(2014) 12 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1283 of 1993 (O and M)

Poona Pearls APPELLANT

Vs

Employees State Insurance Corporation RESPONDENT

Date of Decision : 22-12-2014

Acts Referred:
Employees State Insurance Act, 1948 — Section 75

Citation : (2015) 178 PLR 175

Hon'ble Judges : Navita Singh, J

Bench : Single Bench

Advocate : Aseem Aggarwal, Advocate for the Appellant; Vikas Suri, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Navita Singh, J.

1. The appellant had filed an application under Section 75 of the Employees State Insurance Act (Act for short) on the ground that the firm was not covered under the Act. The demand raised by the respondent was stated to be illegal. The brief facts of the case are that the appellant was running a poultry farm in the name of M/s. Poona Pearls with head office at Poona (now Pune) with branches at various places including Gurgaon. The firm of the appellant was attached with a hatchery at Carterpuri/Kartarpuri, Gurgaon, which, however, closed down in 1983. Besides that, the appellant had another hatchery at Mehrauli Road, Gurgaon. Since the appellant was a hatchery, it was not covered under the Act. The petition filed by the appellant was dismissed.

2. Learned counsel for the appellant argued that it was clear from Ex. P1 that hatching of eggs was not a manufacturing process and appellant being a hatchery, was exempted. The said document was an office order dated 3.10.1987 sending copies to Employees State Insurance Corporation of letter dated 19.6.1987. The letter was addressed to the Regional Director, ESIC, Haryana

regarding covering of M/s. Hatchery-cum-Poultry Farm, Bhiwani and M/s. Rani Shaver Poultry Breeding Farm, Gurgaon. Both the Companies were informed that hatching of eggs was not a manufacturing process but the coverage was to be decided according to the coverage of cold storages/deep freezers etc. and also regarding being a shop. It is un-understandable as to what benefit the appellant can derive from Ex. P1. Learned counsel contended that from the letter it was clear that hatching of eggs did not involve manufacturing process and was thus not covered under the Act The letter, however, did not make any mention exempting the firms'' name therein from the purview of the Act. In any case, the letter did not relate to the appellant and moreover the witness, who appeared from the office of ESIC, Faridabad as AW2, stated that the matter was still pending.

3. The next argument of counsel for the appellant was that the appellant was also not covered in the definition of ''shop'' as activity relating to sale of goods must be carried out in the premises which could be a shop. He relied on the authority reported as M/s. International Ore and Fertilizers (India) Pvt. Ltd. Vs. Employees'' State Insurance Corporation, . The authority, however, would not help the appellant because the Act was not applied on the appellant considering it to be merely a shop.

4. Learned counsel for the respondent per contra, argued that in view of the judgment of the Supreme Court in Transport Corporation of India Vs. Employees'' State Insurance Corpn. and Another, , the head office/main branch of the appellant being covered under the Act, it did not lie in the mouth of the appellant to say that the branch office was not so covered. It was clearly held by the Supreme Court that where two views are possible on the applicability of the Act, the legislation being a beneficial one, the view which furthered the legislative intention should be preferred to one which would frustrate it. It was held that if the head office of the establishment was covered, the Act would automatically apply to its branch having functional integrality with the activities of the main establishment, even though the branch may be situated in a different State. The said judgment is applicable on all fours.

5. To wriggle out of the judgment referred to by counsel for the respondent, counsel for the appellant argued that the business, which was being carried out in the branch, was different from that done in the main establishment. However, there was no such pleading of the appellant nor any evidence was led. It was rather admitted that the Act applied to the main establishment. It was mentioned in the petition itself that the hatchery attached with the firm at Carterpuri was not covered under the Act but no reason for that was given. The witness examined by the appellant as AW3 was Regional Manager of the appellant, who stated that the appellant was a branch of a main firm and that the head office at Pune was covered under the Act.

6. Therefore, in view of Transport Corporation of India (supra), it is held that the appellant was covered under the Act being a branch of the main establishment at

Pune and the petition was rightly dismissed vide the impugned order. The appeal is dismissed.