

***THE HON'BLE SRI JUSTICE M.LAXMAN**

+ CIVIL MISCELLANEOUS APPEAL No.1703 OF 2004

% 01—03—2023

Employees State Insurance Corporation
and another

... Appellants

vs.

\$ Cheekoti Veeranna & Co.

... Respondent

!Counsel for the Appellants: Sri B.G.Ravindeer Reddy

^Counsel for Respondent: Sri Koka Satyanarayana Rao

<Gist :

>Head Note :

? Cases referred

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IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

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CIVIL MISCELLANEOUS APPEAL No.1703 OF 2004

Between:

Employees State Insurance Corporation
and another

... Appellants

And

Cheekoti Veeranna & Co.

... Respondent

JUDGMENT PRONOUNCED ON: 01.03.2023

THE HON'BLE SRI JUSTICE M.LAXMAN

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

M.LAXMAN, J

THE HON'BLE SRI JUSTICE M.LAXMAN
CIVIL MISCELLANEOUS APPEAL No.1703 OF 2004

JUDGMENT:

1. The present Civil Miscellaneous Appeal has been filed against the against the order dated 20.06.2002 in E.I.Case.No.60 of 2000, on the file of the Employees Insurance Court and Chairman, Industrial Tribunal – I, Hyderabad, whereby the application filed by the respondent herein under Section 75(1)(g) of the Employees State Insurance Act, 1948 [for short 'ESI Act'], to set aside the demand notice dated 17.04.2000, whereunder demand of payment of Rs.1,48,051/- was sought towards arrears of contribution and interest there on, was allowed and demand notice was set aside.

2. The petitioners herein are the respondents and the respondent herein is the petitioner before the Court below. For the sake of convenience, parties herein-after referred to as they are arrayed before the Court below.

3. The facts leading to file the present impugned application are that, the Inspector of the respondents-Corporation inspected the factory of the petitioner on 06.03.1998 and noted that three employees were in the factory premises and no ledger or cash

books were maintained in the factory, as the factory was closed. Further, he inspected the attendance register and wage register under Exs.P1 and P2. The factory was covered under the ESI Act from 30.03.1975. The contributions were paid up to 1995 and default was committed from April, 1995 to March, 1996; February, 1998 to March 1998; and April, 1999 to September, 1999. Subsequently, show cause notices were issued to the petitioner under Exs.R9, R13 and R16, and as there was no response from the petitioner, final orders were passed under Section 45(A) of the Act. Later, demand notices were issued under Exs.R10, R14 and R17 when the amounts were not paid. Thereafter, recovery proceedings were initiated by issuing notice under Exs.R11, R15 and R18 for arrears of amounts of contribution and interest. Finally, the arrears of contributions and interest were determined at Rs.1,48,051/-.

4. Aggrieved by the said proceedings, the petitioner has filed a case in E.I.Case.No.60 of 2008, before the Insurance Court. The case of the petitioner was that, he did not deny the original coverage of the factory under ESI Act with effect from 30.03.1975. Their case is that the factory was closed with effect from 01.04.1995 and no manufacturing activities or any other kind of activities were carried on. The employees found on the inspection

were only security personnel and they were employed to guard the factory as well as the properties. Therefore, no employees were engaged for the purpose of manufacturing activity as was done previously, as the factory was closed down. Further, they claim that they are not liable to pay any coverage on account of close down of the factory. Considering the said facts, the Court below has allowed the case. Therefore, present Civil Miscellaneous Appeal has been preferred at the instance of the respondents.

5. The petitioner, to support their case, examined PW1 and relied upon Exs.P1 to P7. The respondents to support their case examined RW1 to RW4 and relied upon Exs.R1 to R19.

6. The Court below had agreed with the claim of the petitioner with regard to close down of the factory with effect from 01.04.1995 and held that the petitioner is not liable to pay contribution and consequently, quashed the demand notice. Hence, the present appeal.

7. The contention of the learned standing counsel for the respondents-Corporation is that the Court below while holding that the petitioner is not liable to pay contributions, has not considered the effect of Section 1(6) of the ESI Act. Non-consideration of Section 1(6) of the ESI Act itself raises the

substantial question of law, so as to maintain the present appeal before this Court. According to him ground No.2 raised in the present appeal raises a substantial question of law. Therefore, he seeks indulgence of this Court to reverse the findings of the Court below.

8. The contention of the learned counsel for the petitioner is that the Court below had accepted the claim of the petitioner that the factory was closed down from 01.04.1995. Such findings were based on sales tax assessment for the years 1995-96 and 1996-97 under Exs.P3 and P4, oral evidence of the claimant and the Inspection report. All such findings, which are based on the evidence, need no interference, even if other view is possible. It is also his contention that Section 1(6) of the ESI Act would not apply to the facts of the present case and it only applies to the case where man power has been decreased and it is not dealing with the question of effect of close down of the establishment. Therefore, Section 1(6) of the ESI Act has no relevance to the case.

9. In the light of the above contentions, this Court has to see whether the findings of the Court below in accepting the contention of the petitioner that the factory is closed down, suffer from any perversity.

10. A close reading of the evidence of PW1, Exs.P3 and P4 and the findings of the Court below, would reflect that the sales tax returns filed by the petitioner firm reflects that there was nil sales from relevant date of default. The explanation offered to the effect that sales were on account of close down of the establishment was accepted by the Court below. The inspection report and evidence of the officials of the respondents' corporation are silent with regard to the fact that at the time of the inspection, manufacturing activity was there or not. The findings of the Court below in holding that the factory was closed down, is based on the evidence, which findings are not suffered from any perversity so as to raise substantial question of law.

11. Now the question is whether the factory is under obligation to make any intimation of close down either to the appropriate authority or to the ESI authorities?

12. In this regard, it is apt to refer to Section 25 FFA of the Industrial Dispute Act, 1947, which reads as under:-

“25FFA. Sixty days' notice to be given of intention to close down any undertaking.-

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate

Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to--

(a) an undertaking in which--

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub- section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub- section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.”

13. A glance of the said provisio would indicate that in respect of an undertaking, in which less than 50 workmen are employed or less than 50 workmen were employed on an average per working day in the preceding 12 months, it is not covered under the requirement of Section 25 FFA of the Industrial Dispute Act. Section 25 requires issuance of a mandatory notice of sixty days to express the intention to close down the establishment by offering reason. Such kind of provisions are not found anywhere either in the ESI Act or in the Factories Act, 1948, obligating the employer to issue any such a prior statutory notice indicating the closer of establishment if the workmen is less than 50. When the

law does not require, there is no obligation on the employer to make such intimation.

14. Next question is whether Section 1(6) of the ESI Act would still apply to the case where the factory is closed down? In this regard, it is apt to refer to Section 1(6) of the ESI Act, which reads as under:-

“1(6).A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.”

15. A reading of the above provision would makes it clear that once the factory or establishment is covered under the ESI Act, the Act shall continue to apply irrespective of the fact whether the employees were reduced from the minimum limit, which was existence at the time of coverage or if no manpower has been used in the manufacturing process.

16. Section 1(6) of the ESI Act would apply to a case where factory/establishment was still running irrespective of less usage of man power or no usage of man power. Here is a case of close down of the factory. Therefore, Section 1(6) of the ESI Act is not

applicable. I do not find any substantial question of law involved in this appeal and this appeal is liable to be dismissed.

17. In the result, this Civil Miscellaneous Appeal is dismissed. The order dated 20.06.2002 in E.I.Case.No.60 of 2000, on the file of the Employee Insurance Court and Chairman, Industrial Tribunal – I, Hyderabad, is hereby confirmed.

No costs. Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE M.LAXMAN

Note: LR copy to be marked

01.03.2023

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