(2014) 01 PAT CK 0052

In the Patna High Court

Case No : Miscellaneous Appeal No. 217 of 2009

Employees State Insurance Corporation APPELLANT

Vs

M/s. Jaiswal Industries RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:
Employees State Insurance Act, 1948 — Section 45(A), 45A, 75, 75(1)(g), 77

Citation : (2014) 141 FLR 188 : (2014) 2 LLN 235 : (2014) 1 PLJR 449

Hon'ble Judges : Amaresh Kumar Lal, J

Bench : Single Bench

Advocate : Sudhir Kumar Bijpuria, for the Appellant;

Final Decision : Allowed

Judgement

Amaresh Kumar Lal, J.—Heard learned counsel for the appellant. No one appears one behalf of the applicant-respondent even after service of notice. The Employees State Insurance Company (hereinafter referred to as the Corporation) has filed this appeal against the order dated 17.2.2009 passed by the Presiding Officer, Labour Court, Patna in ESI Case No. 15 of 1997 by which the claim of the corporation has been negatived.

2. M/s. Jaiswal Industries, Muzaffarpur (hereinafter referred to as the applicant) filed ESI Case No. 15 of 1997 u/s 75(1)(g) of the Employees State Insurance Act, 1948 (hereinafter referred to as the ESI Act) for setting aside the entire proceeding and action taken by the Corporation. The case of the applicant is that the applicant received a letter No. 42-5257/Ins Pro-II/1827 dated 20.11.1996 in Form-C-18 claiming contribution for the period from 8/90 to 3/91 amounting to Rs. 2,298.05. In reply thereto the applicant submitted letter dated 9.12.1996 contending that the unit of the applicant is not coverable under the ESI Act which remained unattended or without any response. The claim of the corporation is barred by limitation, as such the entire claim of the Corporation is fit to be rejected. The Corporation should have cleared the dispute of coverage by filing a case before the Employees Insurance Court (hereinafter referred to as ''E I

Court'') or any other means.

3. The written statement on behalf of the Corporation was filed stating therein that the applicant was found coverable under the ESI Act. The foreman of the applicant''s factory had furnished a list duly signed by him mentioning the name of 10 persons employed in the factory and on that basis the factory is fully covered under the ESI Act. The applicant has not deposited the dues pertaining to ESI Act and the ESI Rules and the petition has been filed only to defeat the recovery proceeding initiated against the applicant. The applicant was advised to submit Form-01 which was enclosed later but the applicant did not furnish any information in Form-01 deliberately. The factory was surveyed by the authority of the Corporation and ten workers were found working in the factory and this fact was substantiated by the foreman of the factory in writing. Therefore, the applicant factory was covered on the basis of information furnished by local office Manager who conducted surveys of the factory. The applicant was also advised to get his record verified vide letter dated 10.10.1991 at Regional Office, Patna but in response to those letters the applicant wrote request Letter No. 20.11.1996. It is further mentioned that cause of action arose in the year 1990 as such the applicant should have moved E I Court, Patna within three years of the cause of action. The notices of dues demand on the applicant''s code No. P/42-5297 were served but the applicant management did not clear the dues and filed the aforesaid ESI Case No. 15 of 1997 which is barred by limitation u/s 77(1-A) of the ESI Act.

4. On the basis of the pleadings of the parties the following questions have been framed by the learned Labour Court:--

(i) Whether the factory is covered under the provision of the ESI or not?

(ii) Whether the case is barred by limitation or not?

(iii) Whether the applicant has been able to make out his case or not?

5. In support of its case the applicant has examined A.W. 1 Lala Kant Jaiswal, A.W.- 2 Mahendra Giri, and A.W. -3 Shailesh. The Corporation has examined Jag Lal Choudhary as O.P.W. -1.

6. Both sides have proved a number of documents which have been marked as follows:--

For the applicant:--

Ext. 1- Attendance Register

Ext. 2- Signature of ESI Inspector on the register on 31.8.1990.

Ext. (2/A to 2/B)- Signature of E.S.I. Inspector & P.F. Inspector on the register on the month of 31.3.1991 and 28.2.1991.

Ext. 3- Letter dt. 17.12.1991 written by Jaiswal Industries given to the E.S.I. Office.

Ext.- 3/A & 3/B Letter dated 9.7.1992, 4.9.1992, given to the E.S.I. Office.

Ext. 3/C Letter written by Jaiswal Industries given to the Regional Director of the E.S.I.

Ext. 3/D to 3/E- Letter dt- 9.12.1996, 22.3.1997.

Ext. 4 to 4/B Registry Receipt No. 5437, 2458, 3172.

Ext. 5 Letter written by Mahendra Giri foreman of the Jaiswal Industries, Bela, Muzaffarpur.

For the opposite parties:--

Ext. -A- Signature of Mahendra Giri on list of employees.

Ext. A/1 - Recital of Ext. -A. Ext.

B- Survey report dated 12.9.1990.

Ext.C- Form- C-18 dated 3.10.1991.

Ext. D- Show cause notice dated 25.10.1991.

7. After hearing both the parties E I Court has decided that the factory (Issue No. 1) does not come under ESI Act. With regard to Issue No. II it has been held that the claim of the Corporation is barred by limitation. Issue No. III has been decided in favour of the applicant.

8. Learned counsel for the Corporation has submitted that following substantial question of law is involved in this case;-

(i) Whether the order of the corporation declaring that applicant comes under the purview of ESI Act is barred by limitation?

(ii) Whether the contribution amount determined and claimed by the Corporation are barred by Limitation u/s 77(1)(A) of the Act?

In pursuance to the list of employees of the applicant submitted by foreman Mahendra Giri (A.W. 2) and after submission of list (Ext. A-1) and the report of the Inspector (Ext. B) the applicant was declared that it comes under the purview of ESI Act and accordingly u/s 10B in Form-01 it was declared that it comes under the purview of ESI Act and as such it has to deposit the contribution made by the employee as well as the employer and accordingly Code No. P/42-5297 was allotted and later on vide letter No. 1128 dated 3.10.1991 demand was made which is Ext. C and the contribution was demanded for the period 17.8.1990 to 31.3.1991, but the contribution was not made by the applicant as such show-cause notice was issued to the applicant/proprietor vide Letter Nos. 1129, 1130, 1131 dated 25.10.1991 (Ext. D), but the applicant did not make any contribution.

9. Learned counsel for the Corporation has further submitted that it is admitted

fact that it has been mentioned in the application before EI Court that applicant received letter in Form-C-2 under P/NF 2684/Muzaffarpur/dated 15.3.1990/11.4.1990 as mentioned in paragraph 3 of the petition. This declaration was never challenged before the EI Court within the limitation period of three years. as such this order stating that the applicant comes under the purview of ESI Act is final but the EI Court has erroneously held that the claim of the Corporation is barred by Limitation as the Corporation did not file any application before the EI Court within five years.

10. Learned counsel for the Corporation has also submitted that the cause of action to the applicant arose in the year 1991 and the case was filed in the EI Court in the year 1997 which is hopelessly barred by limitation, but the learned EI Court has erroneously held that the claim of the Corporation is barred by limitation.

11. It has been held that Corporation should have approached EI Court for realization of the contribution amount but the law is otherwise. It is the employer who has to approach EI Court as it has been held in the case of Employees'' State Insurance Corporation Vs. M/s. F. Fibre Bangalore (P) Ltd., and the same view has been taken in the case of E.S.I.C. Vs. C.C. Santhakumar, It has been held in the latter decision that so far Corporation is concerned, Corporation has no obligation to seek a resolution of the dispute by EI Court u/s 75 or to have the order executed u/s 77. When the order is passed u/s 45A of the Act, it is for the employer concerned to dispute the determination made u/s 45A before the EI Court, failing which the determination u/s 45(A) of the ESI Act would become final against the employer.

12. Considering the facts and circumstances stated above, I am of the view that both the issues are answered in favour of the Corporation.

13. In view of above, the impugned order is not fit to be sustained. It is set aside. This appeal is allowed. There would be no order as to costs.

