
(1994) 01 RAJ CK 0043
In the Rajasthan High Court
Case No : C.M.A. No. 244 of 1987

Baijoo Sales

APPELLANT

Vs

Regl. Dir., ESIC and Another

RESPONDENT

Date of Decision : 04-01-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 82

Citation : (1994) 68 FLR 977 : (1994) 2 LLJ 683

Hon'ble Judges : S.C. Agrawal, C.J

Bench : Single Bench

Advocate : R.K. Kala, for the Appellant;

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—This appeal, u/s 82 of the Employees' State Insurance Act, 1948, has been filed by M/s. Baijoo Sales, Jaipur against the order of the Judge, Employees State Insurance Court, Jaipur dated May 12, 1987 rejecting the application filed by the appellant.

2. The brief facts of the case are these. The appellant-M/s. Baijoo Sales, Jobner Bagh, State Road, Jaipur was engaged in the work of wood cutting, wood planing and wood drilling. The factory of the appellant was inspected by the respondent No. 1. He prepared his Inspection Report dt. August 29, 1982. As per his report, he was of the view that the appellant-establishment came to be covered with effect from August 20, 1982 by the Employees' State Insurance Act, 1948 (hereinafter to be referred as "the Act"). The appellant contested the coverage by the letter dt. August 30, 1984. The respondent No. 1 -The Regional Director, Employees State Insurance Corporation, Jaipur, without taking care of the protest made by the appellant, issued a draft order dated August 31, 1984. It was also contested by the appellant-establishment vide letter dated September 8, 1984. On September 24, 1984, the respondent No.1 issued to the appellant-establishment a notice calling upon the appellant establishment to show cause as to why it should not be prosecuted u/s 85 of the Act with regard to non-payment

of contributor for the period from March 31, 1984 to July 31, 1984. Thereafter, the appellant filed an application u/s 75(1)(g) of the Act praying that it be declared that the appellant establishment was not covered under the Act. The respondent No. 1 be restrained from effecting the recovery of the amount of contribution as determined on ad hoc basis u/s 45A of the Act as also from launching prosecution against the appellant-establishment. The respondent No. 1 alleged that the Inspector visited the factory of the appellant establishment on August 20, 1982 and August 21, 1982. The Inspector obtained the Employers Registration Form 01 in the names of M/s. Baijoo Furnitures and M/s. Baijoo Sales. It was found at the time of inspection that 9 persons were employed for wages in M/s. Baijoo Sales and 13 persons in M/s. Baijoo Furnitures. Both these firms carry on their business in one and the same premises which has one main gate. Both these firms were controlled by Shri Bhanwar Lal Sharma.

3. Both the parties adduced evidence in support of their respective cases.

On the pleadings of the parties, the following three issues were framed by the Employees State Insurance Court:-

"(1) Whether the applicant-factory is not coverable under the ESI act.

(2) Whether the determination of contributions u/s 45A of the Act is illegal?

(3) Relief."

4. After hearing both the parties and scrutinizing the evidence of the parties the learned Judge, Employees State Insurance Court, Jaipur found that M/s. Baijoo Sales and M/s. Baijoo Furnitures were controlled and managed by Shri B.L. Sharma. There was a complete managerial and functional unity between these two firms. On these findings, the learned Judge, E.S.I. Court held that the staff of the one was to be clubbed with the staff of the other. The learned Judge, E.S.I. Court further held that the Regional Director, Employees State Insurance Corporation, Jaipur had the authority, power and jurisdiction to issue the draft order. The application filed by the appellant-establishment was dismissed.

5. Against the aforesaid order of the Employees State Insurance Court dated May 12, 1987, the present appeal has been filed u/s 82 of the Act. An appeal u/s 82 of the Act lies only when it involves substantial question of law. Section 82 of the Act read as under:-

"82. Appeal.-

(2) An appeal shall lie to the High Court from an order of an Employees Insurance Court if it involves substantial question of law."

Looking to the facts and circumstances of the present case, I am unable to hold that the appeal raises any substantial question of law. The questions to be decided were those of facts. On examination of the evidence of the parties, the Judge, E.S.I. Court rightly found that the application filed by the appellant had no substance and was liable to be rejected.

6. Having not been able to find as to how the judgment of the Judge, E.S.I. Court was wrong, I dismiss the appeal with no order as to costs.