

(2014) 10 GAU CK 0009
In the Gauhati High Court
Case No : MFA 25/2003

Employees State Insurance Corporation	APPELLANT
Vs	
Assam Gold Tea (P) Ltd.	RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 20 Rule 1, 2(9)
Employees State Insurance Act, 1948 — Section 2(19), 74, 82

Citation : (2015) 144 FLR 522

Hon'ble Judges : Nishitendu Chaudhury, J

Bench : Single Bench

Advocate : K.K. Nandi, Advocate for the Appellant; G.N. Sahewalla, B. Sarma, A.K. Goswami, P. Bora, Aslam and S. Senapati, Advocate for the Respondent

Judgement

Nishitendu Chaudhury, J.—This is an appeal under Section 82 of the Employees State Insurance Act, 1948 challenging the judgment and order dated 27.06.2002 passed by the learned Employees State Insurance Court of Upper Assam at Dibrugarh in ESI Case No. 4/2001. The appeal was admitted on 11.02.2003 but no substantial question of law was framed which was required under Section 82 of the Act. The learned counsel for the parties are accordingly heard and thereupon following substantial question of law is framed:

"Whether the impugned judgment and order passed by the Employees State Insurance Court is vitiated for non-consideration of the materials on record?"

2. I have heard Mr. K.K. Nandi, learned counsel for the appellant and Mr. G.N. Sahewalla, learned senior counsel assisted by Ms. B. Sarma on behalf of the respondent on this substantial question of law.

3. Before deciding the substantial question of law framed in this case, it is necessary to narrate the bare minimum facts based on which the present appeal has arisen. Respondent, Assam Gold Tea (P) Ltd. is a company under the Companies Act engaged in tea manufacturing. An Inspector of the ESI

Corporation visited the factory of respondent company and thereafter submitted a report on 02.05.2000 stating that the respondent company is engaged in manufacturing process of tea since 03.03.1996 to 22.04.2000 by engaging 25 whole time employees and so it comes within the purview of Employees State Insurance Act, 1948, but the subject factory was not registered under the Act and no action was taken by the employer as required by the Employees State Insurance Act, 1948 (hereinafter referred as "the ESI Act"). Based on the report, the Regional Director of ESI Corporation issued notice to the respondent company for implementation of the ESI Act and also to make a payment of Rs. 82,875/- by notice dated 20.08.2001. Situated thus, the respondent company approached jurisdictional insurance Court on 11.09.2001 whereupon ESI Case No. 4/2001 was registered. It was the case of the respondent company that it is only a seasonal factory and so it is not covered by the provision of the ESI Act. It is prayed thereby that assessment and demand made by defendant be adjudged illegal, arbitrary, void ab initio, etc.

4. On being summoned the appellant submitted a written statement denying the allegation made in the plaint and claimed that the respondent company is engaged in manufacturing process throughout the year. The appellant in the written statement supported the claim of Rs. 82,875/- and prayed that the case be dismissed.

5. Upon such rival contention of the parties, the employees insurance Court framed the following issue:

"Whether the factory exclusively engaged in manufacturing of tea and working throughout the year seized to be seasonable factory?"

6. Respondent herein examined as many as one witness and produced as many as twelve documents. Appellant herein also examined one witness as DW1 and exhibited four documents including Inspection Report (Ext. C), Demand of Notice, etc. After perusal of the materials, learned Employees State Insurance Court passed a judgement on 27.06.2002 holding that respondent company is a seasonal factory and is not covered by the provision of the ESI Act. It is this judgment which has been brought under challenge in the present appeal under Section 82 of the ESI Act, 1948.

7. Having heard the learned counsel for the parties and on perusal of the impugned judgment what is conspicuous is that the learned insurance Court passed the impugned judgment in six paragraphs in which there is recital of the cases of the parties in the two paragraphs. In the fourth paragraph only a judgment of the Hon'ble Supreme Court has been considered and then in paragraph six a one line observation has been made holding that respondent company is a seasonal factory within the meaning of Section 2(19) of the ESI Act, 1948. In so doing, no oral and documentary evidence adduced by the parties has been taken into consideration. No finding has been made in regard to the evidence led by the parties. There is no reason for arriving at a decision and

so it is difficult to hold that the impugned judgment satisfies the essential ingredients of a judicial decision. The appellant by examining DW1 sought to bring on record certain documents to claim that subject factory function throughout the year and that it functions since 1996 till 2000 for which period the demand has been made by the appellant corporation. The respondent management on the other hand is firm on the assertion that it is only a seasonal factory and does not function for more than 7 months in a year so this will be covered by provision of Section 2(19) of the ESI Act, 1948. Having so found and on perusal of both oral and documentary evidence it is incumbent on the part of the jurisdictional insurance Court constituted under Section 74 of the ESI Act to consider all the oral and documentary evidence and thereafter to arrive at a finding as to whether the subject factory is a seasonal factory or not. ESI Court constituted under Section 74 is a Court and the proceeding being adjudicatory in nature is also a judicial proceeding. Employees Insurance Court has been given the power of a Civil Court in regard to enforcement of attendance of the witnesses, calling of documents, examination of witnesses and so on. Once a Court has been given power to examine witnesses and to call for documents it is implicit that the order to be passed by such a Court has to be based on such evidence as may be adduced by the parties. Order XX Rule 1 of the Code of Civil Procedures pointing that there have to be findings on each issue framed by the Court. Order XIV Rule 2 of the Code of Civil Procedure also requires that Court is bound to pronounce judgment on all issues. Judgment has been defined in Section 2(9) of the Code of Civil Procedure as follows:

"2.9 Judgment means the statement given by the Judge on the grounds of a decree or order."

9. From perusal of these provisions, it is clear that a judgment must contain statement of fact and decision on each issue involved in the case and obviously it has to be based on the materials available on record. It can be possible only if the statement so recorded displays consideration of the materials available on record. This means that it should appear from the judgment as to what is the case of each of the parties, what are the evidence led by them in support of their respective cases and what was the opinion of the Court upon such evidence, both oral and documentary adduced by the parties. By mere writing a one line opinion that a factory is a seasonal factory, cannot be a decision a Court constituted under Section 74 of the ESI Act.

10. In the instant case, apparently the learned Court does not appear to have applied mind as to the oral and documentary evidence adduced by both sides. Judgment does not show how many witnesses have been examined by each of the parties. It does not display what are the materials brought on record by them. It does not display as to why some of these documents were relied on by the Court while some were not found to be reliable. In short, the impugned judgment does not contain essential ingredients of a judgment and having so found the sole substantial question of law has to be decided in favour of the

appellant holding that the impugned judgment is vitiated.

11. Accordingly the appeal stands allowed.

12. Impugned judgment is set aside. Appeal is remanded to the trial Court to decide the case afresh after giving adequate opportunity to both sides to lead evidence if necessary. Since the case arose in the year 2001, the learned trial Court shall expeditiously dispose of the same preferably within a period of 6 months from the date of receipt of the record.

13. Send down the records immediately to the learned Court below.

14. Parties shall appear before the learned Court on 01.12.2014.