

(1986) 09 RAJ CK 0090

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 233 of 1979

Ganpati Printing Works

APPELLANT

Vs

E.S.I. Corporation

RESPONDENT

Date of Decision : 19-09-1986

Acts Referred:

Employees State Insurance Act, 1948 — Section 1, 75, 82

Citation : (1987) 1 WLN 356

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

Guman Mal Lodha, J.—This is an appeal u/s 82 of the ESI Act against the judgment dated 19 April, 1979 passed by the Employees State Insurance Court, Jaipur in ESI Case No. 18 of 1978.

2. The appellant filed an application u/s 75 of the ESI Act on 28-10-1976 before the ESI Court Jaipur praying that the Ganpati Printing Works, Pali was not covered under the provisions of the ESI Act and therefore the respondent could not demand the ESI contribution as a sum of Rs. 4,738.82 declared to be due in the appellant and the declaration was sought that the petitioner was not liable for any contribution under the ESI Act and no amount could be recovered from it.

3. Mr. Calla's principal contention is that since by notification dated September 25, 1975 there has been exclusion and this has been accepted by the ESI court therefore the finding that the appellant is included as an establishment is contradictory and cannot be sustained. In support of this he referred to the notification No. 1 and also the judgment para No. 8, 9 and 10.

4. I have carefully gone through the notification and also the judgment relevant portion as pointed out by Mr. Calla. It is to be noticed that the finding of fact of the ESI court is that the establishment of the appellant as per Ex. A/1 is employed in process for making colour. This particular finding of fact of the ESI court is not to be considered with the notification. While considering the

notification it must not be forgotten that Section 1 of the Employees State Insurance Act contains a provision in Sub-clause (iv) by which it applies to all factories other than general factory Clause (v) of Section 1 empowers the Central Government to issue notification for extending the provisions of this Act and of them to any other establishment or class of establishment industrial commercial agricultural or otherwise, obviously the factories in general are covered by Clause (iv) of section and they were covered immediately on coming into force of this Act. Clause (v) is additional empowering power given for the purpose of extending the provisions of this Act to other establishment industrial commercial agricultural otherwise. It means that the extension of this provision of the Act would be to those establishments which were not covered earlier by Clause (iv). It is to make this patent and clear that notification expressly mentioned exclusion of them. This exclusion is not intended to be total exclusion but is meant to clarify the position that by virtue of this notification the new adoption or expansion would apply to those factories or establishments which are not covered earlier and those already are covered by Clause (iv) would already remain by virtue of Clause (iv) and not this notification. In this view of the matter, I have no hesitation in holding that the Clause (v) supplements Clause (iv) of the Act and Clause (v) empowers the State Government by notification to extend the application of this Act to those establishments which are not covered earlier by Clause (iv). In the notification the provision for exclusion of the factory is meant to cover these areas only which are already covered and there should not be so overlapping by the inclusion of those factories which have already been covered by Clause (iv).

5. In this view of the matter. I am of the opinion that the finding of the ESI court that the appellant is covered by ESI Act calls for no interference.

6. Mr. Calla then argued that the ESI court has not clarified that what amount is due and that should be clarified in the presence of the parties so that one appellant can lead evidence on the crucial point about the quantum of the amount due. This appears to be reasonable. Consequently the question of the amount for being raising a demand against the appellant for the purpose of contribution to the Corporation would be determined afresh in the presence of the parties now, by the Insurance Court.

7. To the above limited extent, the appeal is allowed & the appeals fails & it cannot be accepted on the principal point regarding the question that this particular establishment appellant is covered by the ESI Act but the appeal succeeds on the limited point that the quantum of amount to be amended or the contribution which is to be realised from the appellant would be determined now, by the ESI Court in the presence of the parties.

8. The parties would bear their own costs, throughout.