
(2001) 01 KAR CK 0014

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2313 of 1997

Regional Director, ESI Corporation

APPELLANT

Vs

P.R. Packaging Company and Others

RESPONDENT

Date of Decision : 16-01-2001

Acts Referred:

Employees State Insurance Act, 1948 — Section 45 A

Citation : (2001) 2 KCCR 1026

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : M.P. Geethadevi, for the Appellant; Ashok Mensinkai, A.G.A. for Respondents 2 and 3, for the Respondent

Judgement

Chidananda Ullal, J.—This appeal is filed by the ESI Corporation to challenge the order dated 2.4.1997 in ESI Application No. 13 of 1990 passed by the ESI Court, in passing whereof, the said Court while allowing the Application had set aside the order dated 27.3.1989 in No. KAR.INS.I.53-7907-91 passed by the appellant-ESI Corporation u/s 45A of the Employees' State Insurance Act, 1948, henceforth in brief referred to as the "Act".

2. The appellant-Corporation is represented by its Counsel, Smt. Geethadevi, whereas the contesting Respondent No. 1 having been served with notice had remained absent before Court. The Respondent Nos. 2 and 3 being the State Authorities also having been served with notice, had remained absent before Court. The learned Additional Government Advocate, Sri Ashok Mensinkai, being present before Court had taken notice for the said Respondents. Accordingly, he is permitted to file memo of appearance for the said Respondents within a period four weeks.

3. The learned Counsel for the appellant-ESI Corporation, S Mt. Geethadevi, had taken me through the impugned order under challenge. She had also taken me through the facts of the case. According to her, the ESI Court would not have interfered with the impugned order passed u/s 45A of the Act. While taking me

through para-9 of the impugned order, she had also argued that the issues No. 1 and 2 were addressed to the Respondent No. 1-Company inasmuch as it is for the Respondent No. 1-Company to prove the said issues framed by the ESI Court. It was further argued by her that the Respondent No. 1-Company had not produced the relevant Books of Accounts such as ledger, accounts books, cash book vouchers, attendance register in respect of the temporary workmen, wage register in respect of both the permanent and temporary workmen to prove the above issues before the ESI Court and as such the ESI Court, according to her, would have decided the said issues as against the Respondent No. 1-Company. She had also pointed out that on the otherhand the ESI Court during the course of the judgment had observed that the order under challenge before it was that the Inspection Report did not support the case of the Corporation to show that the establishment of the Respondent No. 1-Company was very well covered under the Act. She also submitted that by the way the ESI Court had reached the conclusion, it appeared as if the burden was cast on the ESI Corporation to prove that the establishment of the Respondent No. 1-Company was one coverable under the Act, no matter that the Application before the ESI Court was not filed by it.

4. Therefore, she submitted that the impugned order passed by the ESI Court be set aside in restoring the order passed by the appellant-ESI Corporation.

5. At the outset, I have to observe here that the Respondent No. 1-Company being the contesting Respondent did not choose to contest the instant appeal before this Court and that despite service of notices on it, it had remained absent before Court.

6. Before proceeding further, I feel it appropriate to setout the issues framed in the ESI Application in question by the ESI Court. To quote the same, the same read as hereunder:

1. Whether the applicant proves that it has employed less than 10 persons and therefore not coverable under the Act.

2. Whether the applicant further proves that the order Annexure-C claiming contribution of Rs. 6,025/- for the wage period 4.4.1988 to 30.9.1988 is therefore not sustainable.

3. To what relief the parties are entitled?

7. On a simple reading of the above issues framed by the ESI Court, it is not difficult for one to say that the burden was cast on the Respondent No. 1-Company to prove the said issues framed by the ESI Court. As I see, as argued by the learned Counsel for the appellant-ESI Corporation that the Respondent No. 1-Company did not produce the relevant books for the purpose of proving the above two issues framed by the ESI Court. It is pertinent to mention here that during the course of the inspection by the Inspector of the ESI Corporation, the ledger, cash book vouchers, attendance register (temporary workmen), wage

register for temporary and permanent workmen, ESI Certificate and partnership deed were not at all produced before him by the Respondent No. 1-Company. Even before the ESI Court, the Respondent No. 1- Company failed to produce the above said records to prove the above said two issues framed by the ESI Court. Even if it is true that the establishment of the Respondent No. 1 was not covered under the Factories Act to maintain the above records, it was very well permissible for them to produce the records one they had to maintain u/s 13A of the Payment of Wages Act, giving such particulars of persons employed by them, the work performed by them, wages paid to them etc.... Even if the case of the Respondent No. 1-Company that their establishment was exempted from maintaining the records as contemplated under the provisions of the Labour Laws (Exemption From Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988, they had to maintain in lieu of such registers, register in Form Nos. B, C, D and E in respect of their Establishment. In the instant case in hand, the Respondent No. 1-Company not only did not produce the records referred to above, besides they did not produce the register as contemplated u/s 13A of the Payment of Wages Act, 1965, or registers in Form Nos. B, C, D and E in lieu of the above registers as per Section 4 of the Labour Laws (Exemption From Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988. Therefore, it has to be taken that the Respondent No. 1-Company failed to produce the relevant records to prove the above issues framed by the ESI Court.

8. Let apart, as per Clause (2) of Section 45A of the Act, it is made clear that an order made by the Corporation under Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by it. Therefore, it is clear that under Clause (2) of Section 45A of the Act, there is a presumption under law that an order under Sub-section (1) of Section 45A of the Act was true and correct. Hence, it is obvious that the question of proving the said issues by the ESI Corporation before the ESI Court did not arise at all. In the instant case in hand, the Respondent No. 1-Company had failed to prove the issues No. 1 and 2 as above. In the said view of the matter, I feel that the ESI Court was in error in allowing the Application of the Respondent No. 1-Company in setting aside the order dated 27.3.1989 in No. KAR.INS.I.53- 7907-91 passed by the appellant-ESI Corporation holding that the Respondent No. 1-Company was covered under the Act.

In the result, I pass the following:

ORDER

1. The instant appeal filed by the appellant-ESI Corporation stands allowed in the process the order dated 27.3.1989 in No. KAR.INS.I.53-7907-91 passed u/s 45A of the Act one under challenge by the Respondent No. 1-Company before the ESI Court stands restored to enure to the benefit of the Appellant- ESI Corporation. Let the Respondent No. 1-Company pay the ESI Contribution demanded by the ESI Corporation as per the order passed u/s 45 of the Act within a period of two

months from the date of passing of this order, of course, together with the interest thereon in accordance with law.