

* **HIGH COURT OF DELHI : NEW DELHI**

FAO No.69/2001 & CM No.129/2001

% Judgment reserved on: 9th September, 2009

Judgment delivered on: 13th October, 2009

M/s Mobile Centre (Petrol Pump),
Rajendra Market,
Near Tis Hazari Exchange,
New Delhi-110 054

....Appellant

Through: Mr. K. N .Kataria, Adv.

Versus

Employees' State Insurance Corporation.
Through its Regional Director,
Regional Office,
DDA Shopping-cum -Office Complex,
Rajindra Place,
New Delhi.

....Respondent.

Through: Nemo

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Appellant has filed this appeal under Section 82 of Employees' State Insurance Act, 1948 (for short as

‘Act’) against order dated 9th December, 2000, passed by Senior Civil Judge, Delhi, vide which petition of appellant was dismissed.

2. Brief facts are that appellant is a partnership concern and is running a Petrol Pump near Tis Hazari. Its records were inspected in the year 1984, 1987, 1988 & 1990 by the Inspector of respondent-Corporation. On 15th May, 1980, appellant was informed by respondent that attendants of the Petrol Pump are not covered under the Act. It is further alleged that on 3rd February, 1988, respondent, informed Delhi Petrol Dealers Association that coverage of Petrol Pump would be enforced from 1st January, 1987, but appellant was covered from 29th September, 1981. Appellant protested against it, but to no use.

3. The coverage of appellant with retrospective effect from 29th September, 1981, is wrong and illegal when earlier he was informed that coverage would be

from 1st January, 1987. Moreover, coverage has been effected after more than seven years, which is not as per law. Appellant never employed more than twenty employees and Petrol Pump attendants are not covered.

4. Respondent in its written statement did not deny most of the averments made in the petition. However, it denied that respondent is estopped from covering the appellant from 29th September, 1981. It also denied that notification issued by Delhi Administration is not legal and coverage cannot be affected beyond seven years. Respondent also denied that, appellant did not employ more than twenty workers.

5. On 3rd August, 2009, when matter came up for hearing before this Court, only counsel for appellant was present. None appeared on behalf of respondent. The matter was listed for 9th September, 2009 for final disposal.

6. On 9th September, 2009, again none appeared for respondent. Under these circumstances, there was no option but to proceed with the matter. Arguments advanced by learned counsel for appellant have been heard.

7. It is contended by learned counsel that trial court wrongly held that appellant is covered under the Act, w.e.f. 29th September, 1981, ignoring the fact that appellant on the said date, was not employing twenty or more persons.

8. The issuance and contents of letter dated 3rd February, 1988 have not been denied by respondent-corporation. In fact, they admitted the same. Issuance of this letter is conclusive proof of undertaking of the respondent that corporation is not covering Petrol Pumps prior to 1st January, 1987. The same was in the nature of final order, which is binding on respondent for all times to come.

9. It is further contended that coverage of petrol pump of appellant's firm w.e.f. 29th September, 1981 was not only in contravention of the official letter issued by respondent but was also retrospective in nature. Thus respondent is estopped by its own conduct, from covering Petrol Pump from a date, prior to 1st January, 1987.

10. In the pleadings, respondent had specifically stated that appellant firm is covered under the Act since 1987. Therefore, under the circumstances, there was no occasion for the trial court to hold that appellant firm is covered by the Act from 29th September, 1981.

11. Another contention is that under Section 77 of the Act, no claim can be made by respondent, after five years of the period to which the claim relates. In the case in hand, claim relates to the period of 1981, thus, the same is patently time barred under the provisions of the Act.

12. Lastly, it is contended that as per Survey Report, appellant firm, was not employing twenty or more persons for the period of coverage under challenge and as such appellant is not covered under the provisions of the Act.

13. Learned counsel for appellant in support cited following decisions of Supreme Court;

- (i) ***Mahabir Vegetable Oils Pvt. Ltd. and Anr. v. State of Haryana and Ors., JT 2006 (3) SC 544;***
- (ii) ***Ramana Dayaram Shetty v. The International Airport Authority of India and Ors., AIR 1979 SC 1628 and;***
- (iii) ***The Union of India and Ors. v. M/s. Anglo Afghan Agencies etc., AIR 1968 SC 718.***

14. Though respondent did not appear at the time of final arguments, but in reply to appeal filed on behalf of respondent, it has been stated that appellant itself admitted that more than 10 persons were employed by it during the relevant period. The pumping of oil being

a manufacturing process, the Act became applicable in first instance itself, when 10 or more than 10 persons are employed.

15. Another plea taken is that trial court after due appreciation of letter dated 3rd February, 1988, rightly came to the conclusion that said letter was not the final order, but only an adhoc/provisional order.

16. Case of respondent-Corporation hinges on letter dated 3rd February, 1988. This letter has been duly proved as Ex.-PW1/1. It has been addressed to President, Delhi Petrol Dealers Association and subject of this letter is "Coverage of Petrol Pumps under E.S.I. Act". Relevant portion of it reads as under;

"You may kindly recall the discussions held by the Additional Secretary (Ministry of Labour) with you and your representatives on 12-12-88 on the above subject, when our Insurance Commissioner was also present.

I am directed to inform you that each case of coverage will be examined on its own merit after

obtaining full particulars. But to start with the coverage of Petrol Pumps in Delhi is being enforced w.e.f. 1-1-87.

Sd/-
Regional Director”

17. A bare perusal of this letter, shows that each case of coverage has to be examined on its own merit after obtaining full particulars. But to start with the coverage of Petrol Pumps in Delhi is being enforced w.e.f. 1st January, 1987.

18. There is no ambiguity in this letter with regard to enforcement of the Act, w.e.f. 1st January, 1987, qua Petrol Pumps in Delhi. It nowhere states that Act with regard to Petrol Pumps, would be enforceable retrospectively, i.e. with effect from back date.

19. Moreover, as per letter Ex.-PW 1/5 of respondent, attendants working on the Petrol Pumps are not covered. Relevant extract of this letter reads as under;

“This has a reference to your letter dated 8-5-80 on the above subject. In this connection, I am

to inform that your letter dated 15-4-80 was not received by this office. So far as the coverage of Petrol Pump under the ESI Act is concerned, it is advised that attendants working on the Petrol Pump are not covered."

20. Also on record is a Memorandum issued by respondent-Corporation, No.P.11/21/11/44/87-Ins.IV (2/88)-Dated-22nd December, 1988. It pertains to "Coverage of Petrol Pumps/Service Stations". Relevant portion of which reads as under;

"(1)Coverage of petrol-pumps & service station be examined by clubbing both the units and not independently as earlier advised. However, in cases where only petrol pump or service station exists & both sub-units do not exist, in the same premises the coverage be decided independently, if other conditions are satisfied. For this purpose, we have to count the employees both in service station as well as in petrol pump, irrespective of the position that employer is maintaining combined/separate records & whether the

employees are interchangeable or not.

(2) Above guidelines are to be made effective from 1/1/89 but not retrospectively.

(3) Old cases wherein coverage aspect has already been decided (prior to issue of this Memo) need not be reopened.”

21. According to this Memorandum, guidelines with regard to coverage of Petrol Pumps/Service Stations, are to be made effective from 1st January, 1989, but not retrospectively.

22. Thus, it is apparent from letter, Ex.-PW 1/5 and Memorandum No.P11/21/11/44/87-Ins. IV (2/88), that there was no occasion for respondent to enforce the Act, qua present appellant, w.e.f. 29th September, 1981. In view of the clear admission made by respondent in its letter Ex.PW1/1, that to start with, the coverage of Petrol Pump in Delhi is being enforced w.e.f. 1st January, 1987, now, respondent is estopped from taking contrary plea.

23. One cannot interpret the lines mentioned in Ex.PW1/1, as provisional and completely overlook the conclusive portion of this letter which states;

“but to start with the coverage of Petrol Pump in Delhi is being enforced w.e.f. 1st January, 1987”

24. The rule for interpretation has clearly been explained in Ramana’s case (Supra), where it is observed;

“It is a well settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the court should not be prompt to ascribe superfluity to the language of a document “and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use. To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The court must, as far as

possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce to silence any part of the document and make it altogether inapplicable.”

25. Thus, applying the principles of Estoppel in the present case, the impugned order passed by trial court is unsustainable and hereby set aside. The present appeal stands allowed.

26. Parties shall bear their own costs.

27. Trial court record be sent back.

+CM No.129/2001

28. Application stands disposed of.

13th October, 2009
Bhatti/rb

V.B.GUPTA, J.