
(2010) 03 P&H CK 0321
In the Punjab And Haryana At Chandigarh

Standard Service Station	Vs	APPELLANT
The Employees State Insurance Corporation		RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 74, 75, 76, 85B

Citation : (2011) 1 LLJ 571 : (2010) 159 PLR 147

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—This appeal is directed against the order of Employees State Insurance Court, Gurgaon dated 20.8.2009, by which it has been decided under issue No. 5 that the Civil Court at Gurgaon has no territorial jurisdiction to entertain and decide the petition filed by the appellant u/s 75 of the Employees State Insurance Act, 1948 (for short, "the Act") as the territorial jurisdiction would vest with the Civil Judge (Senior Division) Bhiwani.

2. Briefly stated the facts of the case are that premises of the appellant was inspected by the Inspector of Employees State Insurance Corporation (for short, "the Corporation") on 1.6.1996 and it was opined that the said establishment is covered u/s 2(12) of the Act.

3. The Regional Director issued a notice to the appellant to file an affidavit in order to show as to how many persons are actually employed in its establishment. The appellant submitted an affidavit claiming that only eight persons were on the roll of the establishment and names of two persons recorded on the spot are not actually working for wages at any time. In short, on the pleadings of the parties, issues were framed on 29.7.2002 which reads as under:

1) Whether the petitioner is a factory under ESI Act? OPP

2) If issue No. 1 is proved whether the demand of contribution is illegal and unlawful on the grounds as mentioned in the application? OPP

3) Whether petitioner has no cause of action to file the petition? OPD

4) Whether the petitioner is estopped from filing the present petition by his own act and conduct? OPR

5) Whether this Court has got no jurisdiction to determine the issue u/s 75(g) of ESI Act? OPR

6) Relief.

4. Both the parties led their oral as well as documentary evidence.

5. Before adverting to the issues on merits, learned Court below, at the first instance preferred to decide issue No. 5 as it pertains to territorial jurisdiction of the Court. While deciding the said issue, following observations have been made by the learned Court below which reads as under:

On the other hand, the petitioner in its replication has pleaded that this Court has territorial jurisdiction to determine the issue u/s 75(g) of ESI Act. The respondent has placed on record notification, issued by Government of Haryana, Labour Department bearing No. 2051-5 Lab. 77/10530 dated 24.05.1977, Ex.RW2/C which is reproduced as below:

In exercise of powers conferred by Section 74 of the Employees State Insurance Act, 1948, read with rule 4 of Punjab Employees Insurance Court Rules 1951, and in partial modification of Haryana Government notification No. 4799-5 Lab 71, dated the 6th July 1971, the President of India is pleased to constitute the Courts specified in column No. 2 of the Schedule below as Employees Insurance Courts for the areas specified in column No. 3 thereof and appoints the judicial officers presiding over the courts specified in column No. 2 of the said schedule as judges of Employees Insurance Courts as constituted:

SCHEDULE S. No. Name of the Court Jurisdiction 1. Senior Sub Judge, Bhiwani, Charkhi Dadri and Rewari Bhiwani 2. Senior Sub Judge, Gurgaon and Kutubpur Mola Gurgaon 3. Senior Most Sub Judge Faridabad, Ballabgarh and posted at Ballabgarh Mathu Road (Faridabad) PP. CAPRIHAN Financial Commissioner and Secretary to Govt. Haryana Labour and Employment Departments.

The petitioner in its petition has pleaded that petitioner is an establishment in the name & style of M/s Standard Services Station which provides services to the public for sale of petrol and diesel oil and is a authorized dealer of Bharat Petroleum Ltd. (A Govt. of India Undertaking). Admittedly, aforesaid service station/petrol pump of the petitioner is situated at Narnaul Chowk, Circular Road, Rewari. Therefore, in view of aforesaid notification Ex.RW2/C, the present petition should have been filed by the petitioner in the Court of learned Senior Sub Judge (Civil Judge (Sr. Divn.), Bhiwani.

The plea taken by the petitioner in para No. 8 of the petition that office of the Inspector of the ESI Corporation is situated at Civil Lines, Gurgaon at whose instance the establishment was treated as covered under ESI Act and therefore, this Court has jurisdiction to try its case is not tenable in view of the aforesaid notification Ex.RW 2/C.

In these circumstances and in view of above discussion, this Court is of the view that this Court is having no territorial jurisdiction to entertain and decide the present petition and Court of learned Civil Judge (Sr. Divn.), Bhiwani is having territorial jurisdiction to entertain and decide the present petition. Hence, the plaint/petition is liable to be returned to the petitioner for filing the same in the Court of learned Civil Judge (Sr. Divn.), Bhiwani. Hence, this issue is decided accordingly in favour of the respondent.

6. Being aggrieved against aforesaid order, learned Counsel for the appellant has, inter-alia, argued that the learned Court below has erred in appreciating the fact as well as the provisions of law while deciding issue No. 5. He made a reference to Section 76 and Rule 16, 18 and 19 of the Punjab Employees Insurance Court Rules, 1951 (for short, "Rules") which are reproduced here-under for ready reference:

76. Institution of proceedings etc.-

(1) Subject to the provisions of this Act and any rules made by the State Government, all proceedings before the Employees Insurance Court shall be instituted in the Court appointed for the local area in which the insured person was working at the time the question or dispute arose.

(2) If the Court is satisfied that any matter arising out of any proceeding pending before it can be more conveniently dealt with by any other Employees Insurance Court in the same State, it may, subject to any rules made by the State Government in this behalf, order such matter to be transferred to such other Court for disposal and shall forthwith transmit to such other Court the records connected with that matter;

(3) The State Government may transfer any matter pending before any Employees Insurance Court in the State to any such Court in another State with the consent of the State Government of that State.

(4) The Court to which any matter is transferred under sub section (2) or sub section (3) shall continue the proceedings as if they had been originally instituted in it

16. Place of suing.- In cases not falling under the Sub-section (1) of Section 76, a proceeding against any person shall be instituted in the court within the local limits of whose jurisdiction.

(a) the opposite party of each of the opposite parties where there are more than one, at the time of commencement of the proceedings actually and voluntarily

resides, or carries on business, or personally works for gain, or

(b) any of the opposite parties, where there are more than one at the time of the commencement of the proceedings actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the opposite parties who do not reside, or carry on business or personally work for gain as aforesaid, acquires in such institution, or

(c) the cause of action, wholly or in part, arose.

18. Application presented to wrong Court.

(1) where on receiving an application it appears to the Court that it should be presented to an other Court, it shall return it to the applicant after endorsing upon it the date of the presentation and return, the reasons for returning it and the name of the Court to which it should be presented.

(2) Where it appears to the court at any stage subsequent to the presentation of an application, that the application should have been presented to another Court, in the same state the first mentioned Court shall send the application (and the opposite party if he has received a copy of the application under rule 19) accordingly.

(3) The Court to which an application is transferred under sub rule (2) may continue the proceeding as if the previous proceeding or any part of it has been taken before it, if it is satisfied that the interest of the parties will not thereby be prejudiced.

19. Issue of summons.- (1) on receiving an application, the Court shall ordinarily within three days thereof, cause to be sent to the party from whom the applicant claims relief (hereinafter referred to as the opposite party) a summons in form 4 or form 5, as the case may be, to appear and answer the application on a day, not later than fifteen days from the date of issue of such summons.

Provided that no such summons shall be issued when the opposite party has appeared at the presentation of the application and admitted the applicants claim.

(3) A copy of the application shall also be sent along with the summons under sub rule (1).

7. Learned Counsel for the appellant has framed questions of law in para 13 of memo of appeal which are reproduced below:

a) Whether a dispute between the employer and the Corporation is to be treated a dispute between the employee to deal the matter u/s 76(1) of the E.S.I. Act, 1948 while there is no dispute between the employee and the Corporation or employer or under rule 16?

b) Whether the Employees Insurance, Court at Gurgaon where the opposite party carries on business, resides and works for gain and competent to adjudicate the case under Rule 16 of the Punjab Employees' Insurance Courts Rules, 1951, can

deny to adjudicate the matter on the erroneous plea of Section 76(1) of the Act which is not applicable in this case as the matter is not disputed with the "Insured Person"?

c) Whether the learned Employees" State Insurance Court, Gurgaon is competent to ignore the law laid down by this Hon"ble Court in case M/s Jay Industries v. Employees, State Insurance Corporation 1981 (43) F.L.R. 118?

d) Whether the learned Employees State Insurance Court entertained the case on 03.06.1999 adjudicated the same upto the level final arguments, having the jurisdiction under Order 16 of the Punjab Employees Insurance Courts Rules, 1951, can return the plaint?

e) Whether "the Employees State Insurance Court, Gurgaon is competent to ignore Rule 18(2) of the Punjab Employees" Insurance Courts Rules, 1951 to harass the petitioner illegally while it adjudicated the case upto arguments stage and kept with it for more than 10 years and then ordered to return the same to the petitioner instead of transferring the same to other Court to proceed under Rule 18 (3) of the Rules ibid?

8. Out of the aforesaid questions, one of the primary questions is as to "Whether ESI Courts at Gurgaon would have the territorial jurisdiction or ESI Court as determined in the impugned order shall have the jurisdiction".

9. Learned Counsel for the appellant has submitted that had there been a dispute between the employee/insured person with the corporation, then the matter would have been dealt-with as per Section 76 of the Act, otherwise the matter would be dealt with as per Rule 16 of the Rules.

10. In order to buttress his arguments, learned Counsel for the appellant has submitted that Section 76(1) of the Act provides that ESI Court would have the territorial jurisdiction within the local area. The dispute is whether establishment of the appellant is covered u/s 2(12) of the Act or not. It is submitted that insofar as other disputes are concerned, Rule 16 of the Rules would be applicable as it provides that in cases not falling under Sub-section (1) of Section 76, a proceeding against any person shall be instituted in the court within the local limits of whose jurisdiction the opposite party or each of the opposite parties, where there are more than one, at the time of commencement of the proceedings actually and voluntarily resides, or carries on business, or personally works for gain.

11. In the present case, the opposite party is stated to be a Corporation whose Head Office is at Faridabad but Inspectorate office is situated at Gurgaon who had carried out the survey and issued the impugned notice.

12. Learned Counsel for the appellant has further submitted that a decision of this Court in the case of M/s Jay Industries v. Employees, State Insurance Corporation 1981 (43) F.L.R. 118 is fully applicable to the facts of this case. It is also argued that the proceedings before the ESI Court at Gurgaon were initiated

on 3.6.1999 but the impugned order has been passed on 20.8.2009 after expiry of 10 years, whereas Rule 18 of the Rules provides that if the Court does not have any territorial jurisdiction, then it is incumbent upon it to return the petition to be presented before the Court having the territorial jurisdiction. It is also alleged that the notification which has been relied upon by the respondent is of 24.5.1977 which was very much within the knowledge, not only of the respondent, but also of the ESI Court at Gurgaon, but the proceedings were allowed to continue unnecessarily in which 10 valuable years have been lost.

13. On the other hand, learned Counsel for the respondent/Corporation has argued that the finding recorded under issue No. 5 does not call for any interference by this Court as it is apparent from the notification dated 24.5.1977 that if there is a dispute between the parties, jurisdiction shall vest with the ESI Court at Bhiwani. He has also relied upon a decision of the Apex Court in the case of Fertilizers and Chemicals Travancore Ltd. Vs. Regional Director, ESIC and Others, .

14. Taking support from the aforesaid judgment, it is submitted by the learned Counsel for respondent that the establishment is required to implead all the workmen who are stated to have been engaged by the appellant before taking a decision but in this case all the employees or even some of the employees of the establishment have not been im-pleaded.

15. I have heard learned Counsel for the parties and have perused the record with their able assistance.

16. The question involved in this case is no more res-integra as the same question had arisen before this Court earlier in the case of M/s Jay Industries (supra). In the said case, a petition was filed u/s 75 of the Act, for quashing of the order passed by the Regional Director u/s 85B of the Act levying damages and for stopping the recovery proceedings initiated by the Regional Director, ESI, Corporation, Chandigarh. In the written statement, preliminary objection was taken on behalf of the Corporation that the ESI Court at Chandigarh had no jurisdiction to try the petition because all proceedings before the E.S.I Court are to be instituted in a Court appointed for local area in which the insured persons were working at that time. The plea was taken that the petition, which relates to Faridabad, should not be tried at Chandigarh, because the Employees State Insurance Court has been constituted for Faridabad area was at Ballabhgarh. This Court after considering Sub-section (1) of Section 76 of the Act and Rule 16 of the Rules came to a firm conclusion that since the dispute was between the employer and the Corporation, the office of which is admittedly situated in Chandigarh, Rule 16 of the Rules would apply and not sub section (1) of Section 76 of the Act. Relevant portion of the aforesaid order is as under:

I have heard the learned Counsel for the parties at a great length. In my considered opinion, the contention of the learned Counsel for the appellants has got force. Section 75 of the Act provides the matters to be decided by the

Employees Insurance Court. In most of those matters, the insured person, as defined in Section 2(14) of the Act is likely to be the party to the dispute. As and when the insured is a party to the dispute, then his case will be governed by the provisions of Sub-section (1) of the Section 76 of the Act and all those proceedings shall be instituted in the Court appointed for the local area in which the insured person was working at the time the question or dispute arose to attract provisions of Rule 16, reproduced above. If this argument of the learned Counsel for the Corporation, that since the Act is for the benefit of the insured persons and regarding disputes relating to them, all proceedings must be instituted in the Court appointed for the local area in which the insured person was working at the time the question or dispute arose is accepted in that event, Rule 16 of the Rules becomes redundant. The very opening words of Rule 16 provides that "in cases not falling under Sub-section (1) of Section 76, a proceeding against any, person shall be instituted in the Court within the local limits of whose jurisdiction.... From the language used therein, it is quite clear that the cases, which do not fall within the provisions of Sub-section (I) of Section 76 of the Act, will be governed by Rule 16 of the Rules.

17. Insofar as present case is concerned, in this case, the dispute is with regard to coverage of the appellant under the provisions of the Act as to whether it falls within the definition of a factory or not. The dispute is basically between the employer and the Corporation and not between the employees and the Corporation.

18. Before parting with the judgment, it would be relevant to mention here that the learned Court below should not have wasted a period of over a decade in deciding issue No. 5 alone on the basis of notification dated 24.5.1977 because Rule 18 specifically provides that if the Court comes to a conclusion that "where on receiving an application it appears to the Court that it should be presented to an other court, it shall return it to the applicant so that it could be presented to the proper Court having territorial jurisdiction".

19. In view of the above discussion, the present appeal is allowed, the finding recorded on issue No. 5 against the appellant is hereby set aside and the matter is remanded back to the ESI Court at Gurgaon to decide the case on merit as expeditiously as possible, preferably within a period of six months from the date of receipt of a certified copy of this order.

20. Parties are directed to appear before the ESI Court at Gurgaon on 18.5.2010.