(2006) 01 MP CK 0009

In the Madhya Pradesh High Court

Case No : M.A. No. 658 of 1998

Regional Director, Employees' State Insurance Corporation and Others — APPELLANT

Vs

Ram Kumar Suresh Kumar Timber Merchant — RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:
Employees State Insurance Act, 1948 — Section 75, 82

Citation : (2006) 110 FLR 698 : (2006) 1 MPLJ 519

Hon'ble Judges : Sugandhi Lal Jain, J

Bench : Single Bench

Advocate : B.S. Thakur, for the Appellant; P.C. Chandak, for the Respondent

Judgement

S.L. Jain, J.

Invoking the appellate jurisdiction of this Court u/s 82 of Employees'' State Insurance Act, 1948 (hereinafter referred to as the ''Act'') the appellants have filed this appeal challenging the validity, legality, propriety and correctness of the order dated February 2, 1998, passed by Employees State Insurance Court, Satna (henceforth the ''ESI Court'') in Case No. 1/ESI Act/91.

The facts leading to this appeal lie in a narrow compass.

The appellant No. 3, who is a local Manager of ESI Corporation, Satna, carried out inspection of respondent; Ram Kumar Suresh Kumar Timber Merchant, Satna on March 19, 1987 and December 23, 1987 and found that the respondent-concern and Jagadamba Saw Mills are situated in one and the same premises, machines are filed in the same shade and the employees worked physically in both the aforesaid units. He submitted his report to appellant No. 1.) Pursuant to the inspection report, appellant No. 2, vide letter dated May 17, 1989, directed to club the aforesaid two establishments to be treated as one unit for the purpose of application of provisions of the Act. The appellants issued notice to the respondent for depositing the contribution of its employees in the establishment. Since the amount was not deposited, Revenue Recovery Certificates were issued against the respondent.

The respondent filed an application u/s 75 of the Act before ESI Court, Satna praying that it be declared that the respondent is not covered by the provisions of the Act and the Revenue Recovery Certificates issued by appellants be declared as illegal and ineffective. It also sought a declaration that the respondent and Jagdamba Saw Mills are separate units and cannot be clubbed together for the purposes of application of the provisions of the Act.

The appellants submitted reply to the application filed by the respondent before the ESI Court.

The ESI Court framed as many as five issues and after recording the evidence vide the impugned order held that both the units i.e. the respondent and Jagdamba Saw Mills are separate establishment and the. respondent is'' not covered, by the provisions of the Act and set aside the order of the appellants and Revenue Recovery Certificates.

Being aggrieved by this order, the appellants have come up in this appeal.

I have heard Shri B.S. Thakur, learned Counsel for the appellants and Shri P.C. Chandak, learned Counsel for the respondent; -and perused the record of the Court-below.

Learned Counsel for the appellants vehemently submitted that the Act is a social security legislation seeking to provide for certain benefits to the employees in case of sickness, maternity, employment injury and for certain other related matters. Therefore, the industrialists should not be allowed to camouflage a reality to defeat the provisions of the Act by simply establishing apparently two separate units though their functionaries are one and run by the same family. The Court should pierce the veil and find the reality.

The contention though in the first flash appears to be attractive but where there is no material to establish that there is a camouflage, the Court cannot presume that the two units are one and a clever device has been used to defeat the provisions of the Act.

Before the ESI Court, the respondent examined Ram Kumar (PW-1) who is the partner of the said firm. Ram Kumar (PW-1) has stated that during the period between 1981 to 1987 only 7 to 8 employees worked in his firm. More than ten persons never worked in the firm. He has no connection with Jagdamba Saw Mills. Ram Kumar Suresh Kumar firm submit separate income tax returns. They are having separate registration with Sales Tax Department and Forest Department. Electric connections are also different. Attendance Registers are also separate. The lands of the two units were purchased by separate sale deeds. He specially stated that the respondent-firm has no business relations with Jagdamba Saw Mills.

The evidence of Ram Kumar (PW-1) is corroborated by Naresh Goyal (PW-2) who is the proprietor of Jagdamba Saw Mills. He has stated that the respondent-mill has no connection with Jagdamba Saw Mills. His concern has a separate licence under the Factory Act. Their registration with the Forest Department is also quite different. Separate returns of income tax were submitted and separate sales tax licence was issued by the Sales Tax Department. The machines of Jagdamba Saw Mill were purchased separately. Both the concerns are having different electric connections. The relevant documents were also produced by both the witnesses.

As against this, appellants have examined K.D. Das, Manager, Employees State Insurance Corporation, Satna, who has stated that he inspected the premises of respondent on March 19, 1987 and December 23, 1987 and examined the attendance register, salary disbursement register ledger and cash book. He also inspected the premises of Jagdamba Saw Mills, Satna and examined its records and submitted his reports, Exhibit D-1, Exhibit D-2 and Exhibit D-3. The witness has stated that at the time of inspection on the basis of the record he found that the salaries of Naresh Goyal and Ishwar Das Gupta were paid by the respondent. He has also stated that Naresh Goyal is the proprietor of Jagdamba Saw Mills, His father''s name is Ram Kumar who is partner of Ram Kumar Suresh Kumar. The salary of Ishwar Das Gupta was also paid by Jagdamba Saw Mills. The witness stated that both the units are in the same premises. Salary of Ishwar Das Gupta is paid by both the concerns. Thus, the business of both the units is one. Therefore, both units are liable to be clubbed for the purposes of the Act.

The ESI Court, Satna believed the evidence of Ram Kumar and Naresh Goyal and disbelieved the evidence of K.D. Das on the ground that it was never pleaded in the written statement that Ishwar Das Gupta is working in both the units and his salary is paid by both the units The ledger, cash book and attendance registers were not seized by K.D. Das at the-time of inspection.

A perusal of the evidence of the witnesses and the documents on record reveals that there is no functional integrity between the two factories. They are not interdependent in any manner whatsoever. There is no functional integrity in the matter of ownership, control and supervision in the affairs of the business of the said two factories. It is also clear that both the establishments maintain their separate books of accounts, separate balance sheets and assessed separately by Income Tax Department and have been allotted separate numbers. No financial relationship between the two concerns could be established. The machinery and plants installed by both the parties are not interconnected. Factories are installed on separate survey numbers. Merely because two establishments are adjacent to each other, it, cannot be inferred that they are one single unit.

It was for the appellants to prove that aforesaid two units are common. They could not establish that the factories and machines of both the units were purchased by common source. It is also not established that they have common electricity connections. It is also not established that the licence to run factories are not separate. The persons who are dealing with the affairs of both the Units are different. Merely because they happened to be father and son, it cannot be said that both the units are common and liable to be clubbed.

Ram Kumar (PW-1) has specifically stated in his cross-examination that there is a clear partition between the two premises, therefore, the Court-below committed no error in recording a finding that both the units are separate. K.D. Das who was at the relevant time Manager of the Corporation, has stated that Ishwar Das Gupta, was a common employee of both the units but this fact was not stated in the written, statement nor this fact has been stated in the inspection report. Apparently, the statement is an afterthought.

The Court-below, on the basis of the material on record rightly concluded that the respondent-firm and Jagdamba Saw Mills are two separate and independent factories having no functional or business relations with each other. The respondent never employed ten or more persons. Therefore, the visions of the Act will not apply to the respondent.

The Court-below analysed the factual material properly. The finding of the Court-below is based on proper appreciation of the evidence and cannot be lightly brushed aside by this Court. The appellate Court should also bear in mind that if the finding of the trial Court is reasonably sustainable on evidence on record, it should not be interfered with normally, except for very cogent reasons.

In the circumstances of the cases, I do not find any reason to interfere with the conclusion recorded by the ESI Court, Satna. The appeal is, therefore, sans merit and the same is, accordingly, dismissed. Parties to bear their own costs.