

(2018) 01 GAU CK 0088
In the Gauhati High Court
Case No : 87 of 2011

EMPLOYEES STATE INSURANCE CORPORATION REGIONAL
OFFICE & ORS.

APPELLANT

Vs

M/S ACCOLADE INDIA (P) LIMITED

RESPONDENT

Date of Decision : 29-01-2018

Acts Referred:

Employees State Insurance Act, 1948, Section 82 - Appeal

Citation : (2018) 01 GAU CK 0088

Hon'ble Judges : Arup Kumar Goswami

Bench : Single Bench

Advocate : K.K. NANDI

Judgement

1. Heard Mr. K.K. Nandi, learned counsel for the appellants.
2. By an order passed on 03.05.2017, the appellants were directed to take steps for service of notice on the sole respondent by substituted manner by publishing the notice on two dailies, namely, ""Assam Tribune"" and ""Assomia Pratidin"", fixing the date of appearance on 21.06.2017.
3. By an order passed on 11.01.2018, notice on sole respondent was deemed to have been served. On the said date, though names of some of the counsel were also shown on the side of the respondent, as the record did not contain any Vakalatnama, this Court directed the Registry to verify whether any counsel had appeared for the respondent.
4. Registry has put up a note dated 24.01.2018 indicating that till 11.01.2018, no Vakalatnama had been received on behalf of the sole respondent by the concerned Section.
5. Today, no names are shown on the side of the respondent. Thus, the

respondent is not represented in this proceeding.

6. This appeal under Section 82 of the Employees' State Insurance Act, 1948 is directed against an order dated 16.10.2006 passed by the

learned Commissioner, Employees Insurance Court, Guwahati in ESI Case No.2/2006. As the order is short, it will be appropriate to quote the

said order in its entirety:-

1. M/s Accolade India Pvt. Ltd., NIIT, Panbazar - Guwahati -1 established an Educational Centre at Panbazar, Guwahati to impart computer

education to people as per the course and syllabus prepared by NIIT. The Company is required to deposit the tuition fee received from the

students in the Bank Account of NIIT who in turn would disburse 80% of the collection to the Company. It has been stated for the petitioner that

at no point of time, the Institute had more than 20 employees, but 18 employees were working in the Institute. In spite of the fact that the Petitioner

Company had less than 20 employees, the Inspector of E.S.I.C. included the education Centre within the ambit of the E.S.I.C. and served notices

without notifying the petitioner Company as a company falling under the E.S.I. Act. It has further been stated that since the company was not a

manufacturing process, it cannot be assessed under the E.S.I. Act.

2. The E.S.I.C. filed written statement, whereby the E.S.I.C. categorically denied the submission of the petitioner Company and stated that

32(thirty two) employees were working in the said company.

3. The Petitioner submitted evidence on affidavit, whereby he clearly stated that his company does not come within the definition of Factory as

contemplated in the E.S.I. Act, and exhibited Ext. 1, whereby the petitioner wanted to point out that the Petitioner Company is imparting computer

education only to the students. In spite of giving repeated opportunities, the E.S.I.C. did not cross-examine the petitioner. Hence, the evidence on

affidavit of the petitioner remains un rebutted. Since, the Petitioner's statement is duly supported by an affidavit remain un rebutted, the evidence

adduced by him should be accepted as true state of affairs.

4. The E.S.I.C. did not cross-examine the petitioner and also did not adduce any evidence which also supports the case of the petitioner. Hence,

the petition is allowed and the prayer of the petitioner as contained in petition is hereby allowed with cost.

Given under my hand and seal of this court on this 13th day of October, 2006.

7. Mr. K.K. Nandi, learned counsel for the appellant submits that as the appellants had submitted written statement, assuming that no step was taken by the appellants for cross-examination of PW-1 on 12.10.2006, the case ought to have been fixed for evidence of the appellants and instead of doing so, the very next day was fixed for argument. He, accordingly, submits that one opportunity might be granted to the appellants to adduce evidence.

8. From the order-sheet, it appears that the appellants submitted written statement on 08.06.2006. On 05.07.2006, the respondent herein (petitioner before the Employees Insurance Court) filed additional written statement, which was accepted. On that day, evidence of PW-1 was also filed and 20.07.2006 was fixed for cross-examination of PW-1. On 20.07.2006, cross-examination of PW-1 was adjourned at the instance of the petitioner and the matter was fixed on 03.08.2006 for cross-examination of PW-1. On 21.09.2006, on the request of the appellants, cross-examination of the PW- 1 was fixed on 12.10.2006. On 12.10.2006, the following order was passed:-

The petitioner is represented. For the petitioner, a petition has been submitted, which will be considered later on. The E.S.I.C. has not taken any step. Hence, this case will proceed on ex parte against E.S.I.C. Fix 13.10.06 for argument.

9. On 13.10.2006, the following order was passed:-

Heard argument. Fixed 16/10/2006 for award.

10. Although orders dated 08.06.2006, 29.06.2006, 05.07.2006, 20.07.2006, 03.08.2006 and 31.08.2006 specifically record that parties were present, a perusal of the records reveal that there is no Hazira (attendance-sheet) on any of these dates on behalf of the appellants while the petitioner had submitted either petition or attendancesheet on those relevant dates. Going by the order-sheet, it would appear that only on 12.10.2006, the appellants did not take any steps and, therefore, I am inclined to accept the submission of Mr. Nandi that one opportunity ought to have been granted to the appellants to adduce evidence. However, so far as the evidence of PW-1 is concerned, I am of the considered opinion that no case is made out to allow the appellants to cross-examine PW-1 as no

appropriate steps had been taken by the appellants.

11. In that view of the matter, this appeal is allowed by setting aside the award dated 16.10.2006 passed by the learned Commissioner,

Employees' Insurance Court, Guwahati in ESI Case No.2/2006 and remanding back the case to the Commissioner, Employees State Insurance

Court, Guwahati for fresh determination. The petitioner will be at liberty to adduce further evidence. The appellants shall also be granted

opportunity to adduce evidence.

12. The appeal stands allowed and disposed of on the above terms.

13. Registry will send back the records.