
(1991) 05 KAR CK 0002
In the Karnataka High Court
Case No : M.F.A. No. 1000 of 1991

Regional Director, E.S.I. Corporation	APPELLANT
Vs	
Karnataka Asbestos Cement Products and Another	RESPONDENT

Date of Decision : 29-05-1991

Acts Referred:

Employees State Insurance Act, 1948 — Section 45 A

Citation : (1991) 63 FLR 638 : (1991) 2 KarLJ 264 : (1999) 3 LLJ 235

Hon'ble Judges : R. Ramakrishna, J; M.P. Chandrakantarajurs, J

Bench : Division Bench

Advocate : Raj and Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

M.P. Chandrakantarajurs, J.—The Regional Director, Employees' State Insurance Corporation who was the first respondent in E.S.I. Application No. 30 of 1986 being aggrieved by the order dated February 4, 1991, passed by the Employees' State Insurance Court at Bangalore in E.S.I. Application No. 30/ 1986 holding that the applicant before it was not required to be covered by the Employees' State Insurance Corporation as the applicant had less than ten persons in his establishment, has questioned the legality and correctness of the said order inter alia on the ground that the finding recorded by the E.S.I. Court is not correct and in accordance with law.

2. The respondent-Karnataka Asbestos Cement Products filed an application u/s 75 of the Act challenging the order and consequent demands passed u/s 45-A demanding a sum of Rs. 24,364/- for the period between January 1980 to December 1985 and contribution of Rs. 3,509/- for the period from January 1, 1986 to May 31, 1986 towards the wages paid to the employees. The respondent contended that he has not employed more than six persons and he was also not served with the copy of the report of the Inspector R.W.I, which report formed the basis for the impugned show cause notices, the determination u/s 45-A of the Act and the demands that followed.

3. The learned E.S.I. Court, on the basis of the evidence placed before it, came to the conclusion that the respondent had not employed more than six persons relying on the attendance registers A1 to A5 produced by the employer. At the same time, the trial Court totally disregarded the report filed by the Inspector and his oral evidence. The report was rejected, relying on a decision of this Court in the case of E.S.I. Corporation v. Subbaraya Adiga, ILR 1988 Kar 1806. In the said decision, it was held as follows :

"A list of employees prepared by the E.S.I. Inspector in the course of his visit to an establishment, in order to find out whether the provisions of the E.S.I. Act are attracted to it, must contain the name, father's name, place from which the employee hails, the designation, the length of service and the signature or thumb impression of the employee, as the case may be, if at that time other persons other than the employees are present, the names and addresses of at least two of them with their signatures and also the signature of the Proprietor or Manager or the person- in-charge of the establishment should be obtained at the end of the list and a copy of which be furnished to the establishment."

The report furnished by the Inspector R.W.I did not contain the details which it was required to contain and therefore, the learned Judge was correct in rejecting the report. Only other evidence available was to be found in Exhibits A1 to A5, the Attendance Registers produced by the employer which has not been impeached (sic.) and which disclosed that applicant had not employed more than six persons.

4. The learned counsel for the Corporation Sri R. Gururajan submitted that the Employees' Insurance Court erred in setting aside the demand of contribution for the period January 1, 1986 to May 31, 1986 relying on the evidence relating to earlier period. That argument overlooks the fact that the entire proceedings initiated was on the basis of the report of the Inspector in regard to the previous periods. If that report had to go, all that followed on account of the report should also go.

5. Therefore, we do not find any error committed by the trial Court which calls for interference by us.

In the result, we dismiss the appeal at the stage of admission as it is devoid of merit.