
(1998) 01 RAJ CK 0057

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 101 of 1995

Gautam Industries

APPELLANT

Vs

Regional Director, ESIC

RESPONDENT

Date of Decision : 19-01-1998

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 75, 82

Citation : (1998) 1 RLW 580 : (1998) 2 WLC 319 : (1998) 1 WLN 41

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—The present appeal has been filed against the judgment and decree dated 6.12.1994 passed by Employees Insurance Court whereby the proceeding initiated by the appellant was dismissed u/s 75 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act").

2. Heard.

3. Perused the judgment and decree under appeal.

4. It is borne out from the record that earlier proceeding initiated by the appellant was dismissed by the Employees' Insurance Court on 23.3.1989 holding that the determination of contribution payable by the appellants factory is to be determined by Employees' State Insurance Corporation as envisaged u/s 45A of the Act, provided the appellant within 15 days place material before it in this regard.

5. Against the judgment and decree dated 23.3.1989 passed by Employees' Insurance Court, the appellant filed an appeal wherein the judgment dated 23.3.1989 was affirmed and the appeal was dismissed by High Court.

6. It is pertinent to mention here that after judgment dated 23.3.1989, the appellant raised objection, regarding levying of contribution against his factory

and also furnished documents in support of it.

7. The Employees' State Insurance Corporation vide its order dated 16.1.1990, determined the contribution payable in respect of the employees of the factory of the appellant and it appears that on the basis of this order, recovery proceedings were initiated against the appellant and as such second proceeding u/s 75 of the Act was initiated by him.

8. After hearing learned Counsel for the parties, the Employees' Insurance Court again dismissed the proceeding holding that as the appellant himself has submitted Form No. 01, on the basis of which, in earlier order dated 23.3.1989 it was specifically held that the Act is applicable to the factory of the appellant. The factum about submission of Form No. 01 by appellant to the inspector was categorically held to be signed with his free will in earlier proceedings. From the fact of submission of Form No. 01 it was categorically held by the Employees' State Insurance Court in its earlier judgment dated 23.3.1989 that the Act is applicable to the factory of the appellant.

9. When the aforesaid two questions regarding submission of Form No. 01 and applicability of the Act to the factory of the appellant were re-agitated before the Employees' Insurance Court in subsequent present proceedings u/s 75 of the Act then it was correctly held that both these questions are barred by principle of res judicata. I am of the view that the Employees' Insurance Court has committed no error in arriving at the aforesaid findings.

10. Main thrust of argument of learned Counsel for the appellant Mr. G.M. Bhandari before me is that in the earlier proceedings, the applicability of the Act to the appellant's factory was not finally disposed of by Employees' Insurance Court in its judgment dated 23.3.1989.

11. I am not satisfied with the aforesaid argument of learned Counsel for the appellant in view of the fact noticed in preceding paragraph of this judgment. As a matter of fact, the applicability of the Act to the appellant's factory was categorically decided by Employees Insurance Court vide its judgment dated 23.3.1989 in earlier proceedings u/s 75 of the Act therefore this question cannot be allowed to be reagitated in the present subsequent proceeding being barred by principle of res judicata.

12. It is next contended by Mr. Bhandari that assuming for arguments sake that applicability of the Act as well as submission of Form No. 01 to the inspector is held to be barred by principle of res judicata even then in the present proceeding the propriety of determination of contribution payable by the appellant u/s 45A of the Act ought to have been decided by the Employees' Insurance Court as envisaged under Clause (g) of Sub-section (1) of Section 75 of the Act which clearly provides that any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution

or benefit or other dues payable or recoverable under this Act (or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act.) such question or dispute (subject, to the provisions of Sub-section (2-A)(shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act).

13. There is no quarrel with the aforesaid submission of Mr. Bhandari that the determination made u/s 45A of the Act by the Employees' State Insurance Corporation is subject to decision by the Employees' Insurance Court. But here in the present case the Employees' Insurance Court has examined the legality and validity of determination of contribution payable by the appellant u/s 45A of the Act determined by Employees' State Insurance Corporation on 16.1.1990. The Employees' Insurance Court vide its judgment dated 6.12.1994 under appeal arrived at a conclusion that the determination made by Employees' State Insurance Corporation is eminently just and proper. I am in full agreement with this finding of Employees' Insurance Court which does not suffer from any substantial error of law or procedure within the meaning of Section 82 of the Act.

14. In my considered opinion no substantial question of law is involved in the present appeal therefore it is liable to be dismissed.

15. Resultantly, the instant appeal is hereby dismissed in limine as no substantial question of law is involved in it.