

(2013) 12 CAL CK 0032

In the Calcutta High Court

Case No : C.O. No. 3013 of 2000 (Appellate Side)

E.S.I. Corporation

APPELLANT

Vs

Machine Tools (India) Ltd.

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) 140 FLR 640 : (2014) LabIC 437 : (2014) 1 LLJ 464 : (2014) 2 LLN 626

Hon'ble Judges : Subal Baidya, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Subal Baidya, J.—This is an application under Article 227 of the Constitution of India filed by the petitioner Employees" State Insurance Corporation on 01.12.2000 challenging the judgment dated 13.12.1996 passed by the learned Judge, Employees" Insurance Court, Calcutta, in E.I. Case No. 114 of 1998 in Machine Tools (India) Limited v. E.S.I.C. wherein it has been stated that the petitioner is a Statutory Corporation established by the Central Government under the provisions of the Employees" State Insurance Act, 1948 and the opposite party i.e. Machine Tools (India) Limited is registered as a commercial establishment under the West Bengal Shops and Establishment Act and engaged in rendering services and assistance to their clients in procuring the equipment needed by them from the manufacturers in India and other overseas countries and such services is rendered by the opposite party against certain charges and as such they are selling services to their clients. It has also been stated that the opposite party is having a branch in Bombay at Imperial Chambers" Wilson Road, Bombay - 400038 which has been engaged in business of rendering and selling the same type of services as that of its registered office in Kolkata and the said branch at Bombay has been covered u/s 1(5) of the E.S.I. Act as "shop" with effect from 12.11.1978 under Code No. 31-31590-102 through notification. It has also been stated that Deputy Regional Director E.S.I.C., regional office at

Bombay vide his letter dated 31.05.1988 informed the Regional Director, E.S.I.C., regional office at Kolkata about the coverage of the opposite party's establishment at Bombay and also informed vide letter dated 05.08.1988 in details about the nature of business, number of employees of the regional office of the opposite party's establishment at Kolkata and other region after proper inspection of the records and material documents in this regard.

2. It has also been stated that the opposite party's establishment at Kolkata employed 22 persons on wages and is rendering services to their customers for price and their ledgers and centralized records are maintained at registered office at Kolkata.

3. It has also been stated that on receipt of the two letters, one issued by the Deputy Regional Director in 1988 and another letter issued by the Assistance Regional Director, Bombay regional office of E.S.I.C. and after being satisfied with the conditions of applicability of the provisions of E.S.I. Act, 1948, the Regional Director of the present petitioner issued a notice being No. E-INS.IV/31-31590-102(Cal.)/4183 dated 26.08.1988 and another notice being No. C/RR/31-31590-102(Cal.)/1245 dated 31.08.1998 declaring that the establishment of the opposite party has been brought under the purview of the E.S.I. Act with effect from 12.11.1978 provisionally and called upon the opposite party to ensure compliance with the provisions of the said Act and Regulations framed thereunder in the matter of submission of declaration forms in respect of other employees, payment of contribution etc. It has also been stated that the opposite party then filed an application u/s 75 of the E.S.I. Act, 1948 before the learned Employees' Insurance Court, West Bengal being Case No. 114 of 1988 challenging the said two notices and declaration coverage of the opposite party under E.S.I. Act along with a prayer for permanent injunction restraining the present petitioner from proceeding and further in the matter of recovery of contribution with effect from 12.11.1978 and/or enforcing the provisions of the said Act. It has also been stated that the present petitioner contested that case by filing written statement but the learned Judge of the E.S.I. Court, Calcutta without considering materials on record and without going into the merit of the case allowed the said case with an observation that the impugned notice dated 26.08.1988 is void, illegal and not binding upon the applicant of that case and the said notice has been struck down and also held that the claim of coverage is barred by limitation u/s 77(1A) of the E.S.I. Act, 1948.

4. That being aggrieved by and dissatisfied with the impugned judgment of the E.S.I. Court, the present petitioner has moved this Hon'ble Court challenging the said judgment on the ground that the learned Judge did not apply his mind to declare the claim of coverage and as demanded by the present petitioner barred by limitation and also on the ground that the learned Court below erred in law in holding that the said notice of the E.S.I.C. is void, illegal and not binding upon the opposite party and, therefore, the judgment under challenge passed by the E.S.I. Court should be set aside.

5. The learned advocate for the petitioner submitted that the opposite party Machine Tools (India) Ltd. is a shop within the meaning Section 1(5) of the West Bengal Shops and Establishment Act as the opposite party is selling the services to their customers in different ways through their employees appointed on wages and that being the position, the opposite party is under obligation to comply with the provisions of the E.S.I. Act, 1948 by way of submitting declaration of forms in respect of their employees, payment of contribution to the fund and other matters, but the learned E.S.I. Court, West Bengal without considering the same passed the impugned judgment which is not sustainable in the eye of law. On the other hand, the learned advocate for the opposite party submitted referring to the impugned judgment passed by the E.S.I. Court, West Bengal that the notice in question was issued by the Deputy Regional Director on behalf of Regional Director of the West Bengal region and also referring to the deposition of Joint Regional Director Sri S.C. Jain who deposed before the learned E.S.I. Court, West Bengal as O.P.W. No. 1 who stated in his deposition that the coverage decision was taken on the basis of information/instruction received from the Regional Director, E.S.I. Corporation, Mumbai. The coverage was done under the instruction of Regional Director, Bombay and accordingly, in the notice it has been noted that the coverage is from 12.11.1978 and the Bombay office of E.S.I.C. intimated the office of the opposite party at Bombay regarding coverage from 12.11.1978 and following it the said O.P.W. 1 has taken a decision that the branch office at Kolkata is also covered from 12.11.1978. He further stated referring to the said judgment that the said O.P.W. 1 admitted that he did not conduct any inspection or any other staff of the Corporation did not inspect the factory before coming to his opinion regarding coverage in the case. The said witness further admitted that the shops all over India have not been brought under the E.S.I. Act on the same date, but the opposite party concerned is covered as an establishment and it does not come under the definition of factory. That particular witness has further admitted that he has followed mechanically the instruction of the Regional Director, Bombay region. He further admitted that as Joint Regional Director he is of the opinion that the officers like them have to apply their mind to come to a decision regarding coverage of any establishment. The learned advocate for the opposite party then submitted that for coming to a decision whether a particular establishment will be covered under E.S.I. Act or not, an independent inspection, enquiry is highly essential, but in the instant case, the Joint Regional Director, Kolkata office did nothing. He simply followed the instruction of the Regional Director of Bombay Region and that is why the learned Judge of the E.S.I. Court, West Bengal declared the notice in question void, illegal and not binding upon the present opposite party. The learned advocate for the opposite party further submitted that the notice in question indicating coverage of the opposite party under the E.S.I. Act was issued on 26.08.1988 giving effect from 12.11.1978, but the proviso to Section 77(1A) clearly provides that no claim shall be made by the E.S.I. Corporation after five years of the period to which the claim relates and for that reason the learned E.S.I. Court rightly held that the claim of the present petitioner lodged on

26.08.1988 demanding coverage from 12.11.1978 being beyond five years is barred by limitation as the claim cannot be split up.

6. Going through the impugned judgment of the E.S.I. Court it transpires that the learned Judge of the E.S.I. Court allowed the application u/s 75 of the E.S.I. Act on two grounds. The first ground is that the Joint Regional Director of the E.S.I. Corporation, Kolkata did not follow the provision of Section 45 of the E.S.I. Act for bringing an establishment within the coverage of the E.S.I. Act. Secondly, the claim of the E.S.I. Corporation, Kolkata office demanding coverage from 12.11.1978 being beyond the period of five years from 26.08.1988 is barred by limitation under the proviso of Section 77(1A) of the E.S.I. Act, 1948.

7. I have perused the Sections 45, 75 and 77(1A) of the E.S.I. Act, 1948. The period of limitation is five years, it means that no demand can be made for a claim which is beyond five years from the date when such a demand is made. The demand notice was issued on 26.08.1988 demanding coverage from 12.11.1978.

8. So, it is found that the learned Judge of the E.S.I. Court rightly held that such demand cannot be split up and, therefore, the claim is barred by limitation as provided u/s 77(1A) of the E.S.I. Act. Section 45 of the E.S.I. Act clearly provides for enquiry and inspection for coming to a decision whether an establishment can be brought within the purview of coverage under the ESI Act, 1948, but here it is clear that the Joint Regional Director of E.S.I. Corporation, Kolkata simply followed the instruction of Regional Director of Bombay office mechanically and did not make any enquiry or inspection at all. So, the learned Judge of the E.S.I. Court rightly held that the whole proceeding of coverage by the notice in question was initiated, not only illegally, but also in violation of the statutory provisions of the E.S.I. Act. So, considering the impugned judgment and the provisions of law embodied in the E.S.I. Act mentioned above it is the considered view of this Court that the impugned judgment suffers from no illegality and/or infirmity and therefore, it is affirmed. That being the position, the instant application under Article 227 of the Constitution of India having no merit is dismissed. The application under Article 227 of the Constitution of India being C.O. 3013 of 2000 is, thus, disposed of.