
(2014) 06 KL CK 0054
In the High Court Of Kerala
Case No : Ins. Appeal No. 43 of 2012

Glassco

APPELLANT

Vs

The Regional Director

RESPONDENT

Date of Decision : 11-06-2014

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12)

Citation : (2014) 143 FLR 411 : (2014) 3 LLN 159 : (2014) LLR 970

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : P. Ramakrishnan and Sri. T.C. Krishna, Advocate for the Appellant;
Thomas Mathew Nellimoottil, Standing Counsel, Advocate for the Respondent

Final Decision : Allowed

Judgement

B. Kemal Pasha, J.—The applicant in I.C.9/2007 of the Employees' Insurance Court, Alappuzha has come up in appeal challenging the judgment dated 10.12.2010 passed by the court below. The case before the court below was filed by the appellant herein seeking a declaration that Ext.P1 notice imposing coverage of the establishment of the appellant u/s 2(12) of the Employees State Insurance Act, 1949 (hereinafter referred to as "the E.S.I. Act") with effect from 01.04.2006, is unsustainable and that the appellant is not bound to comply with the provisions of the E.S.I. Act.

2. The case of the appellant is that the establishment of the appellant is a partnership firm of which one T.K.Varghese is the managing partner. The said firm is a small scale industrial establishment engaged in the business of glass processing and designing, the factory of which is located at Kalamassery. It has an administrative office 8 kms. away, at Mamangalam, Ernakulam. The case of the appellant is that the appellant had never engaged 10 or more employees coverable under the E.S.I. Act on any day. It is alleged that two inspectors of the ESI Corporation had visited the said establishment at Kalamassery on 20.04.2006. In the absence of PW1 Manager, who was all along present at the

administrative office Mamangalam, the inspectors allegedly verified the available registers at Kalamassery and collected some evidence. They allegedly ascertained the salary particulars of those persons employed at Kalamassery over the phone from PW2, staff member at the administrative office at Mamangalam. Allegedly on the information passed on by PW2, they prepared a visit note. By the time PW1 had reached there, the inspection was over and they issued a copy of the visit note to PW1 on obtaining his acknowledgment. It is the case of the appellant that the entire contents of the visit note regarding the wages of the employees of the factory are not correct to facts, and the wages included therein represent only the basic wages in which other allowances like DA, HRA etc. are not included.

3. On the basis of the visit report, the ESI Corporation has gone to the extent of finding that the establishment is coverable under the ESI Act and thereby Ext.P1 was issued. It seems that, on the side of appellant, PWs.1 to 3 were examined before the court below, and Exts.P1 to P9 were marked. On the side of respondent, DW1 was marked and Exts.D1 to D5 were marked. The court below has not accepted the evidence tendered by PWs.1 to 3 and also the contents of documents marked as Exts.P1 to P9 by assigning more than one reasons.

4. Heard the learned counsel for the appellant Shri P. Ramakrishnan and the learned Standing Counsel for the respondent Sri. Thomas Mathew Nellimoottil. The learned counsel for the appellant has argued that the court below has unnecessarily brushed aside the evidence of PWs.1 to 3 without any proper reasons and further the court below has discarded the contents of Exts.P1 to P9 by assigning a reason that the said registers were not certified or counter signed by any other authority, which according to the learned counsel for the appellant, is quite unfounded. Per contra, the learned counsel for the ESI Corporation has pointed out that there is no reason to discard the visit note prepared by the two inspectors of the Corporation, in the course of their official duty.

5. The first point argued by the learned counsel for the appellant is that in counting the number of coverable employees in the establishment at Kalamassery, the inspectors ought not to have considered those employees who were working at the administrative office situated at Mamangalam to bring the establishment within the coverage limit as the administrative office is located not in the same premises at which the establishment at Kalamassery is located. The said view has been clearly accepted by the court below and presently there is no quarrel with the said proposition.

6. It seems that the court below has discarded the evidence of PW1 by stating that he has accepted and acknowledged the visit note prepared by the inspectors and therefore, he cannot retract its contents. In order to discard the evidence of PW2, the court below has given a reason that she had telephonically given details of the wages of the employees and she is a tutored witness, who has adduced evidence for aiding the establishment. Relating to the evidence of PW3, who is the managing partner of the establishment, the court below has given a

reason that he is engaged in other business also and that he has no direct knowledge with regard to the affairs and details of the employees at Kalamassery factory. According to the learned counsel for the appellant, those observations made by the court below in order to discard the evidence of PWs.1 to 3 are unsustainable.

7. Another point argued by the learned counsel for the appellant is that the court below has chosen not to rely on the contents of the documents produced and proved by the appellant by projecting a ground that those documents are not seen counter signed or verified by any authority. Only when some authorities visit or inspect the factory or premises of the establishment, then only they get an opportunity to make entries in the visit book or the wages registers or other records. When those wages registers, duly kept in the course of business of the establishment, were produced and proved, it could not have been brushed aside by the court below by merely stating that no authorities had counter signed it. If at all, as pointed out by the learned counsel for the appellant, there is no prescribed authority to verify and counter sign such wages registers. When authorities like officers concerned with the minimum wages, ESI Corporation, Provident Fund etc. are visiting the establishment, they get an opportunity to counter sign those documents. When there were no such visits, merely on the ground that those documents were not counter signed by any of the authorities, the same cannot be brushed aside.

8. The learned counsel for the appellant has pointed out that when the court below has chosen to discard the evidence of PWs.1 to 3 by highlighting and projecting some flimsy grounds, and it has discarded the contents of the documents proved by the appellant in evidence, without any valid reason, the entire matter requires reconsideration by the court below. On going through the reasons adopted by the court below to discard the evidence of PWs.1 to 3 and the contents of Exts.P1 to P9, this Court is also of the view that the entire matter requires reconsideration by the court below, for which the whole matter has to be remitted to the court below.

9. The learned counsel for the ESI Corporation has pointed out that it is not the ESI Corporation that is affected in the matter even on an adverse order; whereas, it is the employees concerned who are really the affected parties, and therefore the representatives of the affected employees have to come on record. Relying on the decision in Fertilizers and Chemicals Travancore Ltd. Vs. Regional Director, ESIC and Others, , the learned counsel for the ESI Corporation has pointed out that the representatives of the employees or the trade union, if any, representing them, are also necessary parties to the matter and in case of a remand, the appellant may be directed to implead such persons also, for the proper adjudication of the matters in controversy in this case.

10. The learned counsel for the ESI Corporation has further pointed out that it is better to avoid PW2 from getting impleaded as a representative of the employees, as she has already adduced evidence for the appellant in the matter.

It is true that PW2, who was one of the employees attached to the administrative office of the establishment at Mamangalam, was examined and she has deposed that what was transpired by her was only basic wages of the employees including her and not the actual emoluments which were being received by the employees. It is incumbent upon the appellant to implead the representatives of the employees or representatives of the trade unions, if any, of the employees in the matter.

In the result, this Insurance Appeal is allowed and the impugned judgment is set aside. The matter is remitted to the court below for fresh disposal in accordance with law. Being an open remand, the parties are at liberty to adduce fresh/further evidence in the matter. The appellant shall implead necessary representatives of those affected employees or representatives of trade unions, if any of such employees, for a proper adjudication of the matter. The court below shall decide the matter afresh based on the evidence, and untrammelled by any of the observations made by the court below in the impugned judgment. The parties shall appear before the court below on 07.08.2014.