

(2001) 02 AP CK 0117
In the Andhra Pradesh High Court
Case No : A.A.O. No. 2863 of 2000

Employees" State Insurance Corporation	APPELLANT
Vs	
Bhaskara Motors	RESPONDENT

Date of Decision : 12-02-2001

Acts Referred:

Employees State Insurance Act, 1948 — Section 75, 75(2)

Citation : (2001) 2 LLJ 73

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : R.N. Reddy, for the Appellant; Vaishali Joshi, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

B. Prakash Rao, J.—In this appeal, the appellant challenges the orders in EIC No. 1 of 1999 dated July 13, 2000 on the file of the Employees" Insurance Court-cum-Industrial Tribunal I, Hyderabad.

2. In the application filed u/s 75(1)(g) of the Employees" State Insurance Act (for short "the Act"), the respondent herein challenged the orders dated October 8, 1998 passed by the Regional Director the appellant herein, bringing the respondent unit under the provisions of the Act. It was claimed that the respondent is only a dealer and there is no manufacturing activity and as it is only a shop with six employees, the provisions of the Act have no application and further that the Inspectors during their visit did not properly verify the records and in fact have taken the signature of the managing partner on a blank paper and straight away recommended for coverage of the unit.

3. Opposing the said application, the appellant herein denied the aforesaid allegations and sought to sustain the orders of coverage based on the attendance register of the respondent herein which itself shows that it had employed ten persons and, therefore, it was rightly brought under the coverage.

4. On these respective pleadings, the Court below framed the following issues.

" 1. Whether the petitioner is not liable to be covered u/s 2(12) of the ESI Act?

2. Whether the petitioner is not liable to pay contribution of Rs. 37,579/- from October 1996 to February 1998 as demanded in the show-cause notice dated October 8, 1998?

3. To what relief?"

and posted the matter for enquiry. However, at that stage, straight away on hearing the counsel, the Court below without conducting an enquiry and without going into any of the above questions and giving any findings thereon, simply directed the respondent to approach the appellant, who is directed to consider the case and pass orders in accordance with law and with liberty to the respondent herein to approach the Court again in the event of any illegality.

5. Sri R. Narasimha Reddy, learned Standing counsel for the Corporation submitted that u/s 75(1)(g) of the Act, the Court below ought to have conducted an enquiry with an opportunity to both sides. Further having framed the issues, it could not have avoided an enquiry into and decision thereon.

6. As the respondent herein though served was not appearing himself nor through any counsel, Ms. Vaishali Joshi, was appointed as amicus curiae, who referred to various decisions and by going through the provisions of the Act submitted that the authority should have conducted an enquiry.

7. Section 75(1)(g) of the Act reads as follows:

"(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act."

8. In the *The Employees State Insurance Corporation, Bhopal Vs. The Central Press and Another*, while considering the scope of the provisions of Section 75 of the said Act, the Supreme Court held at p. 480 of LLJ:

"2. Not only is the mandatory duty cast upon it to decide such disputes, but it is armed with the powers of a civil Court, including summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, u/s 78 of the Act.....

3. The Court should give the Corporation a direction to perform its duty where it considers that this should be performed by the Corporation. It cannot decline to perform its own duty because the Corporation has failed to discharge its function.

4. The Corporation has itself to collect the information initially and make a provisional demand on the basis of that information u/s 45A in such a case.....

5. The Corporation itself should have gathered information u/s 45A".

9. In *The E.S.I. Corporation Madras v. Tiruchy District Co. operative MPU. Ltd.* 1995-II-LLJ-581, the Madras High Court while considering the principles laid down in *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, , by the Apex Court observed at p.396 of LLJ:

"22. The assessment of the quantum of the employees" contribution has now been made on an ad hoc basis because they merely pleaded non-liability and made no returns. On the strength of Section 45-A, the contribution was determined without hearing. In the circumstances of the case and the learned Attorney-General has no objection we think it right to direct the relevant Corporation authorities to give a fresh hearing....."

10. The High Court held that as there was an error of law committed in that case, an investigation is needed in accordance with the procedure provided under the Act.

11. There is no controversy that there is a dispute and the Court has already framed the issues arising out of respective claims and denials. Having thus taken a step, the Court should not have relegated the enquiry or decision thereon back to the primary stage. The scope of enquiry under the said provision is in its original form and nature, where the parties are allowed to substantiate their case. Therefore, by the orders under appeal, the Court below not only denied such opportunity to the parties but also shelved its statutory duty and mandate for a decision on an enquiry. This procedural safeguard allowed to the parties is part of the adjudicating process. A solemn obligation bestowed under a statute cannot be shelved or avoided. Further, the nature of enquiry is an original one and not appellate or revisional. Therefore, the question of remitting back in the form of a remand does not arise.

12. In *Employees" State Insurance Corporation, Bangalore Vs. Super Tailors, Gulbarga*, , the High Court of Karnataka relied on the principles laid down by the Apex Court in *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, , as regards the question of substantial law required for the purpose of Section 82(2) of the Act, which are to the following effect at p. 454 of LLJ:

"8. The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd, the question would not be a substantial question of law".

13. From the above, it is evident in this case that the lower Court did not follow the mandate as contemplated u/s 75(1)(g) of the Act nor there is any enquiry or decision in regard to the dispute which arose but remanded the matter back to the authority for fresh application and consideration. The non-compliance of the provision and absence of an enquiry denying opportunity to the parties is substantially an important question on which this Court in exercise of powers u/s 82(2) of the ESI Act can interfere.

14. Accordingly, the appeal is allowed and the matter is remanded back to the Court below for an enquiry and decision in accordance with law after giving opportunity to both the parties. No costs.

15. Before parting with the case, this Court places on record its appreciation for the able assistance rendered by Ms. Vaishali Joshi, amicus curiae, in the disposal of the appeal.