

(2005) 12 BOM CK 0106
In the Bombay High Court
Case No : F.A. No. 802 of 2004

Joint Regional Director, Employees State Insurance
Corporation

APPELLANT

Vs

Sharad Chaure and Another

RESPONDENT

Date of Decision : 02-12-2005

Acts Referred:

Employees State Insurance Act, 1948 — Section 1, 1(5), 2, 2(12), 45A

Citation : (2006) 5 BomCR 836 : (2006) 110 FLR 331 : (2006) 2 LLJ 598 :
(2006) 3 MhLj 505

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : B.P. Maldhure, for the Appellant; A.P. Tathod and D.P. Thakare,
A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—By this appeal Joint Regional Director of Employees State Insurance Corporation challenges order passed by the learned Member, Industrial Court, Maharashtra, restraining the Corporation from claiming contribution from respondent M/s Satish Motors in terms of the appellant's letter dated 23-1-1989.

2. The facts in the context of which the appeal has arisen are as under : M/s Satish Motors is an establishment employing number of workmen at Akola which is a place to which the provisions of Employees State Insurance Act undoubtedly apply. Under the Act, it is necessary for the establishment which are covered to register with the Corporation and make contributions as prescribed. The Act also enables the Corporation to appoint inspectors to visit the establishment, examine records of the establishment and make necessary reports. Accordingly the Corporation seems to have issued a notice on 8th August, 1986 whereby the Corporation informed the respondent that on the basis of inspection conducted on 30th June, 1986 it was found that the factory falls within the purview of Section 2(12) of the Act w.e.f. 1-1-1984 provisionally. The notice further

informed the respondent that in case subsequent facts revealed that the factory was covered from a date prior to the date mentioned above, the respondent would be liable to comply with the provisions of the Act from such earlier date. The notice then asked the respondent to make necessary compliances.

3. According to the Corporation, subsequent inspection revealed that the respondent's establishment came within the ambit of the Act from 1-5-1982 and not from 1-1-1984, Therefore, on 7th November, 1988 another notice was issued to the respondent, by which, amongst other things, the respondent was informed that respondent's unit stood covered provisionally w.e.f. 1-5-1982 instead of 1-1-1984 u/s 1(5) and called upon the respondent to pay arrears of contributions amounting to Rs. 16,555/-. Since the respondent defaulted, the Corporation had moved the Tahsildar by letter dated 23-1-1989 for recovering the amount due. Aggrieved thereby, the respondent approached the Industrial Court at Akola, contending that, his establishment was not covered for the period from 1-5-1982 to December, 1983 and therefore, prayed that the Corporation and the Tahsildar be restrained from recovering any arrears.

4. The present appellant contested the proceedings by pointing out that on the basis of cash book and ledgers produced on 26-9-1988 it was observed that the respondent had employed 14 employees from 1-5-1982 and therefore, was liable to pay contribution from that date. After considering the rival contentions the learned member came to hold against the Corporation and in favour of the owner of the establishment. He therefore, allowed the application of the owner and restrained the Corporation from demanding arrears of contributions as per letter dated 23-1-1989. As already stated, aggrieved thereby, this appeal has been filed.

5. The learned Counsel for the appellant Corporation submitted that in the first inspection for want of entire record the inspector had concluded provisionally that the establishment was covered from 1-1-1984. At subsequent inspection it was revealed that the establishment fell within the ambit of the Act from 1-5-1982 and subsequently notice was issued to demand the arrears. The learned Counsel drew my attention to the notice dated 8-8-1986, observation sheet dated 26-9-1988 and the notice dated 7-11-1988. She also relied on an "additional sheet" which seems to have been signed by one Shri P.C. Pathak, Inspector, Employees State Insurance Corporation, Aurangabad, but which does not bear any date. It seems from this additional sheet that number of employees became fourteen in the fifth month of 1982. Therefore, according to the learned Counsel, on the basis of this additional sheet the Corporation demanded arrears of contributions. According to her, this additional sheet was duly handed over to the respondent along with observation sheet dated 26-9-1988. While the observation sheet is type written document with a type written space for counter signature of the employer and is duly signed by the employer, the "additional sheet" does not bear any endorsement or signature of the employer of having received copy. The observation sheet does not show that the additional sheet

was annexed to it. Language of the additional sheet would show that it is in the nature of a report made by the Inspector to his superiors and nothing more. Therefore, it is safe to infer that this additional sheet which according to the Corporation, was the foundation of change in date of applicability of provisions effected by it, has not been supplied to the respondent.

6. According to the learned Counsel for the appellant, on both the occasions, the inspectors were not able to lay their hands on the entire record. In that case, the Corporation ought to have taken appropriate action against the establishment to force the establishment to make the record available. The contributions are worked out on the basis of returns which employers are required to furnish and also on the basis of observations of the inspectors. Section 45A of the Employees' State Insurance Act, 1948 provides that if no returns are filed or the inspectors are prevented in any manner from discharging from duties the Corporation may, on the basis of information available, determine the amount of contributions. The proviso to this section requires that no such orders shall be passed unless the employer has been given a reasonable opportunity of being heard. There is no whisper of any such procedure of having been followed.

7. Further, while notice dated 8th August, 1986 enumerates that the establishment falls within the purview of Section 2(12) w.e.f. 1-1-1984, specifically scoring out the Section 1(5), notice dated 2nd November, 1988 enumerates that the unit stands provisionally covered from 1-5-1982 u/s 1(5). Clause (5) of Section 1 enables the appropriate Government to extend the provisions of the Act to any establishment or class of establishments after following the procedure prescribed in the clause. Clause 12 of Section 2 defines "factory" whereby the premises where manufacturing process being carried out with the aid of power having ten or more employees, or unaided by power by twenty or more persons, is included in the definition of Factory. Two notices would show that, second notice came to be given u/s 1(5) of the Act obviously because of some action on the part of the State Government to extent the provisions of the Act. What actually happened has not been explained in the second notice. The learned Counsel for Corporation was also not in a position to point out as to why the establishment came to be covered w.e.f. 1-5-1982 u/s 1(5) of the Act. If the Corporation itself is not sure of the premises on which it has changed, the date of applicability of the provisions of the Act it would be improper to expect the employer to comply with the demand with such a shaky foundation.

8. In view of this no fault can be found with the observations of the learned Member of the Industrial Court at Akola that the demand for contribution from 1-5-1982 was not legal. The appeal therefore, fails and is dismissed with costs.