(2013) 11 DEL CK 0246

In the Delhi High Court

Case No : F.A.O. No. 510 of 2002

M/s. Dammo Enterprises — APPELLANT

Vs

The Regional Director, ESIC — RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0246

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Shiv Charan Garg and Mr. Shashank Mittal, for the Appellant; K.P. Mavi and Mr. B.P. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is an appeal against the order dated 04.06.2002 passed by Sh. O.P. Saini, the learned Senior Civil Judge, ESIC Judge, Delhi. Briefly stated the facts of the case are that the present appellant is a proprietorship concern of one Smt. Daya Wati. It is alleged in the plaint filed by the appellant that it is engaged in the distribution of LPG Gas Cylinders since 06.09.1983. It is alleged that some time in the month of May, 1998, the officials of the respondent came to the premises of the appellant herein and without issuance of any notice to the appellant inspected the factory premises of the appellant. It was stated that the respondent after inspection filed the report and fastened the liability on the appellant to pay the ESI contribution assuming that the proprietorship concern of the appellant had employed more than 20 people because of which certain statutory requirements were to be complied with. The respondent filed its reply contesting the claim of the appellant. So far as the inspection of the premises in question is concerned, it was stated that the inspection was done in the month of February, 1998 and not in the month of May, 1998 and on inspection ESI official had found that at the premises in question the appellant had employed more than 21 people. It is further alleged that because of the number of persons employed, the applicability of the Employees'' State Insurance Act, 1948 (''ESI

Act, 1948'' for short) is attracted and since the appellant had not paid its contribution, they were fastened with the liability to pay the contribution.

2. On the pleadings of the parties, the following issues were framed:

1) Whether the petitioner is not liable to be covered under the ESI Act?

2) Whether the impugned demand is liable to be set aside for the reasons given in the plaint?

3) Relief.

3. The parties adduced their evidence. The appellant examined its proprietor Smt. Daya Wati as PW-1. The respondent examined two witnesses namely RW-1 Sh. Rohtas Singh and RW-2 Sh. T.K. Ghosal.

4. After recording the evidence, the learned Civil Judge, rejected the plea of the appellant both with regard to the proof of the persons employed by the appellant and the plea of no notice having been given to them and upheld the liability of the appellant to pay the contribution to ESIC. Feeling aggrieved, the appellant has preferred the present appeal.

5. In the instant case, the trial court has come to a finding that the appellant had employed at a given point of time 21 people and, therefore, the objections of ESI Act, 1948 were applicable.

6. The plea of the appellant is that it had employed only 15 people was not accepted by the learned Civil Judge on the ground that it had failed to produce any register in Form 7 which was mandatorily required to be maintained by them. So far as the question of non giving of notice before inspecting the factory premises of the appellant was concerned, that was also not accepted by the court below because of the reason that the appellant himself had written a letter contesting the claim of the respondent in the month of March, 1998 that the provisions of the ESI Act, 1948 were not applicable and, therefore, the entire purpose of notice was served inasmuch as the purpose of service of notice is that the other side must be made aware of its statutory duties.

7. I have gone through the impugned judgment as well as the provisions of law.

8. The appeal u/s 82 of the ESI Act, 1948 is permissible only if a substantial question of law is involved. In the instant case, no substantial question of law is involved nor the learned counsel for the appellant has been able to make out one. On the contrary what has been stated in the impugned order is that the notice was duly served on the appellant.

9. I have seen the notice and merely because the notice is not to the liking of the appellant, does not mean that the notice is bad in law. There is no prescribed format or language given in the ESI Act, 1948 so far as the issuance of notice is concerned. The entire purpose of sending a notice is to make out the other side aware of certain legal consequences in case certain statutory requirements are

not met. The requirement is sufficiently met in the instant case.

10. I accordingly feel that the question of notice raised is of no merit because the inspection had been carried out in the month of May, 1998 and the appellant themselves have admitted that in the month of March, 1999 they had sent a letter to the respondent denying their liability to pay the contribution to ESIC. Once such a letter is established on record, it clearly shows that they were aware of the liability fastened upon them by the respondent. Merely because the notice is not required to be in a particular format or a language, does not mean the notice itself becomes bad. The notice has been delivered to the appellant.

11. So far as the question of proof of persons employed by the appellant at its factory premises is concerned, this is a question of fact which has been decided by the court below against the appellant on the basis of the evidence. Further, the onus of proof of the exact number of persons employed by the appellant is a fact specifically within their knowledge and according to Section 106 of the Evidence Act, 1892 they had to discharge the said onus which they failed to do. I do not find any merit or any substantial question of law arising from the present appeal and according the same is dismissed.

