporation to give it a code number, so that necessary contributions under the Act may be deposited with the Corporation. Thereafter several reminders were also sent to the Corporation but code number was issued to the applicant-appellant by the Corporation on April 12, 1978. On April 16, 1978, the respondent-corporation sent the demand notice specifying that the applicant-appellant has not deposited the employer's as well as employees' contributions under the Act from December 1, 1975, to April 1978, which comes to Rs. 16,256.75 paise. On receiving this demand notice the applicant-appellant resisted the claim on the ground that since no code number was allotted to the applicant-appellant under the Act; it was not under any statutory obligation to deposit/pay contributions on its own behalf and on behalf of its employees. The applicant-appellant filed an application under section 75(1) (g) of the Act claiming that the demand notice be waived as after the allotment of the code number, the applicant-appellant is regularly depositing/paying the contributions as per the provisions of the Act. It was also objected that the Corporation cannot raise a demand for the arrears of contribution from the back date.

(3) The respondent-Corporation filed its reply and resisted the petition on various grounds, which are not relevant for the decision of this appeal. It admitted that code number was allotted to the applicant-appellant on April 12, 1978, but it was pleaded that as the applicant did not furnish *hadbast* number to the Corporation, the code number was not allotted to the applicant-appellant. It was also denied that the Corporation cannot raise a demand for arrears of contribution from back date.

(4) Issues were framed. Parties examined their witnesses.

(5) The Insurance Court scanned the evidence and held that as *hadbast* number was not furnished by the applicant-appellant to the respondent-Corporation, the Corporation could not allot code number to the applicant-appellant. Since it is an admitted fact that the applicant was running its establishment with 30 employees from December 1, 1975, it was covered under the provisions of the Act as

the applicant-appellant itself sent a letter to the Corporation on January 15, 1976 to allot it a code number. Hence the Corporation was within its statutory rights to claim contributions not only on behalf of the employer but also on behalf of the employees from December 1, 1975, to April 1978, which were not deposited by the applicant-appellant. Hence the Court held that the Corporation was entitled to claim these arrears of contribution for the aforementioned period. Thus, the petition was rejected.

(6) The applicant-appellant's learned counsel strongly stressed that in view of regulation 10-B of the Employees' State Insurance (General) Regulations, 1950 (in short, the Regulations) as soon as a factory or establishment furnishes employer's registration form to the appropriate Regional Office, the appropriate Regional Office shall allot to it an employer's code number and shall inform the employer of that number. If this code number is allotted to the employer, the employer is required to enter this code number on all documents prepared or completed by him in accordance with the Act, the rules and these regulations and in all correspondence with the appropriate office. He argued that on January 15, 1976, the applicant-appellant sent a letter to the respondent-Corporation to allot a code number to the applicant-appellant. Despite sending various reminders thereafter, the respondent-Corporation failed to allot code number to the applicant till April, 12 1978. Hence till April 12, 1978, the applicant-appellant was not in a position to deposit the contributions under the Act with the respondent-Corporation. Therefore, his witness has admitted on oath that initially deductions were made from the employees wages as employees' contribution but later on it was discontinued as code number was not allotted to the applicant-appellant and hence the applicant was not in a position to deposit employer's contribution as well as employees' contribution with the respondent-Corporation.

(7) The appellant's learned counsel also submitted that immediately after four days of the allotment of the code number the respondent-Corporation sent a demand notice on April 16, 1978, claiming employer's as well as employees' contributions from December 1, 1975, to April 1978. Relying on *K. R. Subbaier* v. *The Regional Provident Fund Commissioner* (1), the learned counsel argued that the respondent exceeded its jurisdiction in demanding

(1) A.I.R. 1963 Madras 112,

the deposit of the employer's as well as employees' contribution under the Act for the aforesaid back period.

(8) The appellant's learned counsel also submitted that during that period as no code number was allotted to the applicant-appellant, it did not deduct employees' contributions from their wages. The employees who were working with during that period are no more working with the applicant-appellant. Thus, now the applicant-appellant cannot deduct employees' contribution from the wages of those employees who have already left its employment.

(9) The respondent's learned counsel contended that no doubt code number was allotted to the applicant-appellant on April 12, 1978, but right from the first day when the applicant-appellant started its business and gave a notice to the Corporation on January 15, 1976, admitting that the provisions of the Act are applicable to it, it was under a statutory duty to deduct employees' contribution and to deposit employer's contribution as well as employees' contribution with the respondent Corporation. The deposit was to be made in the bank, which could have been done even without allotment of the code number. As the applicant-appellant sent a letter on January 15, 1976, seeking allotment of code number and thereafter was sending reminders also to the Corporation, the applicant-appellant could also have informed the Corporation that it has deposited employer's as well as employees' contribution in the bank, to be paid to the Corporation. Since it failed in its statutory duty, the Corporation was entitled to demand these contributions for the period from December 1, 1975, to April 1978.

(10) No doubt, under regulation 10-B of the Regulations every factory or establishment is liable to furnish to the appropriate Regional Office not later than 15 days after the Act becomes applicable to it, employer's registration form. On receiving this form under its clause (d) the appropriate Regional Office is required to allot to the factory or establishment an employer's code number, which is required to be mentioned on all the correspondence and documents etc. by the factory/establishment. Regulation 11 of the said Regulations also enshrines that every such employer of a factory or an establishment shall require every employee working therein to submit a declaration form. Thereafter the employer is required to send those declaration forms to the appropriate office of the Corporation. On receiving such declaration forms the appropriate office of the Corporation is required to allot insurance number to each person in respect of whom the declaration form has been received by it. The

appropriate office is also required to issue identity cards prepared in Form 4 to each person in respect of whom the insurance number is allotted and shall send all such identity cards to the employer. Regulation 17-A further provides that if an insured person happens to need medical care before the temporary identification certificate is issued to him, the employer shall issue a certificate of employment in such form as may be specified by the Director-Gentral to such person on demand. Such certificate shall also be issued on demand if an insured person loses his Temporary Identification Certificate before the receipt of identity person Card.

(11) Under sections 39 and 40 of the Act, the primary liability is that of the establishment/factory to pay not only the employer's contribution but also the employees' contribution. From these statutory provisions it is clear that from out of the common fund maintained under section 26 of the Act, the employees derive various benefits like sickness, maternity, disablement, injury, medical treatment for and attendance on insured persons. Therefore, it is a beneficial piece of social legislation.

(12) The real point in controversy in this appeal is whether the employer is not liable to deduct employees' contribution from their wages and to deposit employer's and employees' contribution, to be paid to the Corporation unless code number is allotted to the factory/establishment ? Another ancilliary question is whether the Corporation officers are entitled to raise a demand of the back period. No doubt, in *K. R. Subbaier's* case (supra) it is held that "on a proper consepectus of the entire provisions of the Act and the scheme I have no doubt that the Regional Provident Fund Commissioner exceeded his jurisdiction in calling upon the petitioner to make demands for the past from 1952 upto 1957." In that case a learned Single Judge of Madras High Court was interpreting the provisions of the Employees Provident Funds Act, 1952, and the scheme framed thereunder. The learned Judge has mentioned that the petitioner's establishment or undertaking remained undiscovered between the years 1952 and 1957. The petitioner never admitted that the Act was applicable to its bosiness or establishment, and even after receipt of the notice, resisted the application of the Act. On this count also this judgment is distinguishable on facts, because in this case within 15 days of the starting of the business, the applicant-appellant sent a letter on January 15, 1976, to the respondent-Corporation admitting that it is covered under the provisions of the Act and, therefore, a code number be allotted to it. In *K. R. Subbaier's* case,

the learned Judge has also referred to various provisions of that Act and has observed that the gist of these provisions is such as to make them operative only and from the point of time when the Authorities hold that a particular unit is within the ambit of the Act and make a consequential demand in terms of the Act and the scheme framed thereunder.

(13) Various other High Courts as well as Apex Court also considered this contention. In *Regional Director of Employees' State Insurance Corporation* v. *Amalgamation Repco Limited* (2), a Single Bench of Madras High Court has considered the provisions of this Act and has held that the management is liable to contribute on its own accord under section 39 of the Act and such payment is not made conditional on any demand by the Corporation.

(14) In *Employees State Insurance Corporation* v. *T. C. Vermani* (3), *G. C. Mital, J.* (as he then was) also considered the provisions of section 40 of the Act and held that "there is no provision under the Act which enjoins a duty on the Corporation to keep on informing the factory owners that they are covered by the Act. The Corporation is not adviser to the employer and, in fact, a duty is enjoined on the principal employer of the factory the moment it stands covered by the provisions of the Act and for that matter to deduct the employees contributions from their pay and send the same to the Corporation along with the employer's contribution. If the employer fails to deduct the employees contribution, no fault can be found with the Corporation as section 40 of the Act places its responsibility to pay the contribution on the principal employer. As such the contribution is to be made by the employer from the date on which the factory comes under the provisions of the Act and not from the date of demand from the Corporation".

(15) A Division Bench of Kerala High Court in *Regional Director ESI Corporation* v. *Fashion Fabrics* (4), also considered the provisions of section 38 of the Act and held that the circumstance that it was not detected at the appropriate time by the Corporation that the establishment was liable to pay contribution, will not absolve the employer from its liability to pay contribution.

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(2) 1982 Lab. I.C. 1691.

(3) K.L.R. (1985) 1 Punjab & Haryana 94.

(4) 1990 (2) K.L.T. 713.

(16) In *M/s Bombay Ammonia Pvt. Ltd* v. *Employees State Insurance Corporation and others* (5), Delhi High Court considered the provisions of sections 39, 45-B and 37-D of the Act and held that it is incumbent upon the employer to pay up the contribution as covered by the Act, on their own, and their liability would not depend on the fact as to whether they had recovered this amount from the employees or not. This will be more so, after notice has been served that they are covered by the Act, and are asked to submit themselves to the provisions of the Act. If, in spite of that, they have not effected any recoveries from their employees, they have themselves to blame and their liability will not be affected *qua* the department.

(17) It is further observed "Section 39 of the Act defines the contribution as to cover the contribution payable both by the employee as well as the employer, and under sub-section (4) the contribution is payable by the end of each week. The liability of the employer has been made clear beyond doubt by section 40 by laying down that the principal liability for contribution in the first instance shall be of the employer with the implication that whether the employee made his contribution or not, and whether the employer had called upon the employee to make that contribution or not; in so far as the Authorities under the Act are concerned; the principal employer is liable for the entire contribution, once it is shown that the Act is applicable to that employer.

(18) In *Employees State Insurance Corporation* v. *M/s Hotel Kalpaka International* (6), the Apex Court considered the facts that the respondent establishment was made liable to pay contributions under the Act under section 40 from October 11, 1985, to March 31, 1988, as the establishment was closed on March 31, 1988. The moot point for consideration was whether the demand for contribution could be enforced against a closed business. The Apex Court held :—

> "From the above provisions it is clear that from the date of his commencement of business, namely, 11th July, 1985 there was a liability to contribute. It has already been seen under section 40, the primary liability is his, to pay,

(5) 1991 Lab. I.C. 1893.
(6) J.T. 1993 (1) S.C. 139.

not only the employer's contribution but also the employees' contribution. Therefore, he cannot be heard to contend that since he had not deducted the employees contribution on the wages of the employees, he could not be made liable for the same. The object of making a deeming entrustment sub-section (4) of section 40 will be altogether rendered negatory if such a contention were to be accepted. After all when he makes employees contribution he is entitled to deduct from the wages. Therefore, by force of the application of the statutory provisions, the liability to contribute, during this relevant period, namely, 11th July, 1985 to 31st March, 1988 arose. There is no gainsaying in that."

The Apex Court further observed that "it is equally fallacious to conclude that because the employees had gone away, there is no liability to contibute. It has to be carefully remembered that the liability to contribute arose from the date of commencement of the establishment and is a continuing liability till the closure. The very object of establishing a common fund under section 26 for the benefit of all the employees will again be thwarted if such a construction is put."

(19) Thus, in my considered view, no doubt, the respondent-Corporation allotted a code number to the applicant-appellant on April 12, 1978, but under its garb the applicant-appellant cannot get itself absolved from its liability to deposit employer's as well as employees' contributions from December 1, 1975, to April 1978. In this case the respondent-Corporation gave a demand notice on April 16, 1978, demanding deposit of contribution for the aforesaid period. But in my consdered view, even without receiving the demand notice the applicant-appellant was under a statutory duty to deposit the employer's as well as employees' contribution under sections 39 and 40 of the Act with the Corporation. Code number is allotted to a factory or establishment to facilitate, to locate their correspondence as well as documents, but neither the Act nor the Regulations provide that till code number is not allotted to the factory/establishment, it is not under any statutory obligation to deposit employer's as well as employees' contribution under the Act.

(20) Even for argument's sake if it is to be observed that till the applicant-appellant received the demand notice dated April 16, 1978, as it has not deposited the employer's as well as employees' contribution under the Act, it has not incurred any liability to pay any

interest thereon, it positively incurred that liability by not depositing these contributions from December 1, 1975, to April 1978 immediately after receiving the demand notice. If earlier, as its witness has admitted, the applicant-appellant was deducting employees' contribution from their wages, which was later on discontinued, immediately after receiving the demand notice the applicant-appellant should have deposited these contributions under the Act from December 1, 1975, the day it started its business. Since even after receiving the demand notice, it has failed to deposit these contributions under the Act and further has filed the petition under section 75 of the Act, disputing its liability to pay these contributions from December 1, 1975, till April 1978, it cannot seek the discretionary relief of the Court so far as the payment of interest is concerned. Under the Act as well as under the Regulations if the employer fails to deposit employer's as well as employees' contribution under the Act within the statutory time, it is liable to pay interest. Therefore, the Corporation is also demanding interest on the amount of Rs. 16,256.75 paise, the amount of contribution under the Act for the aforesaid period.

(21) The appellant's learned counsel has submitted that by now most of the employees who were working with the applicant-appellant during the period December 1975 to April 1978 have left its employment and as during that period it has not deducted employees' contribution from their wages, it is now helpless in depositing those contributions with the Corporation.

(22) Even this argument is fallacious and cannot be accepted. This Act is a piece of social legislation and is enacted for the benefit of employees. If such a plea is accepted, it would not promote the scheme and could be used as a handy lever by such employers in not depositing employees' contribution at the relevant time and after lapse of few years to say that now since those employees have left its employment, it should not be made liable to pay their contribution for the period. If this plea is accepted, it will make the provisions of the Act negatory.

(23) Accordingly, finding no merit in this appeal, it is hereby dismissed.

*R.N.R.*