
(2007) 03 GAU CK 0039
In the Gauhati High Court

Lakshmi Press

APPELLANT

Vs

Regional Director, E.S.I. Corporation

RESPONDENT

Date of Decision : 12-03-2007

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 75, 84

Citation : (2008) 116 FLR 999 : (2007) 3 GLT 526 : (2008) 2 LLJ 729

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

I.A. Ansari, J.—This appeal, u/s 84 of the Employees State Insurance Act, 1948 (in short, "the ESI Act") is directed against the judgment and order, dated August 7, 1997, passed by the Presiding Officer, Employees Insurance Corporation, Dibrugarh, in ESI Case No. 2/95, dismissing the appellant's petition, whereby the appellant had sought to invoke the powers of the learned ESI Court, u/s 75 of the ESI Act, for nullifying the demand of contribution made by the respondent Corporation by its notices, dated February 7, 1989 and February 23, 1990.

2. The appellant's case, in brief, is thus: The appellant's printing press, which is run under the name and style of Lakhimi Press, was, originally, located at Kartikpara, which is the main business centre of Dibrugarh town, and at the time, when the appellant had started his printing business, it had three different Sections, namely, composition, printing, and binding and he used to employ 15 to 20 persons to work in his printing press. As the ESI Act was made applicable to printing presses and the appellant's establishment was run with the aid of power and it employed more than ten persons, it was, originally, covered by the ESI Act. This printing press was, later on, shifted, in the year 1986, to Jigjag Road, in the Chowkidingi area of the town. On account of shifting of the press from Kartikpara to Jigjag Road, the volume of business of the said printing press got reduced. This apart, the employees expressed their inability to report for

work to the distant place to which the appellant had shifted his printing press. In order to cope with the situation, the appellant closed the composition Section of his printing press. In consequence thereof, the number of employees working for the petitioner got reduced to less than ten persons by September 1, 1987. Thus, the appellant's unit fell outside the purview of the ESI Act with effect from September 1, 1987 and the appellant accordingly informed the Corporation. The appellant re-affirmed, vide his letter, dated February 26, 1990, to the Corporation that his unit was outside the purview of the ESI Act. The appellant does not employ any casual labourer and gets the composition works done by another printing press, namely, J.R. Dihingia, and makes payment of the composition works done by the said J.R. Dihingia, which is a wholly independent firm. Notwithstanding the fact that the appellant's press had ceased to be covered by the ESI Act, with effect from September 1, 1987, the Corporation assessed diverse sums of money as the appellant's unpaid contribution on the ground that the appellant had been employing, as a principal employer, more than ten persons at all relevant point of time. As the appellant had not complied with the demands raised by the Corporation, the Corporation started a recovery proceeding against the petitioner. Contending that the demand raised by the Corporation was wholly incorrect and illegal, the appellant, as already indicated hereinabove, sought to invoke the jurisdiction of the learned ESI Court u/s 75 of the ESI Act.

3. The Corporation contested the case by filing their written statement, wherein they reiterated their stand that the petitioner (i.e. the appellant) had kept, as a principal employer, in employment, more than ten persons including casual/ contract workers and was, therefore, liable to pay the contribution under the ESI Act.

4. In support of their respective cases, both the parties adduced evidence and, upon recording the same, the learned Court below concluded that the petitioner had kept, under his employment, more than ten persons at all relevant point of time and was, therefore, liable to pay the contribution as the Corporation had demanded. Having reached this conclusion, the learned Court below rejected the petitioner's application made u/s 75. Aggrieved by the rejection of his application, the petitioner is, now, before this Court with the help of the present appeal.

5. The substantial question of law raised, in the present appeal, is as to whether the finding of fact, reached by the learned Court below, that according to evidence on record, the petitioner was the principal employer of more than ten persons in his printing press, which was run with the aid of power, is perverse and, contrary to the provisions of law contained in that behalf?

I have heard Mr. B.K.. Goswami learned senior counsel, for the appellant, and Mr. B.R. Dey, learned senior counsel, appearing on behalf of the respondent Corporation.

6. While considering the present appeal, what needs to be pointed out is that the fact that the petitioner's said printing press was, originally, started at Kartikpara, the principal business center of Dibrugarh town, and, later on, the said printing press was shifted to Jigjag Road and that the with such shifting of the press, the number of permanent employees employed by the petitioner in his press, got reduced to less than ten persons, has not been in dispute. What has been in dispute is as to whether the appellant had engaged or kept, under his supervision, more than ten persons. In this regard, it needs to be pointed out that the appellant, in his deposition, clearly stated that in his establishment, there had never been any casual worker and that he got his composing works done by J.R. Dihingia, which is an independent unit, and that in accordance with the bills submitted by J.R. Dihingia, he used to make payment for the composed materials received. Though put to cross-examination, these assertions of the appellant remained wholly unchallenged and undisputed in his cross-examination. In the face of these unassailed pieces of assertions, the learned Court below could not have imposed any liability for contribution under the ESI Act, on the petitioner, unless evidence were adduced by the respondent Corporation to show that notwithstanding the evidence, so given, the work of composition, done by J.R. Dihingia, was under the supervision of the appellant.

7. For the purpose of sustaining their case against the petitioner, the respondent Corporation adduced evidence by examining the inspector, who claimed to have visited and inspected the petitioner's said establishment. This inspector proved Exhibit "Ka" as his inspection report. While considering this aspect of the case, what needs to be noted is that this inspection report clearly reveals that the number of employees, found on the date of the inspection, was eight. There is no other evidence on record to show that at any point of time, the payments of dues, which were allegedly made by the petitioner, were done in respect of the works, which had been done either within the establishment of the petitioner; or at any other place, but under the supervision of the petitioner.

8. As a matter of fact, except proving the report, no other evidence was adduced by the respondent Corporation. As far as the inspector himself was concerned, he also gave no evidence to lend support or credence to the facts stated in his said inspection report. It is clear from the evidence of the inspector that to him, it was from the entries made in the books of accounts maintained by the petitioner that it appeared that the petitioner had engaged, as principal employer, casual/contract workers to work for him. It is, now, worth noticing that the petitioner's undisputed evidence is that the payments, which he had made, from time to time, as the labour-charges, were in response to the bills submitted by J.R. Dihingia for the works, which J.R. Dihingia had got done by engaging casual workers. In such circumstances, in the absence of any other cogent, clear and credible evidence on record showing that any of the persons, to whom the payments were made by the petitioner, had actually done the works either within the establishment of the petitioner or elsewhere, but under the supervision and control of the petitioner, the petitioner could not have been regarded as the

principle employer for such persons.

9. At the time of hearing, Mr. B.R. Dey, learned senior counsel, in support of the respondent Corporation's case, has referred to the Division Bench decision of this Court, in *Tara Chan Mohon Lal and Anr. v. Employees' State Insurance Corporation and Ors.* AIR 1970 A&N 246. While considering the case of *Tara Chan Mohon Lal and Anr. v. Employees State Insurance Corporation and Ors.* (supra), it may be noted that it was a case, wherein the workers were engaged in loading and unloading works in a factory. In the case of *Tara Chan Mohon Lal and Anr. v. Employees' State Insurance Corporation and Ors.* (supra), the employer had not denied the fact that besides twenty-two permanent labourers, as many as thirty-seven workers were found working in his factory. The case of the employer was that he had not employed the labourers directly, but through contractors, who used to bring different labourers at different point of time. What, however, surfaced from the evidence on record was that the loading and unloading works used to take place within the premises of the factory and under the supervision of the petitioner as the principal employer. It is in the context of such facts that the employer was held to be the principal employer, for Section 2(9)(ii) of the ESI Act defines an "employee" to mean any person, who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment.

10. The principle of law, which is clearly deducible from the decision in *Tara Chan Mohon Lal and Anr. v. Employees' State Insurance Corporation and Ors.* (supra), is that in order to become a principal employer, the person concerned must have employed the employee, in question, to work either in his factory or establishment under his supervision or under the supervision of his agent. This decision, which the learned Counsel for the respondent Corporation relied upon, has, therefore, no application to the facts of the present case.

11. Thus, the logical conclusion, which can be safely reached, is that the finding of the learned Court below that in the establishment of the present petitioner-appellant more than nine persons had worked, at the relevant point of time, as employees, is wholly against the evidence on record and the law relevant thereto. Such a finding is nothing, but perverse, and shall, if allowed to survive good on record, cause serious miscarriage of justice.

12. In the result and for the foregoing reasons, this appeal succeeds. The impugned orders, passed by the learned Court below, and also the impugned notices are hereby set.

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