(2003) 11 KAR CK 0028

In the Karnataka High Court

Case No : M.F.A. No. 2439 of 2002

Dustven Pvt. Ltd. APPELLANT

Vs

The E.S.I. Corporation RESPONDENT

Date of Decision : 07-11-2003

Acts Referred:

Employees State Insurance Act, 1948 — Section 45 A, 75

Citation : (2004) 102 FLR 162 : (2004) ILR (Kar) 2190 : (2004) 2 KCCR 177 SN : (2004) 3 LLJ 411

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : Sampat Anand Shetty, for the Appellant; V. Narasimha Holla, for the Respondent

Final Decision : Dismissed

Judgement

Billappa, J.—The appellant has preferred this appeal against the order dated 7.2.2002 passed by the Additional Industrial Tribunal and E.I. Court Bangalore, in E.S.I. Application No. 41/1987.

2. Briefly stated the facts are as follows:

The appellant is a private limited company engaged in designing installation of air pollution control, humidification and ventilation systems. It has its registered office at Bangalore and branches at Madras, Coimbatore, Bombay, Delhi and Calcutta. A notice dated 13.10.1986 was issued by the Deputy Regional Director, informing the Appellant Company that the Government, vide notification bearing No. SWL 371 LSI 81 dated 5.1.1985 has extended the provisions of the Act to the other establishments with effect from 27.1.1985 and that the Appellant Company falls within the purview of Section 1(5) of the Act with effect from 27.1.1985 and therefore, it should take steps for registration of its employees. The appellant Company submitted its reply dated 22.10.1986 to the said notice stating that the Appellant Company is not a shop, the strength of its employees is less than 20, it is not carrying any manufacturing process and the provisions of the Act extended by the Government are not applicable to the Appellant Company and hence it is not liable for registration under the E.S.I. Act. Thereafter show cause notice dated 13.3.1987 was issued by the Deputy Regional Director stating that he has proposed to determine the amount of contribution payable in respect of 79 employees of the Appellant Company at Rs. 1,01,643.77 u/s 45A of the Act, taking the contribution at 7.25% of the assumed wages of Rs. 880/- per month, for the period from 27.1.1985 to 30.9.1986 and calling upon the Appellant to show cause within 15 days as to why assessment should not be made as proposed. In response to the said notice Sri Balashanmugham, the Manager finance and accounts of the Appellant Company appeared before the Deputy Regional Director on 20.4.1987 and submitted that the Appellant Company is not covered under the provisions of the Act, as they have no manufacturing process, Appellant is not a shop, and the strength of the employees is less than 20 and hence not liable to pay the contribution. Thereafter, as contribution was not remitted and returns were not filed, the Deputy Regional Director, by his order dated 20.4.1987 determined the contribution payable in respect of 79 employees, of the Appellant Company, for the period from 27.1.1985 to 30.4.1986 at Rs. 1,01,643.77, taking the contribution at 7.252% of assumed wages of Rs. 880/- per month on ad hoc basis and directed to pay the said amount within 15 days. The appellant filed an application u/s 75 of the E.S.I. Act in E.S.I Application No. 41/1987, before the Additional Industrial Tribunal and E.I.Court challenging the validity of the said order passed by the Deputy Regional Director. The ESI Court on appreciation of evidence by its order dated 30.3.98 dismissed the said application holding that the employees of the appellant company at Bangalore and other units are covered under the ESI Act.

3. The appellant preferred an appeal before this Court in MFA No. 3213/98 challenging the said order. By order dated 23.1.2001, this Court holding that the registered office at Bangalore and all its branches are one unit and they are covered under ESI Act, remanded the matter to the ESI Court, with a specific direction to determine the quantum of contribution, on the basis of factual. The matter was remitted only to determine the quantum of contribution.

4. After the matter was remanded to the ESI Court, the appellant examined one witness Sri M. Balashanmugham AW.2 and produced three documents i.e. Exhibits A.23, A.24 attendance cum salary registers and A.25 statement regarding the salary particulars of employees of branch offices. The respondent did not adduce any evidence. The ESI Court on appreciation of evidence on record by its order dated 7.2.2002, dismissed the application holding that the claim made by the Corporation is proper.

5. Being aggrieved by the said order dated 7.2.2002 passed by the ESI Court, the appellant has preferred this appeal.

6. The learned Counsel for the appellant submitted that the specific direction by

this Court was to determine the quantum of contribution on the basis of factual and the Appellant after remand, examined one witness AW.2 and produced three documents i.e. Exhibits A.23, A.24 attendance cum salary registers and A.25 statement regarding the salary particulars of Employees of branch offices and that the respondent has not adduced any evidence. In spite of that the ESI Court has failed to determine the quantum of contribution on the basis of factual. He submitted that without any valid reason the ESI Court has failed to place reliance on Exhibits A.23, A.24 and A.25. He submitted that the ESI Court has erred in not determining the quantum of contribution on the basis of factual and hence the order passed by the ESI Court is contrary to the direction of this Court and hence not sustainable in law. Further placing reliance on the decision in the case of Escorts Ltd. Vs. Regional Director, ESIC, he submitted that having regard to the wide powers of the ESI Court, it ought to have remanded the matter to the concerned authority to determine the quantum of compensation on the basis of factual or else it ought to have called for the documents and decided the quantum of contribution on the basis of factual. The ESI Court has erred in not doing so. Placing reliance on the decision in the case of Sahni Silk Mills (P) Ltd. and Another Vs. Employees'' State Insurance Corporation, he submitted that reasonable opportunity should have been given by the ESI Court to produce the evidence. He also submitted that if an opportunity is given, the Appellant will produce the original books of accounts, salary registers and attendance registers of the employees of the other branches. He submitted that as the ESI Court has not determined that quantum of contribution on the basis of factual, the finding recorded by it is perverse and not sustainable in law.

7. Per contra, learned Counsel for the respondent submitted that as no substantial question of law arises for consideration in this case, the appeal is not maintainable in law. Further, he submitted that as factual were not furnished by the appellant in spite of sufficient opportunity given to him, the ESI Court has rightly dismissed the application. Placing reliance on the decisions reported in the case of Modella Woollens Limited v. Employees State Insurance Corporation he submitted that as the appellant did not come out with the correct amount which according to them is payable and proved nothing before the Court, the ESI Court has accepted the claim made by the Corporation as correct and in the circumstances of the case, it was justified in doing so. He also placed reliance on the decision reported in the case of Regional Director, ESI Corporation v. P.R. Packaging Company and Ors. 2001(2) KCCR 1026 and submitted that under Sub-section (2) of Section 45A of the ESI Act there is a presumption under law that an order under Sub-section (1) of Section 45A of the Act was true and correct and hence question of Respondent proving the issue before the ESI Court did not arise. Placing reliance on the decision reported in the case of Zenna Sorabji and Others Vs. Mirabelle Hotel Co. (Pvt.) Ltd. and Others, he submitted that Exhibits A.23, A.24 and A.25 are not authenticated documents and hence the ESI Court has rightly not placed reliance on those documents. Further he submitted that the order passed by the ESI Court is justified in law and does not call for

interference.

8. I have carefully considered the submissions made by the learned Counsel for the parties.

9. In the light of the submissions made by the learned Counsel, the question of law that arises for consideration is:-

"Whether in the facts and circumstances of the case, and in view of the specific directions by this Court to determine the quantum of contribution on the basis of factual, the order passed by the ESI Court dismissing the application holding that the claim made by the Corporation is proper is perverse and not sustainable in law?

10. This Court in MFA No. 3213/98 remitted the matter with specific direction to determine the quantum of contribution on the basis of factual. It is relevant to extract para-15 of the Judgment which reads as follows:

"15. Though the ESI Court had reached the opinion that Head Office and units are one entity, it had failed to consider the question of quantum of contribution to be paid. The contention of the Corporation before the ESI Court was that they have taken the wages of each employee as Rs. 800/- between the period 27.1.85 to 30th September 1986. However, the Trial Court failed to say whether the demand of Rs. 1 lakh and odd by the respondent-Corporation towards the contribution for the above said period was right or wrong. In other words, it had not determined the actual quantum of contribution to be paid and how it should be worked out having regard to the fact that main office is at Bangalore and its units are at different places outside Karnataka. The mode of payment of contribution can be worked out as provided under the Act and the Regulations. In view of the above discussion and the reasoning only so far as the determination of quantum of contribution the matter deserves to be remanded to the ESI Court concerned, as the same has to be worked out on the basis of the factual. So far as the coverage under the Act by clubbing the employees at main office and the Branch Office, the ESI Court need not touch the said issue."

11. It is not in dispute that after the matter was remitted to the ESI Court the appellant has examined one witness AW.2 and has produced three documents Exhibits A.23, A.24 and A.25. The respondent herein has not adduced any evidence.

12. The appellant has not produced the original attendance registers of Calcutta Bombay, Madras, Delhi and Coimbatore Offices and no other evidence is also made available before the ESI Court. The ESI Court in the course of its order has observed that Exhibits A.25 is a computerized copy and no person has signed it and it is not certified by any one and that the applicant did not want to produce material documents and that they have produced only Exhibits A.23 and A.24 which are attendance registers and they do not reveal the real fact of contribution and that in the absence of any material it cannot determine the

quantum of contribution. Consequently the ESI Court has not placed reliance on Exhibits A.23, 24 and 25 and has held that in the absence of relevant evidence, the claim made by the Corporation is proper and accordingly dismissed the application.

13. Admittedly, the ESI Court was expected to determine the quantum of contribution on the basis of factual in respect of its office at Bangalore and branch offices at Madras, Bombay, Delhi, Calcutta, and Coimbatore. Exhibits A.23 and 24 are the attendance cum salary registers which contains the names of employees at Bangalore office. Exhibit A. 25 is a computer print out showing the salary particulars of employees of other branches. Exhibits A. 23, A.24 and A.25 were in no way helpful to the ESI Court, to determine the quantum of contribution and hence it has not placed reliance on these documents. As relevant documents were not produced in spite of giving opportunity, ESI Court has held that the claim made by the Corporation is proper. It is relevant to refer to the decision in Modella Woollens Ltd., v. Employees State Insurance Corporation and Another: wherein in a similar situation in the application filed before the Insurance Court, the appellant did not come out with the correct amount which according to them was payable except stating in the application that the amount demanded by the Corporation was incorrect, the appellant proved nothing before the Court, the Supreme Court held that the Insurance Court committed no wrong in accepting the Corporation''s assessment as correct without any further scrutiny. In the case of REGIONAL DIRECTOR, ESI CORPORATION v. P.R. PACKAKING COMPANY, this Court has held that under sub-section (2) of Section 45A of the ESI Act, there is a presumption under law that an order under Sub-section (1) of Section 45A of the Act was true and correct. Hence it is obvious that question of proving the issue by the ESI Corporation does not arise. The ratio laid down in these decisions is squarely applicable to the facts of this case. Admittedly in this case, the matter was remitted to the ESI Court with a specific direction to determine the quantum of contribution on the basis of factual. Though opportunity was given to adduce evidence, the appellant herein has failed to produce the relevant original documents like salary registers, attendance registers and account books pertaining to the branch offices at Madras, Calcutta, Bombay, Delhi and Coimbatore. The ESI Court, left with no option has held that the claim made by the Corporation is proper. In the facts and circumstances of the case, the order passed by the ESI Court dismissing the application, holding that the claim made by the Corporation is proper is justified in law and it cannot be said that either it is perverse or unreasonable. I do not find any force in the submission made by the learned Counsel for the Appellant. There is no valid reason to interfere with the order passed by the ESI Court. There is no merit in this appeal and it is liable to be dismissed.

14. For the reasons stated above, the appeal fails and it is dismissed accordingly. No order as to costs.

