

(2005) 06 KAR CK 0013

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1516 of 2000

Srinidhi Silks and Textiles

APPELLANT

Vs

The Regional Director, Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 07-06-2005

Acts Referred:

Employees State Insurance Act, 1948 — Section 45 A, 75, 82

Citation : (2006) 108 FLR 925 : (2005) 6 KarLJ 25 : (2006) 2 KCCR 76 SN : (2006) 1 LLJ 674

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Harikrishna S. Holla, for the Appellant; M.P. Geethadevi, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—This appeal is filed by the appellant against the order dated 11-2-2000 passed in ESI Application No. 1 of 1995 by the Judge, ESI Court, Bangalore dismissing the application filed u/s 75 of the Employees' State Insurance Act, 1948 (in short, "the Act").

2. The brief facts of the case are as follows.--

The appellant is a partnership firm engaged in the business of sale of silk sarees and textiles. The appellant seeks to challenge the order of the ESI Court dismissing the application of the appellant u/s 75 of the Act. It was the appellant's case that the appellant's unit M/s. Srinidhi Silks and Textiles, M/s. Srinidhi Fashions dealing in readymade clothes and M/s. Srinidhi Saree Sadan dealing in sarees, yet another partnership firm, are three independent units and do not have connection with each other, there is no transferability of employees from one establishment to another and that there is no unity of accounts, etc., and hence, it was not permissible for the ESI Corporation to hold that the appellant was liable to comply with the provisions of the Act as though all three

units are one and that there could not be any order determining any alleged contribution to be made by the appellant.

3. The respondent-Corporation after having issued show-cause notices dated 8-11-1993 and 23-2-1995 had passed an order dated 1-4-1995 calling upon the appellant to pay a sum of Rs. 19,724/- being the contribution payable during the period 1-8-1994 to 31-11-1994. This order was challenged by the appellant in Application No. 1 of 1995 before the ESI Court. The same was disposed of holding that the appellant was covered under the Act. The same was challenged before this Court in M.F.A. No. 239 of 1998 and this Court has set aside the order passed by the ESI Court and remitted the matter for fresh hearing. The present order under challenge is the order passed by the ESI Court dated 11-2-2000 after such remand. The ESI Court upon consideration of the material sought to be produced upon remand has found as a fact that the said documents were available with the appellant at the time of inspection and even if for some reason the same was not available, the appellant had ample opportunity to produce it at the time of hearing before the Court in the first instance. The appellant not having done so, the Court has doubted the veracity of the documents sought to be produced, namely, certain accounts books, etc., and has accordingly rejected the application. It is this order, which is under challenge before me.

3-A. The appellant has framed following substantial questions of law for consideration:

(i) Whether the Court below was justified by holding that the appellant establishment is coverable under the ESI Act overlooking the documents produced by the appellant in the form of separate wage and attendance register, separate certificates issued under the Karnataka Shops and Commercial Establishments Act, 1961, separate Income Tax assessment, separate sales tax assessment, separate banking account, separate registered partnership deed, separate account books, bill books, etc."?

(ii) Whether the Court below was right in upholding coverage of the establishment even though the ESI Inspector who conducted inspection did not conduct any mahazar?

(iii) Whether the Court below was right in upholding the order passed by the respondent in covering the establishment without giving any opportunity to the applicant?

(iv) Whether the findings of the Court below is contrary to the judgment as in Employees' State Insurance Corporation v. Karnataka Asbestos Cement Products 1991 LLR 775 ?

(v) Whether the Court below is right in holding that all three units are one and the same and therefore, provisions of the Act are applicable to them comprehensively?

(vi) Whether the Court below is right in holding that the petitioner had employed

20 persons as on date of coverage by clubbing the employment strength of all three units?

4. The learned Counsel for the appellant would contend that the documents produced such as electricity bills, partnership deeds, licence issued under the Karnataka Shops and Commercial Establishments Act, bank account, sales tax and Income Tax returns, wage and attendance register, profit and loss accounts, etc., would clearly establish that there were three separate entities and that the appellant could not, for the purposes for the Act, be treated together with the two firms mentioned hereinabove. He would further contend that there was no enquiry conducted u/s 45-A of the Act. There was no functional integration of the three separate firms and there was no transfer of employees between the firms nor there had been any unity of accounts and it was also urged that at the relevant point of time one of the units was located away from the building in which other two units were situated. Hence, findings of the authorities and the rejection of the application by the ESI Court is perverse and contrary to material on record.

5. The learned Counsel for appellant relies upon the following judgment in support of his contentions:

An unreported judgment of the Court in the case of M/s. Saboo Silk Stores v. Regional Director, Employees" State Insurance Corporation, M.F.A. No. 3150 of 1998, DD: 18-4-2000 (Kar.) wherein this Court has taken a decision on the facts of that particular case that the two firms which were treated as being interdependent in one unit for the purpose of the Act and that they are separate units and had allowed the appeal. He further relies upon the decision in the case of Regional Provident Fund Commissioner and Another Vs. Dharamsi Morarji Chemical Co. Ltd., wherein it was held by the Supreme Court that the facts thereto were two factories owned by the respondent-Company but it is not sufficient to fasten the liability under the provisions of the Act unless there was clear evidence to show the inter connection, such as, common supervisory, financial or managerial control. He further relied on the decision in the case of Karnataka Asbestos Cement Products, to contend that the report furnished by the Inspector on the basis of the attendance register should indicate various details and in the absence of the same the report could not be relied upon for the purposes of the Act. He also relied upon the case of B. Ganapathy Bhandarkar v. The Regional Provident Fund Commissioner 1989 (2) Kar. L.J. 480, in support of his contention that it should be established that one unit is dependent on another and that the activities are common. He further relied upon the case of Devesh Sandeep Associates and Others Vs. Regional Provident Fund Commissioner, Bangalore, in support of his contentions.

6. Per contra, Smt. Geethadevi, learned Counsel for the Corporation would contend that the first requirement u/s 82 of the Act is that the matter should involve a substantial question of law and it is evident from the facts and circumstances of the case that the order of the ESI Court proceeds entirely on

facts and there is absolutely no question of law involved in the present case let alone a substantial one and hence there is a threshold bar to the maintainability of the appeal.

7. It was next contended that in terms of Section 45-A of the Act, would come into play only if no records are maintained, submitted or furnished or if any official of the Corporation is prevented in any manner by the employer in the discharge of his duties. It is only then that the Corporation may determine the amount after providing an opportunity of hearing to the employer and that there was no prohibition to determine the contribution from the available material. The tenor of the Act imposes a duty on the employer to comply with the provisions of the Act and determination by the authorities u/s 45-A of the Act, is only under exceptional circumstance as cited above and the same could not be urged as not having been complied with as erroneously contended by the appellant.

8. The learned Counsel for respondent relies upon the following judgment in support of her contentions:

In the case of Panjak Bhargava and another Vs. Mohinder Nath and another, wherein it has been held that to determine the question of law it would have to be seen if the question directly and substantially affects the rights of the parties. In the present case according to her, there is no question of law, much less, a substantial question of law and hence the appeal would have to be rejected. Further she would rely upon Modella Woollens Limited v. Employees State Insurance Corporation to substantiate her case that it was incumbent on the appellant to plead and prove before the ESI Court as to the actual contribution that the appellant was liable to make in challenging the basis on which the Corporation has determined the same. In the absence of which the same could not be challenged in this proceedings. Further, she relied on the judgment rendered in the case of Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others, in support of her contention that the finding by the Commissioner as to the functional unity and integrity is a finding of fact and the definition "Establishment" was wide enough to encompass within its ambit the units of the appellant for the purpose of the Act.

9. From a consideration of the rival contentions and the case-laws placed before me it is difficult to discern any substantial question of law that arises for consideration in the present case. The finding that there is a functional integrity between the appellant and two other firms is a pure question of fact and as laid down by the Supreme Court in the case of The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, which reads as follows.--

"Para (11) ... It is perhaps, impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units, etc. If in their true relation they constitute one integrated whole, we say that the establishment is one, if one the

contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes a disqualification there for. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same time".

In the light of the above, it is not possible to hold that there should be a strait-jacketed formula for determining functional integrality, for the purposes of the Act, in respect of two or more seemingly independent units.

10. Insofar as the other contentions are concerned, the appellant's endeavour to demonstrate that no enquiry was held prior to an order of determination is not well-founded from a plain reading of Section 45-A of the Act, when it is not in dispute that the materials were, in fact, made available, which were sufficient for the authorities to determine the contribution on the failure of the appellant to comply with the provisions of the Act.

11. In the result, the appeal fails and is accordingly dismissed. No order as to costs.