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**(2007) 04 AP CK 0029**  
**In the Andhra Pradesh High Court**  
**Case No : CMA No. 2769 of 2003**

Royal Food Products

APPELLANT

Vs

E.S.I. Corporation and Another

RESPONDENT

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**Date of Decision :** 17-04-2007

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100, 100(4)  
Employees State Insurance Act, 1948 — Section 2(12), 40, 75, 75(2B), 77

**Citation :** (2007) 4 ALD 632

**Hon'ble Judges :** P.S. Narayana, J

**Bench :** Single Bench

**Advocate :** Dhanamjaya, for the Appellant; V. Ch. Naidu, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.S. Narayana, J.—Heard Sri Challa Dhanamjaya, learned Counsel representing the appellant and Sri V. Ch. Naidu, learned Counsel representing respondents.

2. Sri Challa Dhanamjaya, learned Counsel representing the appellant, had pointed out to the following substantial question of law:

Whether the Additional Senior Civil Judge, Rajahmundry, is justified in dismissing OP No. 10 of 2001 without deciding the application IA No. 51 of 2001 filed by appellant-petitioner praying for dispensing with of the deposit of the amount?

3. The Counsel for appellant in all fairness would submit that though grounds "a" to "g" in ground No. 2 had been raised, this question, which is being raised, had not been specifically raised in the civil miscellaneous appeal, but however, since this is a serious procedural infirmity as reflected from the record, the said question to be considered and decided as a substantial question of law involved in this civil miscellaneous appeal. Incidentally, the learned Counsel also had drawn the attention of this Court to certain findings, which had been recorded at Paras 14 and 15 of the order impugned in the present civil miscellaneous appeal and further had pointed out that even on facts, the appellant-petitioner is having

fair chances of success.

4. Per contra, Sri V. Ch. Naidu, learned Standing Counsel representing respondents-E.S.I. Corporation, would maintain that it may be true that a separate application IA No. 51 of 2001 was moved, but the mere fact that the application was not separately decided would not cause any prejudice to the appellant-petitioner for the reason that the dispensing with of the deposit was prayed for on the ground of closure of the establishment and this would not seriously alter the situation. The learned Counsel placed strong reliance on the decision of the Apex Court in *Employees State Insurance Corporation Vs. M/s. Hotel Kalpaka International*, . While further elaborating his submissions, the Counsel pointed out to the evidence available on record and would maintain that the evidence was properly appreciated by the learned Judge and even on the question, which is being raised now, clear findings had been recorded at Paras 14 and 15 and inasmuch as the non-compliance of Section 75(2B) of the Employees' State Insurance Act, 1948 (hereinafter in short referred to as "the Act" for the purpose of convenience) being mandatory, the dismissal of the O.P. is well justified.

The learned Counsel placed strong reliance on the decision of the Madras High Court reported in *Connemara Hotel, Spencer International Hotels Ltd. Vs. Employees Insurance Court and Others*, .

5. This Court on 31 -7-2003 made the following order:

Admit.

In CMP No. 16149 of 2003, on the very same day i.e., on 31-7-2003, an interim injunction was granted.

6. Section 82 of the Act deals with appeal. Section 82(2) specifies that an appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves substantial question of law. When the statute ordains the entertainment of appeal on a substantial question of law, it may be just and proper for the Court to specify the substantial question of law while admitting the appeal. It is true that this provision though in a way is just akin or analogous to Section 100 of the CPC (hereinafter in short referred in as "the Code" for the purpose of convenience), Sub-section (4) of Section 100 of the Code further specifies the Court formulating such question. Though such language as such is not employed in Section 82(2) of the Act, inasmuch as, entertainment of an appeal would be only on the strength of substantial question of law as specified in Sub-section (2) of Section 82 of the Act, this Court is of the considered opinion that while admitting an appeal, it would be desirable to frame the substantial question of law.

7. The appellant-petitioner filed OP No. 10 of 2001 under Sections 75 and 77 of the Act against respondents 1 and 2 praying for declaration that the appellant-petitioner firm will not fall within the purview of the Act and to declare the

notices dated 30-9-1999, 7/8-3-2000, 13-3-2000 and 8-11-2000 as arbitrary and illegal and for permanent injunction from enforcing any of the notices or invoking the penal provisions of the Act and for other ancillary reliefs.

8. The parties hereinafter would be referred to as petitioner and respondents as arrayed in OP No. 10 of 2001 referred to supra. The petitioner in the original petition states as hereunder:

The petitioner is a partnership firm carrying on business of manufacturing of bakery products. The petitioner had only 6 cookers and its employees never exceeded 6 at any time. The provisions of ESI Act are not applicable commenced its business from 1-7-1997 after obtaining necessary licence from Factories Department. On 2-9-1999 and 1-10-1999, the Inspector of respondents" corporation visited the premises of the petitioner and wanted to inspect the books of business of petitioner. As the books of the business were with the Accountant, the Inspector was requested to give sometime for production of the books. On 1-10-1999 the Inspector issued a notice to the petitioner expressing his intention to visit the premises and inspect the books on 5-11-1999 and asked the petitioner to keep the books ready. Again on 15-10-1999 the Inspector issued another notice stating that he will visit on 12-11-1999. The petitioner received a notice dated 30-9-1999 from the 1st respondent alleging that as per the inspection made on 2-9-1999 by the Inspector, the petitioner"s firm comes within the purview of ESI Act and therefore it is allotted a Code No. Then the petitioner addressed a letter dated 6-11-1999 denying the factum of coverage and inspection and informed that the petitioner is not liable to be covered under ESI Act and the books of accounts are kept ready for inspection at any time and the respondents may come and inspect the same. Respondents issued another notice dated 7/8-3-2000 demanding the petitioner to contribute Rs. 3,595/- for the period 2-9-1999 to 30-9-1999. Then the petitioner addressed a letter dated 14-4-2000 setting out the facts that the unit never employed 10 or more workers besides the unit was permanently closed with effect from 16-3-2000 and requested the respondents not to insist for contribution. Without considering the representations of the petitioner, R1 issued a notice dated 13-3-2000 and 8-11-2000 calling upon the petitioner to pay contributions failing which threatened to initial penal prosecution. The respondents issued a legal notice on 20-11-2000 to the notice dated 8-11-2000.

9. The respondents filed written statement denying the averments made in the petition and had taken a specific stand that the original petition is to be dismissed for non deposit of 50% of the arrears claimed by the Corporation. It was also pleaded as hereunder:

As per the contents of the preliminary inspection report dated 2-9-1999 of the Inspector of this respondent who visited the petitioner"s factory on 2-9-1999 and submitted the report, it is clear from the same that the petitioner"s factory is engaged in manufacture of Bakery products and confectionery with the aid of power and he employed not less than 10 persons for wages on 2-9-1999. Hence,

the factory attracts the provisions of Section 2(12) of ESI Act. The petitioner failed to comply with the provisions of the Act, which he is liable to comply. The petitioner was given not only 15 days time to show-cause but also was earlier afforded an opportunity of personal hearing on 2-5-2000. The petitioner submitted a letter dated 14-4-2000. The reasons assigned by the petitioner are found to be incorrect and not at all sustainable. Hence, this respondent issued final order dated 26-9-2000 determining that an amount of Rs. 3,595/- is liable to be paid by the petitioner as contributions for the period from 2-9-1999 to 30-9-1999 along with interest at 15%. The petitioner has also failed to comply for the period from 1-10-1999 to 31-10-2000 in spite of affording opportunity of personal hearing on 21-11-2000. The Recovery Officer of the Corporation has also issued another notice in form ESI CP-2 dated 17-1-2001 calling upon the petitioner to pay the amount due within 15 days of the receipt of the same along with further interest till the date of payment etc. The Inspector on physical verification found 16 employees employed for wages on 2-9-1999. The Inspector reported that the petitioner has not produced records like muster, wages register etc., stating that all the workers are engaged through a contractor Sri Johny who is paid on production basis and that contractor is not maintaining any records. The Inspector has also interviewed the workers working at that time in the presence of Sri B. Venkateswara Rao, Partner and found 16 workers working for wages. A duty has also cast upon on the petitioner to pay contribution u/s 40 of the Act besides employing with other provisions of the Act. In spite of visit of Inspector on 2-9-1999 and providing opportunity of personal hearing on 2-5-2000, the petitioner failed to produce records to prove his contentions.

10. PW.1 was examined and Exs.A1 to A12 were marked on behalf of the petitioner and likewise, RW.1 was examined and Exs.B1 to B16 were marked on behalf of the respondents.

11. The learned Judge framed the following point for consideration:

Whether the petitioner is entitled for the declaration and permanent injunction against the respondents as prayed for?

12. The learned Judge appreciated the oral and documentary evidence available on record at length and came to the conclusion that the appellant-petitioner is not entitled to any of the reliefs prayed for and dismissed the same with costs. It may be appropriate to have a look at the findings recorded by the learned Judge at Paras 14 and 15.

It is the contention of respondents that as per Section 75(2-B) of the ESI Act, the petitioner is liable to deposit 50% of the arrears amount in the Court and then only he is entitled to raise the dispute in the Court. As the petitioner failed to comply with the said mandatory provisions, the petition filed by the petitioner is not maintainable. On perusal of Section 75(2-B):

No matter which is in dispute between a principal employer and the Corporation in respect of any contributions or any other dues shall be raised by the principal

employer in the EI Court unless he has deposited with the Court 50% of the amount due from him as claimed by the Corporation.

13. The main grievance ventilated by the Counsel for appellant-petitioner is that had the Court given an opportunity to the appellant-petitioner by deciding the application IA No. 51 of 2001 in one way or the other, the appellant-petitioner would have deposited the amount and further proceeded with the matter, but however, that opportunity was not given. It is no doubt true that though the application IA No. 51 of 2001 in OP No. 10 of 2001 was not decided, certain reasons had been recorded in this regard as can be seen from the relevant portion of the order in Paras 14 and 15 referred to supra. Section 75 of the Act deals with matters to be decided by Employees' Insurance Court. Sub-section (2-B) of Section 75 of the Act specifies that no matter which is in dispute between a principal employer and the Corporation in respect of any contributions or any other dues shall be raised by the principal employer in the E.I. Court unless he has deposited with the Court 50% of the amount due from him as claimed by the Corporation. The proviso specifies provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this subsection. In the affidavit filed in support of the application I.A. No. 51 of 2001, certain reasons had been specified in Paras 2 and 3, but no doubt, elaborate counter had been filed denying all those allegations. Strong reliance was placed on the decision of the Apex Court in Employees' State Insurance Corporation's case (supra), wherein the Apex Court held while dealing with the liability to pay contribution relating to the period when the business was running-Notice of demand issued after closure of business-Immaterial-Notice is only reminder to employer to discharge his statutory obligation to pay contribution which arose prior to closure.

14. It is needless to say that this is a question to be decided while deciding the merits and demerits of the matter. The learned Counsel for respondent-Corporation also placed strong reliance on the decision of the Madras High Court in Connemara Hotel's case (supra), where the provisions of Section 75(2-B) of the Act were held to be mandatory. When an application is moved along with the O.P., in the light of the proviso to Section 75(2-B) of the Act referred to supra, the Court is expected to apply the mind and arrive at a conclusion whether it is a fit matter where the deposit to be dispensed with for reasons to be recorded or to negative the same, so that, an opportunity may be given to the petitioner to make such deposit and to further proceed with the matter.

15. In the present case, instead of deciding the application, no doubt certain reasons had been recorded relating to dispensing with of deposit in the main O.P. This procedure, which had been adopted or followed by the learned Judge, in many a matter, may cause prejudice to the respective petitioners approaching the Courts for appropriate reliefs. Hence, it is made clear that whenever such applications are moved along with the O.Ps. or E.I. Cases as the case may be, in the light of the proviso to Section 75(2-B) of the Act, the concerned Court is duty

bound to decide whether such deposit to be dispensed with or to be waived or such relief to be negatived, even before numbering the original petition or the E.1. Case as the case may be, so that, an opportunity can be given to the concerned party to make such deposit and to further proceed with the matter in accordance with law.

16. In the light of the same, inasmuch as, this is a procedural infirmity, which had crept into this proceeding, the impugned order is hereby set aside and the matter is remanded. Let the learned Judge decide the application I.A. No. 51 of 2001 in OP No. 10 of 2001 in accordance with law and then further proceed with the matter in accordance with law.

17. At this stage, the learned Standing Counsel representing the Corporation made a request for earlier disposal of the matter, and inasmuch as the matter is an old one, let the learned Judge give top priority to the matter and dispose of the same at the earlier point of time.

18. Accordingly, the civil miscellaneous appeal is allowed to the extent indicated above. No order as to costs.