
(2006) 10 KAR CK 0021
In the Karnataka High Court
Case No : M.F.A. No. 5681 of 2001

The Regional Director, ESI Corporation

APPELLANT

Vs

Ganesh Mahal

RESPONDENT

Date of Decision : 25-10-2006

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 10B (b)
Employees State Insurance Act, 1948 — Section 2 (A), 75

Citation : (2006) 10 KAR CK 0021

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : V. Narasimha Holla, for the Appellant; Natraj Ballal, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—Heard the learned Counsel for the parties.

2. Aggrieved by the order dated 24.7.2001 passed in ESI Application No. 87/1994 by the Presiding Officer, Employees State Insurance Court-cum-Labour Court, Mangalore, (for short "the ESI Court"), in allowing the petition filed by the respondent herein u/s 75 of the Employees State Insurance Act (for short the ESI Act), that the respondent does not come within the coverage of the ESI Act, this Appeal is preferred by the ESI Corporation.

3. Sri. Narasimha Holla, Learned Counsel for the appellant submits that the respondent himself through his Manager has submitted Form No. 01 which has been marked as Ex.R.3 in. the evidence before the ESI Court and the said document speaks for itself inasmuch as during the year 1986 there were 20 employees working in the establishment of the first respondent and in view of this admission by the respondent himself, the ESI Court could not have disbelieved the document Ex.R.3 and the reasons given by the ESI Court is totally perverse. Therefore, in the face of the admission made by the respondent both in Ex.R.3 as well as at paragraph-5 of the petition filed before the ESI

Court, there was no good reason for the ESI Court to reject the above said evidence placed before it. Therefore, the impugned order is erroneous and contrary to the material placed on record.

4. In support of his submission, counsel drew the attention of the Court to Section 2(A) of the Employees' State Insurance Act, 1948 (the "Act" in short) and to Regulation 10(B)(b) of the Employees' State Insurance (General) Regulations, 1950 ("Regulations" in short) to contend that it was incumbent on the part of the employer to have maintained necessary records as required by the Regulation and therefore the document Ex.R.3 which is Form No. 01 submitted by the employer himself clinches the issue in favour of the appellant-Corporation.

5. On the other hand, learned Counsel for the respondent submits that though Form No. 01/Ex.R.3 was submitted by the respondent, but on the other hand the form that was submitted by the respondent is as per Annexure-A5 and the said Form does not mention about 20 persons being employed in the establishment at any point of time.

6. Having heard the submission made as above, I have carefully gone through the records as well as the order passed by the ESI Court. The only ground on which the ESI Court has allowed the petition filed by the respondent is that there is no evidence to show as to who has given Ex.R.3 i.e. Form No. 01 and therefore, the contentions of the ESI Corporation that there were 20 employees, cannot be accepted.

7. In my view, the reasoning given by the ESI Court, cannot be accepted either on facts or in law. First, as admitted by the respondent himself he has given Form No. 01 to the Corporation. Ex.R.3 which is Form No. 01 was confronted to AW-1 in the course of his evidence and except denying the number of employees mentioned in Ex.R.3, nowhere in his evidence AW-1 has gone on record to say that Ex.R.3 was not submitted by his establishment.

8. Secondly, the ESI Court has observed that RW-1 examined on behalf of the Corporation has not stated anything with regard to Ex.R.3. This reasoning also does not appear to be a rational one because as already-observed by me, Ex.R.3 was confronted to AW-1 in the course of his evidence and furthermore, the said exhibit has not been denied by AW-1.

9. Thirdly, the ESI Court, nowhere in the course of its order has referred to Ex.A.5, which is alleged to have been the Form No. 01 given by the respondent to the ESI Corporation. The entire order focuses only on Ex.R.3 and no other document.

10. Section 2(A) of the "Act" reads thus:

Registration of factories and establishments:

Every factory or establishment to which this Act applies shall be registered within

such time and in such manner as may be specified in the regulations made in this behalf.

Regulation 10(B)(b) reads thus:

The employer shall be responsible for the correctness of all the particulars and information required for and furnished on the Employer's Registration Form.

If Ex.R.3 (Form No.-01) is read in the light of the above provisions, the only inference that is permissible is that the employer cannot go back on the information furnished in Ex.R.3 as regards the number of employees in concerned. The said documents mentions that there were twenty employees.

11. Therefore, the argument that what was furnished was Ex.A.5 and not Ex.R.,3 requires to be noticed only to be rejected because the alleged Form No. 01 as per Ex.A.5 does not conform to the requirement of the Form No. 01 that is to be furnished in accordance with Regulation 10 (B). When the Regulation prescribes a particular Form No. 01, it shall be furnished in that manner only and not in any other manner. Hence, no importance can be attached to the form that was furnished as per Ex.A.5.

12. The last aspect of the matter is that Ex.R.3 also bears the seal as well as the designation of the person who has signed it. Therefore, it is not now open to the respondent to contend that Ex.R.3 was not submitted by it to the Corporation. As such, the reasoning given by the ESI Court cannot be accepted and the impugned order passed by the ESI Court is unsustainable in law as it has ignored the positive material placed on record by the Corporation and hence, I pass the following:

ORDER

The Appeal is allowed and the order dated 24.7.2001 passed in ESI Application No. 87/1994 by the Presiding Officer, Employees State Insurance Court-cum-Labour Court, Mangalore, is set aside.