

(1999) 07 AP CK 0155
In the Andhra Pradesh High Court
Case No : AAO No. 1692 of 1992

Employees" State Insurance Corporation	APPELLANT
Vs	
Rasu Tools Ltd.	RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 11, 12, 14, 32
Employees State Insurance Act, 1948 — Section 2(12), 40, 41, 42, 43

Citation : (1999) 5 ALD 303 : (1999) 5 ALT 105 : (2000) 85 FLR 202 : (2000) 1 LLJ 372

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : Mr. B.G. Ravindera Reddy, for the Appellant;

Judgement

1. The Employees State Insurance Corporation, is the appellant in the above appeal, which was filed against the judgment of the Employees Insurance Court, Hyderabad dated 31-12-1991 in EI Case No.3 of 1989, under which it held that the petitioner factory M/s. Rasu Tools Limited, Patancheru, is not coverable under the provisions of the Employees State Insurance Act of the period from October, 1986 to October, 1987.

2. Mr. Ravindra Reddy, the learned Counsel for the appellant submitted that the factory was covered under the Employees State Insurance Act (for short the Act) and on the information furnished by the employer on OI Form, that he employed 20 persons in his establishment the said employer never informed about the reduction of number of employees in the factory from October, 1986 to October, 1987, therefore, he is liable to pay the compensation under the Act. Therefore, the order passed by the Employees State Insurance Court (for short the Court) is bad in law. He next contended that the finding of the Court that the burden of proof lies on the corporation to prove the number of employees engaged by the petitioner exceeded 20 or more persons during the above said period from 1-10-1986 to 1-10-1987 is untenable, illegal and liable to be set aside. It is

further contended that it is the respondent who keeps all the books and registers pertaining to the attendance and payment of wages and the strength of employees employed by the respondent. Therefore, the Court should have directed the respondent before deciding the above said case and therefore, he sought for interference of this Court.

3. The brief facts of the case are that the petitioner factory filed EI Case No.3 of 1989. The petitioner factory is a small scale industry dealing in manufacture of tools, situated at Patancheru Industrial Area. It is further mentioned in the petition that the factory never employed 20 or more persons at any time and therefore, is not coverable under the provisions of the Act. It is further stated that the Inspector of the respondent-Corporation visited the factory and obtained OI form from the Managing Director stating that the Insurance scheme would be more beneficial to the factory even though the petitioner factory has not employed 20 persons or more though the Act is not applicable but handed over OI form to the Inspector. The Corporation, therefore, decided that the provisions of the Act are applicable to the Respondent, and called upon to pay Rs.8,038-80 paise towards the contributions. Against which, the petitioner addressed a letter dated 19-2-1987 informing the respondent-Corporation that the total strength of the employees was only 17 and the factory is not liable to pay the contribution. The Corporation by their letter dated 15-4-1987 informed the petitioner that the factory is covered as per the OI Form with effect from 1-4-1986. Therefore, the Corporation sent the Inspector for verification of records on 16-12-1988 who verified the records and satisfied that the satisfied that the factory is not coverable under the provisions of the act for the period from 1-4-1986 to October, 1987, as the petitioner never employed 20 or more employees and the factory became coverable under the Act from October, 1987 as the Act was extended to small factories employing ten or more persons in Patancheru Area. The Corporation filed PSC 34/1989 before the Court claiming Rs.39,5317-towards the contribution for the period from April, 1986 to August, 1988 and the action of the Corporation in covering the petitioner factory from April, 1986 and making ad hoc assessment of Rs.39,53!/- is illegal and without jurisdiction. The Inspector of the corporation has no right or authority to obtain OI Form from the petitioner-factory. The petitioner-Factory has contended that in view of the filing of P.S.C. No.34/1989 the respondent Corporation has no authority to recover the alleged contributions without passing a valid order u/s 45-A of the Act and therefore, the same is liable to be set aside.

4. In reply to the above said averments, the Corporation has filed it counter contending that the averments made by the petitioner-factory that it never employed twenty or more persons for wages and hence, the factory is not coverable under the Act for the period from 1-4-1986 to October, 1987 is not true. The Inspector of the Corporation who visited the factory on 24-8-1986 verified the attendance and wage registers and reported that the petitioner factory employed 20 persons for wages with effect from 1-4-1986. The petitioner factory also submitted Employees Registration Form called OI Form dated

28-4-1986 wherein it was stated that the petitioner employed 21 persons for wages from 1-4-1986 and it was signed by the Managing Director of the petitioner-factory. Therefore, in view of the above averment that the petitioner factory never employed more than 20 or more persons, is not correct and the submission of the statement in Form OI is binding on the petitioner-factory. It is further stated that the petitioner factory is covered u/s 2(12) of the Act, as a Factory and a Code No.52-5112-67 was allotted to the factory and the intimation of coverage was sent to it on 14-5-1986 with a request to comply with the various provisions of the Act. The respondent-Corporation waited for nine months for compliance and as no compliance was forthcoming from the factory, the Corporation issued a notice in Form C-18 dated 11-2-1987 claiming a sum of Rs.8,038-80 Ps. towards contributions for the period from 1-4-1986 to 30-9-1988 calculated on ad hoc basis u/s 45-A of the Act, and the same was made on the basis of number of employees employed by the petitioner and the minimum wage fixed by the Government of India., giving an opportunity to the petitioner to pay the contributions otherwise the said amount would be recovered as arrears of land revenue u/s 45-B of the Act. Against the said impugned notice, the petitioner vide his letter dated 19-2-1987 disputed coverage of his factory on the ground that its employment strength is only 17 and as such the Act is not applicable to it. Thereafter, the respondent on 15-4-1987 informed the petitioner that the factory was covered under the Act basing on the particulars furnished by the Employer and in view of the non-compliance of Form C-18 notice, the petitioner-factory shall pay the following amounts for the periods mentioned hereunder:

C-18 dated 11-2-87 14-86 to 30-9-86 Rs. 8,038.80

C-18 dated 6-7-87 1-10-86 to 31-3-87 Rs. 8,838 80

C-18 dated 14-1-88 14-87 to 30-9-87 Rs. 8,038-80

C-18 dated 10-5-88 1-10-87 to 31-3-88 Rs. 8,038-80

C-18 dated 31-10-88 14-88 to 30-9-88 Rs. 8,038-80

When the petitioner has failed to deposit the amounts under C-18 notices, the Corporation has filed S No.34 of 19 89 before the Court u/s 85 of the Act. At that stage, the petitioner approached the Court disputing the coverage of the factory for the period from 1-4-1986 to October, 1987.

5. Basing on the submissions and rival submissions of the petitioner and the respondent, the Court framed the following three issues:

- (1) Whether the petitioner-establishment is not coverable under the provisions of the E.S.I. Act?
- (2) Whether the ad hoc assessment is illegal and without jurisdiction?
- (3) To what relief is the petitioner entitled to?

6. PW1 was examined on behalf of the petitioner and Exs.P1 and P2 were marked. RW1 was examined for the respondent and Exs.R1 to R5 were marked.

7. After considering the evidence, both oral and documentary, the Court held on the first issue that the petitioner-establishment is covered under the provisions of the Act for the period from 1-4-1986 to 30-9-1986 and for the period from October, 1986 to October, 1987, as the petitioner has not employed 20 or more persons, during that period, it is not coverable under the Act. On issue No.2, with regard to the adhoc assessment, it was held that the petitioner is liable to pay the contributions for the period from 1-4-1986 to 30-9-1986 and the petitioner was directed to pay the same on actuals failing which the respondent-Corporation was at liberty to recover the same on ad hoc basis by passing a proper order u/s 45-A of the Act after complying with the provisions of the Act.

8. Before going into the merits of the case, it is necessary to see the object and reasons of the Act and the provisions thereof. This Act is a beneficial piece of Social security Legislation in the interest of labour and the provisions of the Act will be construed to promote the scheme and to avoid the mischief played by the employers. The object of the Act is to provide certain benefits to the employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto. The Act was enacted by the Parliament with the above objects and reasons, so that the employers cannot act contrary to the above said provisions of the Act.

9. Chapter IV of the Act deals with contributions to be made by the employer for the welfare of its employees. According to Section 40, the Principal Employer shall pay contributions on the actual wages paid to its employees to the Corporation. Section 41 thereof contemplates recovery of contribution from immediate employer whereas Section 42 thereof deals with the contribution of an employee whose average daily wages during wage period below such wage as may be prescribed by the Central Government. Section 43 thereof deals with the method of payment of contribution and Section 44 mandates the employers to furnish the returns and maintain registers and Section 45 specifies the functions and duties of Inspectors of the Corporation. Section 45-A deals with the determination of contributions of a factory whereas Section 45-B of the Act contemplates its recovery from the employers, when they fail to make contributions, as the Corporation has got power to recover under the Revenue Recovery Act when they become due. Further under the E.S.I Regulations (General), 1950, a duty is cast on the employer to obtain the particulars of the persons employed on the appointed day or after appointed day under Form No.1 under Regulations 11 and 12. Under regulation 14 of the Regulations, the Employers shall send it to the appropriate Office by Registered Post or Special Messenger within ten days of the date on which Form No.1 was obtained from the employees. According to Regulation 32, every employer shall maintain a register in Form No.7 in respect of every employee of his factory or establishment. The Court below without considering the above provisions of law

simply came to the conclusion that the burden of proof to prove that the petitioner employed 20 or more persons during the period from October, 1986 to October 1987 lies on the Corporation. But as seen from the provisions of the Act, the burden lies on the petitioner only to prove that he has not employed 20 or more persons in his factory or establishment. It is not the Corporation, who has approached the Court seeking direction from it, to direct the respondent to pay the contributions for the period from October, 1986 to October, 1987, it is the employer of the factory who has approached the Court. As per the provisions of the Act, the petitioner (respondent herein) is the legal custodian of the records, registers, etc., pertaining to payment of wages, their attendance, etc. As submitted by the respondent-Corporation, the factory was inspected by their Inspector and on the basis of his report after verification of records of the factory, and as the Managing Director of the factory submitted OI Form to the Corporation, the Corporation initiated action calculating the amounts as per the wages paid to their workers. Therefore, when once the Managing Director of the petitioner-company has submitted OI Form, he cannot again go back and contend that his factory is not coverable under the provisions of the Act, as he has never employed 20 or more persons in his factory. If once the respondent has admitted that he has employed 20 or more persons during the period from 1-4-1986 to 30-9-1986, he cannot say that he has not employed 20 or more persons for the remaining period. As there is no whisper in the judgment that the Court directed the petitioner-factory to produce records which are maintained under Regulations 11, 12 and 32 for its verification and the respondent never stated that they have not employed 20 or more employees during that period. Therefore, the finding of the Court that the burden lies on the Corporation to prove that the petitioner-factory has not employed 20 or more persons during that period is not legal and not based on any record and therefore, it is liable to be set aside.

10. The provisions of the Act, contemplates 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 11-2-1987 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, register 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.

11. 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.

12. In the result, the appeal is allowed without costs.