

(2007) 02 GAU CK 0042
In the Gauhati High Court
Case No : MFA No. 78 0/2001

Regional Director, Employees State Insurance Corporation	APPELLANT
Vs	
Shree Pawan Putra Roller Flour Mill (P.) Ltd.	RESPONDENT

Date of Decision : 08-02-2007

Acts Referred:

Employees State Insurance Act, 1948 — Section 82(2), 82(2)

Citation : (2008) 2 GLR 278

Hon'ble Judges : I.A.Ansari, J

Bench : Single Bench

Advocate : K.Agarwal, K.K.Nandi, Advocates appearing for Parties

Judgement

1. This is an appeal under section 82 of the Employees' State Insurance Act, 1948 ("the ESI Act"), preferred against the order, dated 14.8.2001, passed, in ESI Case No. 04/2000, by the learned ESI Court, at (Dibrugarh, whereby the learned court below has set aside the appellant's assessment of the contribution to be made by the respondent and notice served on the respondent by the appellant for recovery of the contribution so assessed.

2. The material facts giving rise to the present appeal may, in a nutshell, be set out as follows:

(i) Shree Pawan Putra Roller Flour Mill (P.) Ltd is a company registered under the Companies Act, 1956 and runs a Flour Mill at Tinsukia, which stands registered, as a Small Scale Industry, under the District Industries Centre, Tinsukia. By the letter, dated 30.6.2000, issued by the Additional Director, ESI, the Corporation served a notice on the respondent directing it to show cause as to why the amount, mentioned in the notice aforementioned; be not recovered from the respondent as it's contribution under the ESI Act, for, the respondent's said industrial unit was, according to the appellant, a factory within the meaning of ESI Act and was, therefore, covered under the scheme of the ESI Act. Before the respondent could give reply to the letter, dated 30.6.2000, aforementioned, it

was" served with yet another notice, dated 30.6.2000, asking it to show cause within 15 days as to why the amount, assessed by the Corporation as the contribution to be made by the respondent should not be recovered from the respondent. On receiving the letter and the notice aforementioned, the respondent, vide its letter, dated 25.7.2000, sought for a month's time to submit its reply, the request for time having been made on the ground that its managing director was ill. Notwithstanding the request so made, the respondent was served a notice, dated 27.7.2000, from the Recovery Officer of the Corporation asking the respondent to make payment of the amount, which had been assessed by the Corporation as the contribution to be made, under the ESI Act, by the respondent.

(ii) Contending that the ESI Act was not applicable to its said Flour Mill, the respondent made an application, under section 75 of the ESI Act, challenging the letter and notice of assessment of the contribution and also the demand for payment thereof made by the Corporation. This application gave rise to ESI Case No. 04/2000 aforementioned. During the course of the proceeding in the ESI Court, both sides adduced evidence by examining witnesses. Having, however, held that the said industrial unit was not covered by the provisions of the ESI Act, though the same was run with the aid of power, the learned ESI Court held the letter and notices aforementioned as illegal, arbitrary and without jurisdiction. The letter and notices aforementioned were accordingly set aside. Aggrieved by the order, dated 14.8.2001, the appellant has preferred this appeal.

3. I have heard Mr. K.K. Nandi, learned Standing Counsel for the appellant Corporation and Mr. K. Agarwal, learned counsel for the respondent.

4. While considering the present appeal, what needs to be borne in mind is that under section 82(2), an appeal to the High Court will lie from an order of an ESI Court provided that the appeal involves a substantial question of law. In the present case, the controversy raised is as to whether the respondent's industrial unit, in question, is a factory within the meaning of the word factory as defined in section 2(12) of the ESI Act. While considering this controversy, it is also pertinent to point out that the fact that the said industrial unit of the respondent is carried on with the aid of power is not in dispute. Hence, if, in the said industrial unit, ten or more persons are employed or were employed for wages on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power" or is ordinarily so carried on, then, the respondent's said industrial unit would be treated as a factory within the meaning of clause (a) of subsection 12 of section 2. The question as to whether ten or more persons are or were employed, as alleged by the appellant Corporation, is essentially a question of fact. Thus, when the respondent's contend that it was not covered by the ESI Act, the onus rested on the appellant Corporation to prove that the ESI Act was applicable to the respondent. If the finding, reached by the learned ESI Court, is based on the evidence on record and the law relevant thereto, there is no scope for this court

to interfere with such a finding even if the evidence on record, according to this court, gave rise to two possible views. In short, thus, unless the findings of the learned ESI Court, is held to be without any evidence or wholly against the evidence on record, such a finding would not be interfered in an appeal under section 82.

5. Bearing in mind what is indicated above, let me, now, come to the evidence on record. In this regard, what needs to be noted is that the appellant Corporation relied wholly on the inspection report prepared by the DW 1, an inspector of factory, who claimed to have visited the said industrial unit of the respondent on 2.2.1999, this inspection report having been proved as Exhibit A. While considering Exhibit "A", what needs to be carefully noted is that except exhibiting the inspection report, not even an iota of evidence was given by the DW 1 to support the contents of the inspection report, wherein it had been contended that the said industrial unit was found employing 15 persons as employees, 5 of these employees being milling men/mazdoor and 10 of them being motias/labourers. Be that as it may, what cannot be ignored is that the inspection report, when read, in the light of the observations made in the "Observation Slip" (Exhibit 12), which was prepared by DW 1, shows that Shri Munnalal Prajapati was a witness to the inspection, which DWI claimed to have carried out. Though this Munnalal Prajapati was described as an employee of the respondent, Munnalal Prajapati, when examined as a witness by the respondent, deposed that he was not an employee of the respondent. Even DW 1 himself admitted, in his evidence, that Munnalal Prajapati was not an employee of the mill, in question. The said Munnalal Prajapati did not stand by the correctness of the statements made in the "observation slip" of DWI. In such circumstances, it was incumbent, on the part of DWI, to prove that he had found, on his visit to the said mill, such number of employees working in the said mill, or having worked in the said mill, as had been mentioned by him in his inspection report. No such evidence was, however, given by the DWI.

6. Apart from the fact that there is, thus, no cogent evidence to sustain the contents of the inspection report of the DWI, what is equally important to note is that the respondent has produced, in the learned court below, the records, which they claimed to have been maintained. These records were proved to have been countersigned by the Labour Inspector. These records reflect that the number of employees, working at the said mill of the respondent, was less than what is required for applying the provisions of ESI Act to a factory, which is run with the aid of power. Though the mere fact that the attendance register, maintained by the respondent, was countersigned by the Labour Inspector, was not, in itself, enough to throw away the case of DW1, the fact remains that there has been virtually no cross-examination on the credibility of the maintenance of the records by the respondent or the correctness of the entries made therein.

7. Coupled with the above, the countersignatures of the Labour Inspector, on the records maintained by the respondent, show that these records were

contemporaneous records prepared in the discharge of the respondent's obligation under the relevant statutes. In such circumstances, heavy burden lied on DW1 to prove the correctness of his inspection report. As the evidence adduced by the DW1 were not enough to dislodge the evidence adduced by the respondent, the learned ESI Court concluded that it could not be proved that the respondent's said industrial unit was covered by the provisions of the ESI Act. I do not find that in the absence of the evidence on record, the conclusion, so reached, or the findings, so arrived at, by the learned court below suffer from any infirmity, legal or factual. Situated, thus, I hold that this appeal is wholly without merit inasmuch as it has not raised any question of law, far less substantial question of law, nor is the finding of the learned court below suffers from any infirmity, legal or factual.

8. In the result and for the foregoing reasons, this appeal fails and the same shall accordingly stand dismissed.

9. Send back the LCR.