
(1998) 09 GAU CK 0030
In the Gauhati High Court
Case No : M.A. (F) No. 72 of 1989

Employees" State Insurance Corporation and Another	APPELLANT
Vs	
Hotel Samrat	RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Employees State Insurance Act, 1948 — Section 82(2)

Citation : (1998) 3 GLT 541 : (1999) 2 LLJ 153

Hon'ble Judges : A.P. Singh, J

Bench : Single Bench

Advocate : B.R. Dey and M. Nath, for the Appellant; L.P. Sarma and Bhattacharyya, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Singh, J.—Heard Mr. B.R. Dey, learned counsel for the appellants and Ms. R. Bhattacharyya, learned counsel for the Respondents.

2. The present appeal u/s 82 of the Employees" State Insurance Act, 1948 has been filed against the judgment and order dated March 17, 1989 passed by Shri A.N. Sarma learned Judge, Employees" Insurance Court, Guwahati in E.S.I. Case No.8 of 1988. It appears that appellant No. 2, Assistant Regional Director of Employees" State Insurance Corporation demanded contribution of Rs. 18,338 from the Respondent in respect of period May 1987 to April 1988 towards E.S.I, contribution for its employees. Being faced with the demand Respondent filed case u/s 75(1)(g) of the Act in the E. S. I. Court on the ground that demand was illegally made inasmuch as it had not employed 20 or more than 20 employees in the service of the hotel. Therefore, the hotel did not fall within the purview of the Act. Hence no contribution towards Employees" Insurance was required to be made to the Corporation by the Respondents. This aspect of the case set up by Respondent was disputed by the Corporation Issue was accordingly framed by the E.S.I. Court as to whether Hotel Samrat was covered under the Act and was liable to pay contribution for its employees.

3. It is not in controversy between the parties that if less than 20 employees, including the casual employees, are employed in the service of the hotel (Respondent No. 1) then Respondent will not be covered by the Act so as to become liable to make the contribution, in that case demand made from them by Respondent No. 2 would not be justified by law. In case, however, it is found that at any time, within a period of 12 months, preceding the date of the demand the hotel had employed 20 or more than 20 employees in its service, including the casual employees, in that event the demand made by the appellant herein will be fully justified and Respondent will be liable to make the contribution as demanded. In view of the matter, question which arises in the case whether 20 employees or more employees, including the casual employees were or not in the employment of the hotel (Respondent No. 1) within a period of 12 months preceding the date of the notice served by the Appellant.

4. The appellants examined the Inspector as D.W. 1 who according to them had carried out inspections of the hotel. As per his testimony inspections were made so as to find out as to whether at the time of the inspection 20 or more employees were working in the hotel. According to him on every inspection he found more than 20 employees engaged in the hotel. It was on this foundation that the assessment of the contribution and liability of Respondent was fixed resulting in the demand. The contention of the Respondent that it never employed 20 or more than 20 employees in its service at any time and at all material times, since after the start of the hotel they had employed, 19 employees in their service including the casual employees. Therefore, they were not liable to make the contribution as per demand raised by appellant No. 2. To substantiate their version the Respondent examined Manager of the hotel as P.W. 1. The Manager produced the pay-cum-attendance register and also made oral statement in the Court. He stated that there were eight permanent employees and the rest of the employees were temporary. He also gave the name of the permanent employees. As per the register which was produced by the Manager the Court found that total number of employees on the rolls of Respondent No. 1 were only 19. It was on this basis that the E.S.I. Court came to the conclusion that Respondent (hotel) was not covered by the Act and demand raised against it was not justified under the provisions of the Act. The Court accordingly allowed Respondents case. Hence, this appeal, u/s 82.

5. An appeal u/s 82 is not maintainable on facts and also on questions of law. It is maintainable only if the appeal involves a substantial question of law. Clause (2) of the Section 82 reads as follows:-

"An appeal shall lie to the High Court from an order of an E.S.I. Court if it involves a substantial question of law."

6. Mr. B.R. Dey, Advocate who appeared in support of appeal has contended that the Court committed illegality in casting the burden of proof on the appellant instead of the Respondent who had gone to the Court to challenge the notice of demand and further to prove that it was not covered by the provisions of the Act

for the reasons that less than 20 employees were in its employment as on the relevant time. Learned counsel contends that serious prejudice to the appellant has resulted from the impugned judgment of the E.S.I. Court. Assuming that the E. S. I. Court had cast the burden of proof on the appellant to establish that the Respondent was covered by the provisions of the Act for the reason that they employed 20 or more employees in their service of the hotel still do not find any illegality has resorted therefrom.

7. Having carefully considered the argument advanced by the learned counsel and having perused the judgment under appeal in my opinion the argument advanced by the learned counsel for the appellants is misconceived. No doubt, an observation has been made by the E.S.I. Court regarding burden of proof being that of appellant. The question of burden of proof however loses all significance when both sides adduce evidence in support of their respective plea. The plea of Respondent was that it had less than 20 employees on its roll whereas the plea of the appellant was that the Respondent had more than 20 employees on its roll. Both Respondent as well as the appellant examined witnesses in support of their respective plea, whereas the Respondent examined Manager of the hotel as PW 1 in support of its plea. The appellant examined the Inspector (D.M. Das) as DW 1 in support of its own plea to the effect that the hotel had employed at all relevant times more than 20 employees on its roll hence was covered by the provisions of the Act. In the above circumstances, the burden of proof lost all significance similarly the observation of the E.S.I. Court in that regard. From the evidence adduced by the appellants it was found by the E.S.I. Court that the appellant had miserably failed to prove that more than 20 employees were in the service of the hotel at any time as D.W. 1 was unable to produce any inspection note with the names of those employees who may have been found working in the hotel at the time when he made the inspection or he could orally tell their names. It was, therefore, not possible for the E.S.I. Court to believe that D.W. 1 carried out inspection and found 20 or more people employed in the hotel as was being stated by him. Whereas from the statement of P.W. 1 and the documentary evidence produced by him it was clearly made out that there were only 19 employees at all relevant times who were working in the hotel which also included the casual employees. In the above circumstances, no illegality was occasioned in the view which was expressed by the E.S.I. Court in the impugned order. On the above premises, I find no merit in this appeal which is accordingly dismissed with costs.