

(1992) 09 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 293 of 1989

Gautam Industries

APPELLANT

Vs

Regional Director, Employees State Insurance Corporation

RESPONDENT

Date of Decision : 23-09-1992

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 45B, 75

Citation : (1992) WLN 204

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—This appeal is directed against the decree and judgment dated March 23, 1989, passed by the Civil Judge acting as the Judge of the Employees State Insurance Court, Jodhpur, by which the learned Judge of the E.S.I. Court disposed of the appellant's application u/s 75 of the Employees State Insurance Act.

2. M/s. Gautam Industries filed an application u/s 75 of the E.S.I. Act in the Court of the Employees State Insurance Court, Jodhpur, for the adjudication of the dispute whether the applicant factory M/s. Gautam Industries, Raoti Road, out-side Chandpole, Jodhpur, is covered by the provisions of the E.S.I. Act or not. The case of the applicant, as put-up in the application, is that the applicant factory is not covered by the provisions of the E.S.I. Act as less than ten persons are employed in the applicant establishment though the establishment is run by power. It was stated in the application that on 15.3.1975, a letter was received from the Inspector, Employees State Insurance Corporation that the establishment of the applicant is covered by the provisions of the E.S.I. Act and, therefore, it is necessary to get it registered. The applicant filed reply to that letter, but the Corporation informed the applicant that the establishment of the applicant is covered by the provisions of the E.S.I. Act since September 14, 1977, and, therefore, it is required to deposit the employer's contribution and If

the employer's contribution Is not deposited then the proceedings for the recovery of the amount under Sections 45A and 45B of the E.S.I. Act will be initiated against the applicant establishment. A dispute was raised by the applicant u/s 75 of the E.S.I. Act before the learned Judge of the E.S.I. Court, Jodhpur, and it was prayed that it may be declared that the applicant establishment is not covered by the provisions of the E.S.I. Act. This application was opposed by the E.S.I. Corporation and it was stated in the written statement that the survey of the applicant's factory was made by the Inspector of the E.S.I. Corporation on 14.7.1977, and more than ten persons were found working In the applicant establishment and the power was, also, being used in the establishment. The applicant itself duly filled-in the form No. 01 for the registration of the factory under the E.S.I. Act and applied for the same. At the time of survey on 6.1.79 Shri Hari Ram Mistri gave the list of the workers working in the factory on 6.1.1979, which were ten in number and the factory was, also, having an electric connection of 10-H.P. and there were eight power-looms and other machineries operating there at that time. The learned trial Court, on the basis of the pleadings of the parties, framed the following issues:

- 1- vk;k oknh izfr"Bku ij deZpkjh jkT; chek vf/kfu;e ykxw ugha gksrk gS\\
- 2- vk;k oknh us dHkh vius gkFk ls Hkj dj dksbZ ?kks"k.kk i= izfroknh dks ckcr iathdj.k ugha Hkstk\\
- 3- vk;k oknh va"knku dh jde vnk djus dks ikcUn ugha gSa\\
- 4- nknjlh\\

The applicant, in support of its case, examined its partner Gautam Chand as PW 1 and placed on record 62 documents. The Corporation produced DW 1 D.C. Pandey in support of its case and reliance was placed on three documents. The learned Judge of the E.S.I. Court, by its judgment dated 23.3.89, did not decided issues No. 1 and 2 finally by observing that A notice u/s 45A of the E.S.I. Act was given to the applicant why the amount of the contribution has not been deposited and an opportunity of hearing was given to the applicant to show cause why the contribution may not be ordered to be paid and, therefore, it is not necessary to decide the issue finally at this stage whether the provisions of the E.S.I. Act are applicable in the case of the applicant establishment and that issue will be decided by the Corporation at the time of disposal of the application. Regarding issue No. 3, which deals with the liability of the applicant to pay the contribution, it was observed by the learned Judge of the E.S.I. Court that the applicant has been given 15 days" time to appear and raise the objection and the point has not been finally decided by the Corporation and, therefore, no recovery under the Public Demand Recoveries Act can be made from the applicant. The applicant was, therefore, asked to appear before the Corporation and to file any objection in pursuance to the notice received by it.

3. Heard learned Counsel for the parties and perused the judgment passed by the learned lower Court and the record of the case. The learned Judge of the

E.S.I. Court has not finally determined the question: whether the establishment of the applicant is covered by the provisions of the E.S.I. Act or not and has left the issue open for the Corporation to decide the matter after considering the objections raised by the applicant, if any, and after giving an opportunity of hearing to the applicant. As the matter has not been finally disposed of by the learned Judge of the E.S.I. Court, it will not be proper for this Court to express any opinion whether the establishment of the applicant is covered by the provisions of the E.S.I. Act or not, as that will amount to pre-judging the matter and interfering in the jurisdiction of the E.S.I. Corporation which has yet to decide the matter. Any finding on this fact, arrived at by this Court, will adversely affect the case of the applicant. As the matter has not been finally adjudicated by the B.S.I. Court or by the Corporation, therefore, the appeal, filed by the appellant, is pre-mature and deserves to be dismissed on this ground alone.

4. In the result, I do not find any merit in this appeal and the appeal, filed by the appellant, is, therefore, dismissed as the same being pre-mature.