

(2000) 07 RAJ CK 0088
In the Rajasthan High Court
Case No : .C.S.A. No. 10 of 2000

Employees' State Insurance Corporation	APPELLANT
Vs	
Bharat Motors	RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 45A

Citation : (2000) 87 FLR 605 : (2000) 2 LLJ 1502 : (2000) 3 RLW 1498

Hon'ble Judges : A.R. Lakshmanan, C.J.;Rajesh Balia, J

Bench : Division Bench

Advocate : Govind Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

Dr. Lakshmanan, C.J.—This appeal is preferred by the Employees' State Insurance Corporation, Jaipur through its Regional Director against judgment dated April 27, 2000 passed by the learned single Judge of the Court in S.B. Civil Misc. Appeal No 159/2000. The said appeal was filed by the Corporation to declare the judgment and decree passed by the E.I. Court as illegal and to quash the same.

2. The E. I. Court has held that the respondent is not a "factory" as defined u/s 2(12) of the Act of 1948 for the reason that ten or more employees were not in the employment of it as required by Sub-section (12) of Section 2 of the Act of 1948 for holding an establishment as a factory. This Court has also held that there was violation of the provisions of Section 45-A of the Act as no opportunity of hearing was given to the respondent-employer. It is the case of the appellant (herein) that sufficient opportunity was afforded to the employer, and, that Section 45-A has no application in the present controversy as it comes in operation where the employer does not co-operate with the E.S.I. Inspector by not providing necessary registers etc. Section 45-A reads thus:

"45-A Determination of contributions in certain cases:

(1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44 or any Inspector or other official of the Corporation referred to in Sub-section (2) of Section 45 is prevented in any manner by the principal or immediate employer or any other person, in exercising his functions or discharging his duties u/s 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment.

Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in-charge of the factory or establishment has been given a reasonable opportunity of being heard.

2. An order made by the Corporation under Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45B (or the recovery u/s 45-C to Section 45-I)"

3. It was argued before the learned single Judge that from a perusal of Section 45-A of the Act, the Corporation may, on the basis of the information available to it, determine the amount of contribution and that, for taking such an action, no opportunity need be given to the employer. It is further submitted that the Inspector of the Corporation inspected the establishment of the employer who placed the vouchers on record before the Inspector and, on the basis of those documents, the proceedings were initiated against the employer and, therefore, it is deemed that the employer co-operated with the Inspector and as such there was no necessity for proceeding according to the proviso to Section 45-A(1) of the Act of 1948.

4. The learned single Judge, on a careful reading of Section 45, held that the factory or; the establishment has to be given a reasonable opportunity of being heard in accordance with the proviso to Section 45-A(1). The learned Judge dismissed the appeal filed by the Corporation on the above ground and also reserved the liberty to the department for commencing the proceedings for determination of the contribution u/s 45A after affording sufficient opportunity to the employer there being sufficient grounds to adopt such course.

5. Being aggrieved, the Insurance Corporation has preferred the above appeal. Mr. Govind Mathur, learned counsel appearing for the Corporation, reiterated the contention raised before the learned single Judge. We have perused the pleadings and the judgment impugned in this appeal and other connected record.

6. We are unable to countenance the submission made by Mr. Mathur that the opportunity of hearing is to be given only in those cases where no returns, particulars, registers or records are submitted in accordance with the provisions of Section 44 of the Act. A reading of Section 44 clearly shows that an opportunity shall be afforded to the employer before determining the contribution payable by the employer. No other provision is available except the provisions of

Section 45-A for determination of the contribution payable by the employer. In our opinion, the Inspector has no authority to determine the quantum of contribution payable by the employer and it is only the Regional Director of the Employees' State Insurance Corporation who has jurisdiction to decide the contribution payable. At best, the inspection-report submitted by the Inspector can be taken into consideration while determining the contribution. Under such circumstances, the order passed by the Corporation without affording opportunity to the employer u/s 45-A is bad in law and, therefore, the said order is liable to be set aside. The learned single Judge has rightly rejected the contention made by the Corporation. No interference is called for. Accordingly, this appeal is rejected. The order of the learned single Judge is confirmed.