

(2007) 04 AP CK 0003
In the Andhra Pradesh High Court
Case No : CMA No. 2995 of 2003

Employees State Insurance Corporation	APPELLANT
Vs	
Ganapati Vilas	RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 10B, 11, 12, 32
Employees State Insurance Act, 1948 — Section 44, 45A, 82(2)

Citation : (2007) 5 ALD 310 : (2007) 3 LLJ 1078

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : R.N. Reddy, for the Appellant;

Final Decision : Allowed

Judgement

P.S. Narayana, J.—The Employees" State Insurance Corporation, aggrieved by the order dated 15-3-2002 made in E.I. Case No. 94 of 2000 on the file of the Employees" Insurance Court and Chairman, Industrial Tribunal-I, at Hyderabad, preferred the present civil miscellaneous appeal u/s 82(2) of the Employees" State Insurance Act, 1948 (hereinafter in short referred to as "the Act" for the purpose of convenience).

2. The substantial question of law, which had been argued in elaboration by Sri R.N. Reddy, learned Counsel representing the appellant is as hereunder.

Whether the respondent can go back and contend otherwise relating to the number of employees contrary to the details and the information furnished by him in Ex. R-1.

Sri R.N. Reddy, learned Counsel representing the appellant-Corporation had taken this Court through the respective pleadings of the parties and the evidence available on record and would contend that the learned Judge proceeded on the assumption that Ex. R-1 had been issued by the Corporation, but in fact, the same had been submitted by the respondent himself. The learned Counsel also

would further submit that even in relation to appreciation of burden of proof, the learned Judge had not appreciated the material available on record in proper perspective and hence the impugned order cannot be sustained. The learned Counsel also had drawn the attention of this Court to the Regulation 10-B of the Employees State Insurance (General) Regulations, 1950 (hereinafter in short referred to as "the Regulations" for the purpose of convenience).

3. For the purpose of convenience the parties hereinafter would be referred to as petitioner and the respondent as shown in E.I. Case No. 94 of 2000 on the file of the Employees Insurance Court and Chairman, Industrial Tribunal-I, at Hyderabad.

4. The respondent in the civil miscellaneous appeal, petitioner-M/s. Ganapathi Vilas, filed E.I. Case No. 94 of 2000 for a declaration that the impugned order dated 10-8-2000 is not sustainable. It was averred as hereunder:

The petitioner was running a small hotel at Machilipatnam and engaged 7 or 9 employees and it was registered under A.P. Shops and Establishments Act, 1988, and the employees engaged had never exceeded 10 or more at any point of time from inception. It is further averred that on 22-1-1999 the respondent's Inspector visited and issued 01 Form to fill the same stating that it was required for a statistical purpose and asked him to note that 11 employees were working in the hotel as on 1-1-1999 and thereafter coverage intimation was sent along with code number which was nothing but illegal. There cannot be any coverage voluntarily, unless the requirements of a factory/establishment were satisfied as per the Act. After allotment of code number, the respondent issued C-18 notice (Ad hoc) dated 21-6-2000 demanding Rs. 38,342/- towards alleged contribution on the assumed wages for the period from 1-1-1999 to 31-3-2000. He sent a reply dated 10-7-2000 through an advocate informing that 8 employees were working in the hotel. Without verifying the records and giving any opportunity, the authority passed the impugned order, which was arbitrary and illegal.

5. In the written statement filed by the appellant herein as respondent in E.I. Case No. 94 of 2000 it was pleaded as hereunder:

The respondent had taken the stand that as on 1-1-1999 11 employees were employed in the petitioner's hotel, which is being run on electric power as such, the provisions of the Act attracted it. In 01 Form the petitioner himself declared that 11 employees were working and on the recommendation the hotel was covered under the E.S.I. coverage with effect from 1-1-1999. The respondent issued a letter dated 23-8-1999 informing the petitioner to comply with the provisions of the Act. Another notice was also issued in the month of September, 1999 in this regard. Since he failed to comply C-18 Ad hoc notice, a final order u/s 45-A was passed after giving an opportunity. It was stated that the petitioner also failed to produce the records and accordingly a final order had been passed.

6. On the strength of the pleadings the following issues were settled.

1. Whether the petitioner-hotel is not liable to be covered under the E.S.I. Act, as it never engaged more than 8 employees ?

2. Whether the petitioner is not liable to pay any amount as demanded in the order dated 10-8-2000 ?

3. To what relief?

7. The learned Judge recorded the evidence of P.W. 1, R.W. 1 and R.W. 2 and marked Exs. P-1 to P-9 and Exs. R-1 to R-7 and ultimately allowed the petition setting aside Ex. P-3 the impugned order of demand. Aggrieved by the same, the present civil miscellaneous appeal is filed.

8. It is not in serious controversy that Ex. R-1 shows the number of employees as 8 + 3 on the date of inspection. It is also not in serious controversy that the same had been furnished by the petitioner himself in E.I. Case No. 94 of 2000. The petitioner having furnished the details as males-8 and females-3, total 11, now before the Court he is contending otherwise. It is needless to say that in such a case the burden of proof is on the petitioner in E.I. Case No. 94 of 2000 to establish the same. In Employees' State Insurance Corporation Vs. Rasu Tools Ltd., , a learned Judge of this Court at Paras 10 and 11 observed as hereunder:

The provisions of the Act, contemplate that the Corporation, before fixing contribution payable by the employers, it has to give opportunity to the employers. Thereafter if the employers feel aggrieved by the order passed by the Corporation, they have to approach the E. S.I. Court for the redressal of their grievance. In the present case, aggrieved by the order of the Corporation u/s 45-A dated February 1.1, 1987 in C-18 Form, the petitioner has approached the Court. Therefore the burden lies on him to prove the same by producing necessary registers etc., in terms of Section 44 read with Regulations 11, 12 and 32 of the Act, inasmuch as the petitioner factory is the custodian of the records, registers etc. Therefore, it has to prove that it has not employed 20 or more persons during the relevant period. Therefore, the respondent-factory has acted in a manner detrimental to the interest of its employees in view of non-contribution to the Corporation. In view of the above said facts and circumstances of the case and taking into consideration the statement of objects and reasons of the Act, I hold that u/s 44 read with Regulations 11, 12 and 32 of the E.S.I. Act, the petitioner has to prove that the petitioner has not employed more than 20 persons during the period from October, 1986 to October, 1987. But the petitioner factory has failed to prove the same and the Court held that the Corporation failed to prove the same. In those circumstances, I have no hesitation to set aside the order passed by the E.S.I. Court and direct the petitioner-factory to pay the contributions on actual wages paid to the employees during the period from October, 1986 to October, 1987 on the actual payments assessed by the Corporation.

The learned Judge relied upon the decision of Karnataka High Court in Employees' State Insurance Corporation v. Karnataka Asbestos Cement Products

1991 (2) LLN 519, wherein it was held that the report furnished by the Inspector should contain all details. It is stated by Sri R.N. Reddy that this decision of Karnataka High Court is distinguishable on facts since Ex. R-1 was furnished by the petitioner in E.I. Case No. 94 of 2000 and hence having furnished such information, in the light of Regulation 10-B of the Regulations specified above, the establishment again cannot go back.

9. Regulation 10-B deals with registration of factories or shops and 10-B(1)(b) specifies that the employer shall be responsible for the correctness of all the particulars and information required for and furnished on the employer's registration form. In the light of the nature of the order which had been made especially Ex. R-1 and also in the light of the findings recorded by the learned Judge and appreciation of the evidence available on record P.W. 1, R.Ws. 1 and 2 and Exs. P-1 to P-9 and also Exs. R-1 to R-7, this Court is of the considered opinion that the learned Judge erred in coming to the conclusion that the demand made by the Corporation cannot be sustained. It is needless to say that it is for the petitioner in E.I. Case No. 94 of 2000 to establish these aspects.

10. In view of the same, especially in the light of the particulars furnished by the petitioner himself in E.I. Case No. 94 of 2000 as referred in Ex. R-1 and also in view of the Regulation 10-B of the Rules specified above, the impugned order cannot be sustained and accordingly the same is hereby set aside and the civil miscellaneous appeal is allowed. No order as to costs.