
(2011) 09 DEL CK 0414
In the Delhi High Court
Case No : FAO No. 120 of 2001

Indian Hume Pipe Company Ltd.

APPELLANT

Vs

Regional Director, E.S.I.C. and Another

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

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

Citation : (2012) 132 FLR 154 : (2012) 2 LLJ 558

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.S. Ray and Rajan Tyagi, for the Appellant; K.P. Mavi, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this First Appeal u/s 82 of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act") is to the impugned order of the ESI Court dated 8.12.2000 which dismissed the petition filed by the Appellant herein u/s 75 of the Act.

2. The facts of the case are that the Appellant is engaged in the manufacture of large size pipes. The Appellant was sent a notice dated 24.11.1986 demanding payment of Rs. 97,224.30/- for laying work of the pipes. The Appellant made a representation against the notice of demand and produced certain documents whereafter the demand was reduced from Rs. 97,224.30/- to 12,207.65/- vide order dated 9.3.1987. It was also held that no interest was payable by the Appellant. The Appellant made a representation dated 9.4.1987 against the said demand of Rs. 12,207.65/- and followed it up by another representation dated 30.4.1987. On account of the failure of the Appellant to pay the amount due, intimation was sent by the Respondents to the Collector to recover the subject demand alongwith interest.

3. The Appellant challenged this action of the Respondents by means of filing of

the subject petition u/s 75 of the Act. What was contended on behalf of the Appellant before the ESI Court was that the work of laying of pipes was not the work of the Appellant but was the work of an independent contractor and which work therefore cannot be said to be within the scope of the activities of the Appellant and accordingly for employees engaged in such work ESI contribution was not to be paid.

4. After pleadings were complete, the ESI Court framed issues and the main issue was issue No. 2 as to the validity of the demand raised.

5. In this regard, the ESI Court by the impugned judgment has held that the Appellant failed to file the necessary documents and show that the work of laying of pipes was not given to the Appellant but was given to an independent contractor. The ESI Court found that the specialized nature of the work was such that the work could not have been done by an independent contractor. The ESI Court also referred to the fact that if there was an independent contractor, the Appellant would have examined that independent contractor or the witnesses from the Municipal Corporation of Delhi (for whom the work of laying the pipes was done) to show that the work was done by an independent contractor and not the Appellant, however the same was not done. Accordingly, ESI Court held that the work of laying of pipes was within the scope of the activities of the Appellant and therefore ESI contribution was payable. The relevant observations of the Court below in which the necessary findings and conclusions in this regard are given in paras 16 and 17 which read as under:

16. It is clear from the discussion that an employer is liable to pay the contribution in respect of activities which form an integral part of its activities and are carried on under the supervision of the employer and the employer has no liability to pay the contributions in respect of work carried out by the independent contractors, or in respect of an activity which does not form an integral part of its activities.

17. In the instant case, it is the case of the Petitioner that its main activity is pipe manufacturing. The pipes are heavy in weight and bulky in size. The laying work is not part and parcel of its manufacturing activity. The work was done far away from the factory at a site of M.C.D. However, the Petitioner has not placed on the record any agreement to the effect that pipes would be laid by it at the site of M.C.D. When the pipes were laid at a site of MCD, which is a govt. body, the work could not have been done on oral request. There must have been some written agreement which the Petitioner has failed to produce on the record. Secondly, it is the case of the Petitioner that pipes are heavy in weight and are bulky in size. The natural consequences of this is that any ordinary person which includes a company also cannot lay them. Some specific qualifications must be required which only a person having some experience of the work can do. On the facts of the instant case, the Petitioner is the best person to possess such experience. That is why they were called upon by the MCD to lay the pipes. A company which does not have specific expertise in laying such heavy pipes

cannot be called upon by any person including the MCD to lay the pipes when it is not sure of the expertise possessed by the laying company. Thirdly, no witness has been examined from the MCD Deptt. to say that the pipes were laid by independent contractors for them and not by the Petitioner-company. Fourthly, no independent contractor has been examined in the witness box. Fifthly, from the document Ex.PA, which gives a record of the laying work, all the details have been mentioned. If the work was carried out by an independent contractor, there was no need for the Petitioner to maintain such details record as it would have been suffice for them to maintain a record of the payments made by them. Sixthly, PW-1 Mr. G.K. Giotra has admitted in the cross-examination that he has not produced the ledger regarding the persons from whom they got the work done and there is no agreement in this regard. He took the excuse that they cannot produce the record as the matter is quite old. The excuse cannot be accepted. For these reasons, I do not agree with the Petitioner that the pipe laying work is not an integral part of the work of the Petitioner-company. The principal work of the company might be pipe manufacturing but on the facts of the instant case, they have failed to show that laying work was independent and separable work and was not an integral work connected with the work of the Petitioner-company. As such, the authorities cited above by the Id. counsel for the Petitioner showing the meaning of "factory" and the law regarding contract site are not applicable to the facts of the present case."

(underlining added)

6. I do not find any illegality whatsoever in the aforesaid findings and conclusions of the Court below. The Appellant was guilty of deliberately concealing documents and deliberately not leading the necessary evidence. The ESI Court has therefore rightly held that the work in question i.e. laying of pipes was very much part and parcel of the activities of the Appellant, and therefore, Appellant was liable to pay the ESI contribution with respect to the employees who did this work.

7. I may note that an appeal u/s 82 of the Act is only entertained if there arises a substantial question of law. The finding of facts contained in para 17 of the impugned judgment does not raise any substantial question of law. There is therefore no merit in the argument raising any substantial question of law with respect to the finding of coverage of the Appellant under the Act for contribution to be made with respect to the employees for the work of laying out of the pipes.

8. Learned Counsel for the Appellant firstly sought to argue that the provision of Section 45A of the Act did not apply. Firstly, I find that there is no reference to such an issue having been argued before the Court below at the time of final argument inasmuch there is no discussion whatsoever with respect to this issue in the impugned judgment. Obviously, this point must have been given up and therefore not argued. If really this point was argued and not pronounced upon it was incumbent upon the Appellant to immediately approach the ESI Court after the impugned order was passed to bring to the notice of the Court below that

such a point was argued but was not pronounced upon. Admittedly, this was not done and in fact no such application was ever filed. Therefore, in accordance with the ratio of the judgment in the case of State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, I hold that the Appellant ought not to be permitted to raise this point in the appeal having given up the same before the ESI Court. In any case, even on merits, I do not find any strength in this argument because the original order which was passed by the concerned authority was pursuant to the notice dated 24.11.1986, which resulted in passing of an order reducing the demand from Rs. 97,224.30/- to Rs. 12,207.65/-. The demand was therefore raised after following the due procedure of law and which having not been paid action was taken to recover the amount through the Collector.

9. The second point which was argued was that the concerned authority which passed the impugned order was not a competent authority. It was argued that the order was passed in the year 1987 and the notification which is relied upon by the Court below is of 29.7.1991. It is argued that an Assistant Regional Director has no authority to pass an order. In my opinion, such hyper technical points do not raise a substantial question of law. In the facts of the present case for the appeal to be entertained u/s 82, considering that existence of a substantial question of law is a sine qua non for entertaining the appeal, I reject this technical argument urged on behalf of the Appellant.

10. The final argument as raised on behalf of the Appellant was that the demand in question pertained to the period from 1968 to 1971 and therefore the impugned demand raised in the year 1986 is barred by limitation. Counsel for the Appellant however agrees that no period of limitation was provided under the Act during the relevant period of time. Once that is so, I fail to understand as to how the ground of limitation can be urged, more so when the Appellant itself is guilty of deliberately concealing facts and not producing the relevant record before the ESI Court.

11. In view of the above, I find that there is no merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.