
(2003) 02 RAJ CK 0013
In the Rajasthan High Court
Case No : C.M.A. No. 283 of 1995

Gunesh Textiles	Vs	APPELLANT
Regional Director, Employees' State Insurance Corporation		RESPONDENT

Date of Decision : 11-02-2003

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 75G, 82

Citation : (2004) 2 LLJ 136 : (2003) WLC 796

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : M.D. Purohit and Anand Purohit, for the Appellant; Govind Mathur, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Panwar, J.

1.This miscellaneous appeal is directed against the judgment dated May 24, 1995 passed by Employees' Insurance Court (Civil Judge, Senior Division), Pali (hereinafter referred to as "the EI Court") whereby the EI Court dismissed the application filed by appellant u/s 75-G of the Employees' State Insurance Act, 1948 (for short "the Act"). Aggrieved by the judgment impugned, the appellant has preferred present miscellaneous appeal. I have heard learned counsel for the parties. Perused the judgment impugned and relevant material.

2. The appellant establishment is a partnership firm engaged in printing and dyeing of clothes having its factory at Pali, Rajasthan. It is contended that the said establishment is engaged in printing and dyeing of clothes (textile) since 1975. There are 13 to 14 persons working in the factory for printing and dyeing of clothes. Thus, the said establishment has more than 10 persons working with the aid of power, situated within the municipal area of Pali. On June 22, 1989, Inspector of respondent Employees' State Insurance (for short "the E.S.I. Inspector") visited and inspected the said establishment and submitted the

inspection report Exhibit A/1. The representative of the appellant establishment submitted Form Exhibit A/2 stating therein that there are 13 to 14 persons working in the said establishment engaged in printing and dyeing of clothes. Thus, the ESI Inspector came to the conclusion that the appellant establishment is engaged in printing and dyeing of clothes, by manufacturing process with the aid of power and, therefore, the appellant is an establishment within the meaning of Section 1(5) read with Section 2(12) of the Act.

3. A notice was sent to the appellant Establishment raising demand of Rs. 18,672/- as employer's contribution under the provisions of the Act. The said notice was received by the appellant. On receipt of the notice, the appellant filed an application u/s 75-B of the Act.

4. Reply was submitted by respondent Regional Director, Employees' State Insurance Corporation, Jaipur and on the pleadings of the parties, the EI Court framed two issues. Parties led evidence and produced certain documents. By judgment impugned, the EI Court decided issue No. 1 against the appellant and in favour of the ESI and held that in the factory of appellant's establishment about 13 to 14 persons are working who are engaged in manufacturing process (printing and dyeing of clothes) with the aid of power and thus, the appellant's establishment is covered by the provisions of the Act, While deciding issue No. 2, the EI Court held that the notice given by the respondent directing the appellant to deposit the ESI contribution amounting to Rs. 18,672/- cannot be said to be erroneous. Thus, it cannot be said that the Employees' State Insurance Corporation is not entitled to recover the said amount.

5. It is contended by the learned counsel for the appellant that the appellant's establishment is engaged in printing and dyeing Of clothes for which power is used to lift water from well to overhead tank and as such, use of power for lifting water from well to over head tank for the purpose of printing and dyeing of clothes cannot be said, to be manufacturing process with the aid of power, and therefore, denied the coverage of its factory within the provisions of the Act. Thus, the appellant cannot be held liable for the contribution.

6. Learned counsel for the respondent contended that indisputably the appellant establishment is engaged in printing and dyeing of clothes and in the factory more than ten persons are employed for wages and thus it is engaged in manufacturing process carried on by drawing water from well and overhead tank by the use of an electric motor with the aid of electric power and the establishment is a factory fully covered by the provisions of the Act.

7. Learned counsel for the appellant relied on a judgment of the Andhra Pradesh High Court in Gantyal Handloom Industries, Hyderabad v. Employees' State Insurance Corporation, Hyderabad 1976 Lab IC 1433 . Per contra learned counsel for the respondent relied on a judgment of this Court in Grading Minerals v. Regional Director, Employees' Insurance Corporation and Anr., S.B. Civil Misc. Appeal No. 61/1989, decided on July 23, 1996 and a judgment of the Andhra

8. I have given my thoughtful consideration to the rival submissions made at the Bar.

9. In Gantyal Handloom Industries, (supra), the Andhra Pradesh High Court held that there must be a direct nexus or connection for the use of the water pumped by an electric motor to the very manufacturing process. In the said case, the water had been pumped with the aid of an electric motor into overhead tank. That water in the tank was admittedly used for drinking, bathing and other purposes of the employees and others. Not only this, the water was also utilised for watering the plants, trees and for growing vegetables in a portion of the vacant land. In the instant case, it is not the case of the appellants that the water pumped by use of electric motor for lifting water to overhead tank is put to any other use other than the use of printing and dyeing of clothes. Admittedly, the appellant came out with the case that water is lifted from the well to overhead tank with electric motor with the aid of power for the purpose of printing and dyeing of the clothes in the establishment. Thus, it is not the case of the appellant that, water which is lifted from the well with aid of power is put to any other use other than manufacturing process and printing and dyeing of the clothes in the establishment. The facts of the instant case are almost identical to that of the case of Gantyal Handloom Industries (supra). The question which came up for consideration before the Andhra Pradesh High Court in Gantyal Handloom Industries (supra) was whether the respondent therein was an establishment within the meaning of Sub-section (12) of Section 2 of the Act. In that case the establishment was engaged in printing and dyeing of sarees. The premises where manufacturing process was being carried has overhead tank and the water was pumped in the tank by the electric motor with the aid of power. On survey conducted by the ESI Inspector, the establishment was found to be covered by the Act. It was contended by the establishment that by use of power of lifting water to overhead tank cannot be construed to be manufacturing process as defined in Section 2(8) of the Factories Act. The Andhra Pradesh High Court held that water which is used in manufacturing process, from the well was stored in over head tank with the aid of power and, therefore, the manufacturing process is being carried on with the aid of power and, therefore, it was held that the establishment is covered by the Act.

10. This Court in Grading Minerals (supra) held that whether the fans which are operating in the factory are used for drying of sarees or not, is a finding of fact and while hearing the appeal u/s 82 of the Act, question of finding of fact cannot be decided. This Court declined to interfere with the finding of fact holding that no question of law is involved in the appeal.

11. An appeal u/s 82 of the Act lies to the High Court against the judgment of the EI Court if it involves a substantial question of law. In the instant case, the conclusion of evidence arrived at by the EI Court is in accordance with law and prescribed procedure based on pure fact. Thus, it does not involve any question

of law much less substantial question of law. Hence, no case for interference is made out.

12. For the reasons stated, this appeal fails and is hereby dismissed. No order as to costs.