(2016) 07 CAL CK 0080

In the Calcutta High Court

Case No : W.P. No. 938 of 2015

Luxmi Tea Co. Ltd. APPELLANT

Vs

Employees'' State Insurance Corporation Ltd. RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 1(4), Section 1(5), Section 2(19A)

Citation : (2017) 2 WBLR 325

Hon'ble Judges : Indra Prasanna Mukherji, J.

Bench : Single Bench

Advocate : Mr. R.N. Majumdar and Mr. A. Deb, Advocates, for the Petitioner; Mr. S. Banerjee, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Indra Prasanna Mukherji, J.—The Court: The orders under challenge are dated 28th May, 2015 and 10th June, 2015 passed by the Assistant Director of the Employees'' State Insurance Corporation (ESI), 5/1 Grant Lane, Kolkata 700 012. Power was exercised under Section 45A of the Employees'' State Insurance Act, 1948 (ESI Act).

2. The contention of the writ petitioner was pure and simple. Its tea garden, factory and its head office at Kolkata were not covered by the Employees'' State Insurance Act, 1948 (ESI Act, 1948). Certain provisions of the Act are most important. Section 1(4) provides that the Act shall not apply to a seasonal factory. It would normally apply to other factories. Subsection 5 of Section 1 gives power to the appropriate Government to extend the operation of this Act to any other establishment. Section 2(12) defines factory in the following manner:-

"2[(12) "factory" means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952) of a railway running shed;]

3. Seasonal factory is defined in Section 2(19A) thus :

"[(19-A) "seasonal factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decoration of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year-

(a) in any process of blending packing or repacking of tea or coffee; or

(b) in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify;]"

4. The writ petitioner admittedly has a tea plantation, factory and also an establishment in Kolkata.

5. In my opinion, if tea is grown and thereafter undergoes the manufacturing process of blending, packing etc. in the same premises, for a period not exceeding seven months the whole area has to be compositely treated as a factory. By the application of Section 2 (19A) it is a seasonal factory.

6. The next question is with regard to the establishment in Kolkata.

7. Now, normally only a factory is covered under the said Act and not any other establishment. Such establishment has to be covered by a notification under Section 1(5) of the said Act. Mr. Majumdar submits that no such notification could be produced by the respondent authority to show such coverage.

8. In my opinion, none of these issues have been dealt with at all by the respondent authority. In those circumstances, the impugned orders dated 28th May, 2015 and 10th June, 2015 are set aside with a direction upon the Employees'' State Insurance Corporation to redetermine the jurisdictional issue upon hearing the writ petitioner, considering the evidence produced and by a reasoned order within six months from the date of communication of this order, following the observations made in this order.

9. Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.