

(2009) 05 SHI CK 0026
In the High Court Of Himachal Pradesh

Employees State Insurance Corporation	APPELLANT
Vs	
Vipin Kumar Singla and Another	RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Employees State Insurance Act, 1948 — Section 39, 40(1), 43, 85(e), 86(3)

Citation : (2009) 123 FLR 857 : (2010) 2 LLJ 212 : (2009) 2 ShimLC 267

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—In both these appeals, the common question of law and facts is involved, hence taken up together for its decision.

2. Heard and gone through the record. The facts of complaint No. 25/3 of 2000 in Appeal No. 592 of 2001 be noticed thus. The complaint was filed by the appellant under Sections 39, 40(1) and 43 read with Section 85(e) of the Employees' State Insurance Act, 1948, in short "the Act", in the court of learned Chief Judicial Magistrate, Sirmaur district at Nahan, alleging therein that the respondent-Company was required to submit the return of the contribution of its employees, to the petitioner-Corporation, but it failed to submit the return for the period w.e.f. April, 1996 to March, 1999, a show cause notice was issued in this behalf on 13.8.1999, despite that the respondent-Company failed to deposit the aforesaid amount, thus, sought an action under the relevant provisions of the Act. The learned trial Court dismissed the complaint on twin points, firstly that the complaint is barred by time as per provisions of Section 86(3) of the Act and secondly, the court had no territorial jurisdiction to try and hear the complaint as the return was required to be filed at Chandigarh in the Regional Office of the Corporation, and no part of cause of action accrued within the jurisdiction of the court, thus, dismissed the complaint.

3. As a matter of fact, in so far as first point is concerned, the learned trial court lost sight of the fact that in Section 86(3) above the words providing limitation of six months was deleted by the amendment Act of 29 of 1989 w.e.f. 20th October,

1989. The alleged offence in question had taken place w.e.f. April, 1996 to March, 1989 regarding which the show cause notice was given to the respondent-company on 13.8.99. When the respondent-Company failed to submit the return of contribution to the petitioner- Corporation, the complaint was filed in the month of April, 2000. There was no statutory bar to file the complaint after six months from the commission of offence. Thus the dismissal of the complaint on the ground as having barred by time is wrong and illegal.

4. Secondly, as far as the territorial jurisdiction of the court below is concerned, the return was required to be sent to "appropriate office" of the Corporation. The Regulation No. 26 framed u/s 97 of the Act governs this provision and it reads as under:

26. Return of contributions to be sent to appropriate Office:

(1) Every employer shall send a return of contributions in quadruplicate in Form 6 along with receipted copies of challans for the amounts deposited in the Bank, to the appropriate Office by registered post or messenger, in respect of all employees for whom contributions were payable in a contribution period, so as to reach that officer:

(a) within 42 days of the termination of the contribution period to which it relates;

(b) within 21 days of the date of permanent closure of the factory or establishment, as the case may be;

(c) within 7 days of the date of receipt of requisition in that behalf from the appropriate office.

(2) For the purpose of Section 77 of the Act, the due date by which the evidence of contributions having been paid must reach the Corporation shall be the last of the days respectively specified in Clauses (a), (b) & (c) of sub-regulation (1).

5. The word "appropriate office" has been defined under the definition clause of The Employees' State Insurance (General) Regulations, 1950, which can be usefully quoted here below:

(c) "Appropriate Officer", "Appropriate Local Office" or "Appropriate Regional Office" shall mean with reference to any action taken under these regulations, such office of the Corporation as may be specified for that purpose under a general or special order of the Corporation.

6. It is submitted by the learned Counsel for petitioner and not disputed by the respondent that the petitioner-Corporation has its duly specified "appropriate office" at Paonta Sahib, falling within the jurisdiction of the Chief Judicial Magistrate, Sirmaur district at Nahan. Therefore, in view of this situation, in my opinion, the Chief Judicial Magistrate Nahan has the territorial jurisdiction to try and hear the complaint.

7. Thus, for the above stated reasons, the view taken by the learned trial court in both the cases, passed in Criminal Complaint No. 25/3 of 2000 (in Appeal No. 592/01) and in complaint No. 26/3 of 2000 (in Appeal No. 593 of 2001) dismissing the complaints on 12.12.2000 is erroneous hence set-aside, as such, both the complaints are remanded back to the court of learned Chief Judicial Magistrate, Sirmaur district at Nahan to try and hear the matter in accordance with law.

8. Parties are hereby directed to be present before the learned trial court on 19th June, 2009 at 10 a.m. Send down the records.