
(2009) 03 MAD CK 0133
In the Madras High Court
Case No : C.M.A. No. 289 of 2002

Sri Krishna Refineries

APPELLANT

Vs

The Assistant Regional Director, Employees State Insurance
Corpn.

RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 2(13), 2(22), 2(9), 45A

Citation : (2010) 1 LW 629

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : Ashok Kumar, for the Appellant; K.C. Ramalingam, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The averments contained in the petition filed by the petitioner u/s 75 of the Employees' State Insurance Act 1948 (hereinafter referred to as "Act") are as follows:

1.(i) The petitioner is an establishment registered under the Factories Act, engaged in the manufacture of bulk edible oil refined from ground-nut oil etc., The petitioner received a notice in Form C-18 dated 31.12.1996 from the respondent, requiring him to show cause within 15 days as to why contribution should not be assessed in respect of his factory as provided u/s 45-A of the Act and recovered. Since the petitioner has not employed the minimum number of employees required for coverage u/s 2(12) of the Act, he represented during the visit of the inspector as well as through his various representatives as many as 4 times with relevant records as such. It is stated that one Shanmugam is doing filling and tinkering work in the neighboring premises is not petitioner's "immediate employer". But his representation was not considered and it was concluded that the said Shanmugam is the contractor.

1.(ii) On 25.4.1997 an order u/s 45-A of the Act was received by the petitioner, directing him to pay within 15 days an amount of Rs. 12,252/- towards contribution for the period from January to September 1996 or face recovery proceedings and distraint action. No enquiry was held by the Inspector before the order was passed. Shanmugam employed 6 persons and this petitioner had employed 9 workers and the inspecting officials totalled them as 15 workers for coverage. The said Shanmugam is doing work not only for the petitioner but also for the others. Proper documents are maintained for giving oil in bulk and taking out in packed form from Shanmugam such as receipts and delivery challans. He has a separate and independent licence to run the industry viz., packing, sealing, cleaning and filling of oil etc., from the local Panchayat Board. He is also paying monthly rent regularly for occupying the premises to its owner. The petitioner does not exercise any control whatsoever over the Shanmugam's establishment nor his employees. Hence, it is prayed that it may be declared that the impugned order dated 25.04.1997 demanding payment of Rs. 12,262/- towards contribution invalid.

2. In the counter filed by the respondent, the following have been stated:

2.(i) The petition is not maintainable. All the allegations in the petition are denied. It was only after proper verification of the records of attendance register and physical verification of the premises where the employees of both principal employer and immediate employer were working together, the Inspector has recommended for coverage of the factory. Only after giving sufficient opportunities to the petitioner u/s 45-A of the Act, order was passed. All the six persons employed by Shanmugam are working in the same premises and their work is connected with the main work (i.e., Refining oil). Mr. Shanmugam is only an immediate employer u/s 2(13) of the Act and his employees are coverable u/s 2(9) of the Act. The petitioner has not maintained/produced at the time of inspection and personal hearing, the relevant records as regards the delivery of oil to the contractor.

2.(ii) The filling/ tinkering are done under same roof and only a collapsible gate is provided in the eastern side which was fully open, adjacent to the office room. Practically there is no physical barrier and the workers used to move freely in all portions of the factory; that the finished i.e., Refined oil flows from the boiler to the tank which lies in the hall. No record is maintained nor produced for delivery of oil to the contractor for filling/tinkering etc. or for having taken back the oil from him. No separate sign board for Shanmugam was displayed. Hence the petition has to be dismissed.

3. The learned Principal District Judge, Erode, after hearing both parties, reached a conclusion that the petitioner's establishment has to be covered under the provisions of the Act and that Shanmugam was immediate Contractor of the petitioner so as to bring the business of the petitioner within the scope of Section 2(9) and 2(22) of the Act. Aggrieved against the said order, the petitioner is before this Court with this appeal.

4. At the time of admission of the case the following substantial questions of law were framed by this Court:

(i) Whether the finding of the court below that late Shanmugam was an immediate employer of the appellant is correct in the total absence of any evidence both oral and documentary to show that the late Shanmugam was employed in connection with the work or the appellant are shown to be employed in any one of the categories mentioned under the Act and that there was supervisory control by the appellant on the said Shanmugam?

(ii) Whether the finding of the court below that merely because of the fact that late Shanmugam was permitted to work in the premises of the appellant would attract the rigour of the ESI Act is correct in law and on facts?

5. The petitioner is an establishment engaged in the manufacture of bulk edible oil refined from ground-nut oil etc.,. Concededly he employed 9 workers and Shanmugam employed 6 persons. It is the version of the petitioner that he used to give edible oil in bulk to Shanmugam who is doing his business of filling the same in packets and after the process was completed they will be returned back to the petitioner; that Shanmugam is having a separate premises and that the petitioner has no control over the said Shanmugam nor his employees.

6. Conversely, it is contended by the respondent's side that the Inspection Report would eventually portray the fact that both the petitioner's and Shanmugam's establishments are one and the same unit which are indivisible that they are having direct connection with each other; that there is no physical barrier available in the factory so as to divide both the establishments and to show that they are separate ones and that Shanmugam was immediate employer to the petitioner and the employment of all the 15 workers have to be considered for the coverage of the Employees State Insurance Act.

7. Inspection report plays crucial role in this matter. The Inspector has taken into account the topography of both establishments. He was unable to see any separate establishment. All the 15 workers were found moving freely in both the portions. The said Shanmugam is said to have represented before the concerned authorities on behalf of the petitioner in various matters to show that he is engaged in different business, there was no sign board. No record was maintained/produced before the Inspector at the time of his inspection to show that oil in bulk was obtained from the petitioner and the said Shanmugam returned them in packs. The Inspector also found the finished product i.e., the refined oil flowing freely from the boiler to the tank which lies in hall in question. He also found an iron grill under the same roof and a collapsible gate in the eastern side of the shutter which was fully opened, and situated adjacent to the office room and verandah. It is also mentioned in the report that when the Inspector asked for documentary evidence for leasing out the building etc., the petitioner did not produce any documents except the attendance register.

8. It was represented before the Inspector by the petitioner that six workers

employed by Mr. Shanmugam, were paid by him alone and that he got nothing to do with them.

9. The petitioner has produced before the Court below the attendance register Ex. A.17, pertaining to January 1996 to December 1996, in which six employees have been shown under the name of Shanmugam as owner of the business. Ex.A.19 is the Acquittance Register evidencing receipt of monthly wages by six employees under Shanmugam from January 1998 to December 1998. This Ex. A19 is after the demand proceedings. Excepting the Attendance Register for 1996, no other attendance registers for other earlier years were produced.

10. Ex. A-13 to A-16 series are the receipts reportedly issued by Shanmugam to other persons for receipt of money in his business. Materials have been produced to show that the establishments run by the petitioner and Shanmugam are entirely different. Evidence also in this proceedings show that, on the spot one could not comprehend that two separate establishments are functioning. In this connection the learned Counsel for the respondent garnered support from a Division Bench decision of this Court in 2005 (3) LLN 1162 Regional Director, Employees State Insurance Corporation and Anr. v. Aruna Stores and Anr. in which it is held that even though apparently there may be two units for the record purpose, when it transpired from the inspection report that they are incidentally connected to each other, they should be treated as one unit and that the beneficial legislations have to be construed liberally. The operative portion of the Judgment goes thus:

8. A perusal of the inspection note shows that Aruna Textile is the wholesale section, while Aruna Stores is the retail section, but both are really an integrated single unit. The building and electricity connection are common for both the establishments. The cash counter and packing sanction are common for both. There is common supervision for both. There is common security and common paths. The proprietor of Aruna Textiles is Sri Gopalakrishnan, while his mother Smt. Shantha is ostensibly the proprietrix of Aruna Stores. The entrance to Aruna Textiles is not independent. After going inside the Aruna Textiles, one has to go upstairs after cross the cash counter and packing section of Aruna Stores.

9. In industrial law, there is a well known concept of functional integrity. If ostensibly they are tow units, but there is functional integrity in the two, then, for the purpose of industrial law, they should be treated really as one unit. A perusal of the inspection note, dated 26 November 1990, shows that there is functional integrity between Aruna Stores and Aruna Textiles. Hence, for the purpose of industrial law, they have to be treated really as one unit. It may be that for the purpose of sales tax or for some other purpose, they may be treated as separate units, but, as already mentioned above, the principles of industrial laws are different from the principles of other branches of law.

11. Taking into account, it is the considered view of this Court that even though the attendance registers and receipts for payment of money are available, from

the Inspection report, it is seen that the functions undertaken by both the petitioner and Shanmugam are interconnected and incidental to each other, it has to be necessarily observed that they together form one unit for the purpose of the Act and in this regard, the benefit of the labour law legislation have to be made available to the persons concerned. The substantial questions of law are answered accordingly.

12. In the light of the observations following the Division Bench decision of this Court, it is held that the petitioner's factory is liable to be covered under the provisions of the Act. There is no illegality or perversity in the proceedings impugned. There is no infirmity in the order passed by the learned Principal District Judge, Erode, which deserves to be confirmed and it is confirmed. The Civil Miscellaneous Appeal suffers dismissal.

In the result, the Civil Miscellaneous Appeal is dismissed. No costs.