
(2015) 03 JH CK 0034
In the Jharkhand High Court
Case No : M.A. No. 329 of 2006

Anapol Security and Investigation Services	APPELLANT
Vs	
The E.S.I. Corporation and Others	RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Employees State Insurance Act, 1948 — Section 4, 45-A, 45-A(1), 7, 75(1)a

Citation : (2015) 2 AJR 480 : (2015) 146 FLR 116 : (2015) 3 JLJR 142 : (2015) LabIC 2385

Hon'ble Judges : Dhruv Narayan Upadhyay, J.

Bench : Single Bench

Advocate : Saurav Arun, for the Appellant; Ashutosh Anand, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dhruv Narayan Upadhyay, J.—This appeal has been preferred against the judgment dated 15th July, 2006 passed by Presiding Officer-cum-E.S.I. Court, Ranchi in connection with E.S.I. Case No. 14 of 2002, whereby petition filed by the appellant under Section 75(1)a and g of the Employees' State Insurance Act, 1948 (hereinafter to be referred as "Act") has been dismissed and order dated 11th February, 2002 passed by the Deputy Director, E.S.I. Corporation under Section 45-A has been held legal and enforceable.

2. The case of the appellant, in brief, is that the appellant is registered under Bihar Shops and Establishment Act and it provides security services and private investigation. It is contended that number of employees in the establishment had never been more than ten, but the appellant in order to provide benefit to its employees and to get coverage under the Act has voluntarily applied for its registration with E.S.I. Corporation and agreed to abide by the Act and Rules envisaged under the Act. The appellant had been regularly depositing employees' contribution as well as contribution to be paid by the employer and returns were duly filed. Due to absence of staff, who had been dealing with the

matter, contribution for the period from 1st September, 1995 to 31st March, 1996 and from 1st August, 1996 to 31st July, 1998 had not been deposited inadvertently. Further plea has been taken that numbers of employees at the relevant point of time were below ten and this fact was not taken note of by the respondents.

3. The Respondent-Deputy Director, E.S.I. Corporation, issued a notice dated 20th August, 1998 under Form-C 18, fixing date of personal appearance of the appellant on 24th September, 1998. It was submitted that no such notice was ever served upon the appellant and, therefore, it could not appear before the authority on 24th September, 1998.

4. The appellant wrote several letters, including the letters dated 23rd June, 2002 and 4th April, 2002, requesting the respondents for supply of copy of notice dated 20th August, 1998, but the Corporation and the Deputy Director did not respond. Thereafter, the appellant's authorized representative visited the office of the Regional Director for ascertaining the particulars and after computing the contribution to be paid by the employees and employer deposited the required amount even without deducting the employees' contribution for the period under dispute. The payments so made were communicated vide letter dated 17th September, 2002, but prior to that the Deputy Director, E.S.I. Corporation arbitrarily assessed the contribution amount and passed an order under Section 45-A of the Act on 11th February, 2002. The correspondences made by the appellant were kept in abeyance.

5. The Deputy Director further referred the matter to the Recovery Officer for initiation of recovery proceeding for a sum of Rs. 1,05,477/- plus interest to the extent of Rs. 70,485/-calculated up to 1st January, 2002. It was further pointed out that despite payment of contribution on 14th September, 2002, the Recovery Officer issued warrant of arrest on 12th September, 2002, directing the Superintendent of Police, Ranchi to arrest the proprietress of The Anapol Security and Investigation Services.

6. The appellant has challenged the legality of the order passed under Section 45-A, inter alia, on the ground that under the provisions of Section 45-A(1) Corporation was bound to give reasonable opportunity of hearing to the appellant and notice dated 20th August, 1998 was never received by the appellant. Repeated requests were made for supply of copy of the said notice, but the Corporation had not given any heed to those requests. Without giving reasonable opportunity of hearing, the order passed under Section 45-A is arbitrary in nature and that need to be set aside. It was submitted that the Deputy Director was not authorized to pass order under Section 45-A of the Act and on that score alone the order dated 11th February, 2002 is liable to be set aside.

7. Learned counsel has relied upon the judgment rendered in the case of National Seeds Corporation Ltd. Vs. M. Madhusudhan Reddy and Another, . In course of argument, learned counsel submitted that prior to the period under

dispute and also thereafter, the appellant has deposited the required contribution and filed return thereof. The details of calculation for arriving at Rs. 1,05,477/- and interest calculated thereon appears to be vague in the order dated 11th February, 2002.

8. Learned E.S.I. Court has failed to consider the documents and evidence produced/adduced by the appellant. Learned Presiding Officer has wrongly discussed the salary sheet and attendance register and has committed error in holding that those documents are contradictory in nature. As a matter of fact, the employees, who were ex. service men, are exempted from making contribution under the Act and they are not covered under the Act.

9. It was submitted that the impugned order passed by the learned Presiding Officer, E.S.I. Court at Ranchi is highly erroneous, illegal and liable to be set aside.

10. On the other hand, learned counsel for the respondents has submitted that the appellant itself had applied for its registration with E.S.I. Corporation for providing benefit and coverage to its employees and for that Form-01 was filled up and numbers of employees have been shown more than ten.

11. It is admitted case of the appellant that they did not deposit the contribution of the employees as well as contribution to be paid by the employer for the period from 1st September, 1995 to 31st March, 1996 and 1st August, 1996 to 31st July, 1998. When this fact came to the notice of the respondents, a notice under Form-C 18 dated 20th August, 1998 was issued under registered cover. Since notice so issued did not return unserved, the presumption would be that it was duly served.

12. By filing a supplementary affidavit on 3rd December, 2014, vide Annexure-C, it was brought to the notice of this Court that vide Memo No. 7124, notice dated 20th August, 1998 was sent through registered post and xerox copy of the registry receipt has also been annexed. It was submitted that notice dated 20th August, 1998 was duly filled and it was under Form-C 18. The appellant was given opportunity to appear in person for hearing on 24th September, 1998, but they did not appear.

13. Since the appellant did not put its appearance, the Deputy Director, E.S.I. Corporation passed the impugned order on 11th February, 2002 under Section 45-A of the Act, directing the appellant to deposit required contribution with interest. After passing the aforesaid order, the appellant started making correspondences, but failed to prove that those letters were received by the Corporation.

14. It was further pointed out that the appellant has taken a plea that the firm had deposited required contribution of the employees and employer prior to the period under dispute and also after the period under dispute but failed to prove those documents before the E.S.I. Court.

15. Learned counsel for the appellant has vehemently argued that the Deputy Regional Director had no authority to pass order under Section 45-A of the Act. In reply to that the respondents filed Annexure-B with supplementary affidavit dated 3rd December, 2014, xerox copy of the extract of the Gazette of India Notification No. 29 dated 29th July, 1991, Part-III, Section 4 and the resolution taken includes the Deputy Regional Director to pass order under Section 45-A of the Act and Rule 48 thereof. As a matter of fact, this resolution was not brought before the Court on earlier occasion and, therefore, some orders had been passed in favour of these litigants.

16. Last but not least it was submitted that reasonable opportunity was given to the appellant to put his stand by appearing before the authority on 24th September, 1998, but no one appeared.

17. The order dated 11th February, 2002 by which order under Section 45-A of the Act was passed was also communicated, but the appellant instead of depositing the contribution amount had chosen to prefer an application before the E.S.I. Court under Section 75(1)a and g of the Act. Learned Presiding Officer, E.S.I. Court, Ranchi has elaborately discussed the evidence adduced from both sides and dealt with documents, marked as exhibits. The points raised by the parties have properly been considered and, therefore, the impugned order needs no interference and the appeal is liable to be dismissed.

18. I have gone through the impugned order as well as the documents and evidences available on record. Learned E.S.I. Court on the basis of pleadings of the parties framed following issues:--

"(i) Whether the applicant has paid the contribution amount for the period from September, 1995 to March, 1996 and August, 1996 to July, 1998?

(ii) Whether the impugned order under Section 45-A is barred by limitation?

(iii) Whether the impugned order under Section 45-A is in contravention of law and against the provision of the Act?"

19. The appellant has mainly assailed the impugned order on the ground that the documents furnished by the appellant have not properly been considered. The contributions calculated by the respondents are beyond the record and the same have not properly been indicated in the impugned order. The numbers of employees for the period under dispute were less than ten and that was shown in the salary sheets, which have also been proved and marked as exhibits, but the same were not properly considered and the Court has wrongly held that attendance register and salary sheet are not consistent. As a matter of fact, the appellant had filed challans, showing deposit of contributions, but those challans were also not taken note of and the Court has disbelieved those challans and salary sheet only on the ground that books of account maintained by the appellant have not been produced.

20. From perusal of Paragraph 5 of the impugned order, it is evident that the

Court has discussed the documents and evidences brought on record by the parties concerned. It is not disputed that employees' and employers' contributions for the period under dispute were not deposited prior to the passing of the order dated 11th February, 2002. However, when the impugned order came to the notice, the appellant had become concerned over the matter and had started taking steps to justify the mistake.

21. The appellant had calculated the contribution amount to be deducted from the salary of employees and contribution to be paid by the employer and deposited the same through challans and then wrote letters to the Corporation, informing that required contribution had already been paid.

22. The discussion made by the learned E.S.I. Court in the impugned order and the admission of the appellant go to show that numbers of employees shown in Form-01 are 20 (twenty). The appellant has tried to bring on record by proving salary sheets for the said period that numbers of employees were only six or seven i.e. below ten. The attendance register, which was brought on record, was showing numbers of employees as twelve for the relevant period. The appellant was given opportunity to bring books of account on record, but they failed to do so and it was held that records of the employees were not maintained as per Regulation 32 of the Act. At this juncture, a plea was taken that the retired police personnel as well as ex. service men are exempted from being covered under the Act and that was the reason for inconsistency in these two documents i.e. attendance register and salary sheet.

23. From perusal of the record, I do not find that names of those retired police personnel or ex. service men employed by the appellant had ever been shown either in the attendance register or in the salary sheet. Since no books of account was brought on record, the plea taken by the appellant stood unsubstantiated. Learned E.S.I. Court has discussed all the points raised by the parties under Issue No. 1 in Paragraph 5 of the impugned order and, therefore, argument advanced by the appellant is not acceptable.

24. The next point raised by the appellant is that no reasonable opportunity was given and the respondents have failed to prove that notice issued under Form-C 18 was served upon the appellant. In course of argument, one more point was taken that the Deputy Director has no authority to pass order under Section 45-A of the Act, although it was not pleaded before the court below.

25. The respondents have filed supplementary affidavit on 3rd December, 2014 enclosing extract of Gazette Notification No. 29 dated 29th July, 1991, Part-III, Section 4, as Annexure-B, under which resolution taken under the Act has been indicated.

26. Since the appellant has raised legal question to be answered and also referred certain judgment, I feel it necessary to bring the resolution notified on record and the resolution under Notification No. 29 dated 29th July, 1991, Part-III, Section 4, reads as under:--

"The 28th June, 1991-No. T-11/13/3/90-Ins.III:- The Employees" State Insurance Corporation at its meeting held on 6-3-91 adopted the following Resolution, which is published for information of all concerned:--

RESOLUTION

"In supersession of earlier Resolution dated 14.12.1990, it is resolved that the powers of the Corporation under section 45-A to determine by order the amount of contributions payable shall be exercised:--

(i) By the Director General, Insurance Commissioner and a Joint Insurance Commissioner in respect of a factory/ establishment situated anywhere in India;

(ii) By a Regional Director in respect of a factory/ establishment situated within his Region;

(iii) By a Director/Joint Regional Director/Joint Regional Director In-charge/Dy. Regional Director and Assistant Regional Director in respect of a factory/ establishment situated within the area in his charge/in his Region/sub-Region."

Authenticated under sec. 7 of the ESI Act, 1948 (as amended).

No. T-11/19/1/90-Ins.III- It is notified for general information that the ESI Corporation at its meeting held on 6.3.91 has decided to further delegate powers to levy and recover damages from the employers under Section 85-B of the ESI Act to other officers of the Corporation in addition to the officers in the Corporation Resolution as published under Notification No. N-4/13/2/82-Ins.III dated 29.4.83 in Part-III, Section 4 of the Gazette of India of May, 14, 1983 as under:--

"Further resolved that the powers to levy and recover damages from the employer(s) under Sec. 85(B) of the ESI Act, 1948 as amended may also be exercised by the Joint Regional Director In-charge of Sub-Regional Office in addition to the officers authorized in the Corporation's Resolution dated 19.2.83". Sd/- Smt. KUSUM PRASAD DIRECTOR GENERAL"

27. In view of the above resolution, it is clear that the Deputy Director of the Corporation for the said reason has been given authority to pass order under Section 45-A of the Act. In this context, argument was advanced that the Deputy Director was not having jurisdiction for Ranchi Region to pass order. Learned counsel for the respondents has made it clear that at the relevant point of time, no separate region for Ranchi was created and it was controlled and governed by Patna and, therefore, the argument advanced by counsel for the appellant has no legs to stand.

28. Counsel for the appellant has given much stress on the point of giving reasonable opportunity and it was pleaded that notice dated 20th August, 1998 was not received by the Concern. The respondents have also brought on record the copies of dispatch register and postal receipts vide Annexure-C to the supplementary affidavit dated 3rd December, 2014. The notice so issued under

Form-C 18 was not returned undelivered. It was also contended that only one date was given for appearance to the appellant and the impugned order was passed after three years.

29. Learned E.S.I. Court has discussed the issue and I am also of the view that the appellant was under statutory obligation to deposit contributions of the employees as well as employer and the establishment was supposed to file periodical return. The appellant has admitted the fact that inadvertently contributions for the period under dispute were not deposited. It was submitted that prior to the period under dispute and after the period under dispute, the appellant had been regularly depositing contributions with the Corporation, but no such document has been proved. Learned E.S.I. Court has elaborately discussed the documents and evidences under Issue No. 1 in Paragraph-5 of the impugned order. No books of account was produced. Contradiction in respect of numbers of employees is apparent between two documents i.e. attendance register and salary sheet. The fact that the establishment of the appellant was having 20 employees at the time of its registration is also admitted. If numbers of employees were less than ten, the return should have been filed and contributions so deducted and deposited should have been shown, but the appellant has failed to prove all these facts.

30. In view of the above, I do not find that the impugned order passed by the learned Presiding Officer, Labour Court-cum-E.S.I. Court, Ranchi needs any interference. This appeal has no merit and the same stands dismissed.