

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2377 of 2010 (O/M)
Date of decision : 10.3.2015

The Hisar Central Cooperative Consumers Stores Ltd.Appellant

Versus

Employees State Insurance Corporation and others ... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Surender Singh Dalal, Advocate,
for the appellant.
Mr. Vikas Suri, Senior Standing Counsel,
for respondent No. 1.

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

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KULDIP SINGH, J. (ORAL)

Challenged in the present appeal is the judgment dated 26.3.2009, passed by the Employees' Insurance Court, Hisar, vide which the application filed by the present appellant under Section 75 of the Employees' State Insurance Act, 1948 (in short 'the ESI Act') was dismissed.

Briefly stated, the appellant is a Central Cooperative Consumers Stores Ltd., registered under the Societies Act, 1860. It was stated that it is not an industry or a factory. The appellant-Store has employed various employees from time to time and provide the facilities and conveniences to the general public as a whole. It indulges in sale of goods. It was stated that the appellant-Store

does not fall under the Employees' State Insurance Act, 1948. It does not fall within the definition of the 'factory'. Respondent No. 1, vide order dated 21.11.2002, has wrongly and illegally claimed a sum of Rs. 2,83,192/- from the appellant-Store. The said order is illegal and liable to be set aside.

Suffice to say that the application was contested and it was stated that the establishment of the appellant-Store was surveyed on 30.12.1976. It was found that at the relevant time, more than 20 persons i.e. 23 employees were found present in the establishment. The establishment of the appellant-Store is covered as an 'establishment'. Therefore, the correct assessment was made and correct amount was claimed by respondent No. 1. After recording the evidence of both the parties, the impugned order dated 26.3.2009 was passed by the Employees' Insurance Court, Hisar.

I have heard the learned counsel for the parties and have also carefully gone through the file.

Before this Court, the learned counsel for the appellant-Store has argued that the appellant-Store is not covered within the definition of 'factory' as given in sub-section (12) of Section 2 of the ESI Act, 1948.

On the other hand, the learned counsel for respondent No. 1 has argued that on the earlier two occasions, the same point was agitated between the same parties, wherein the same plea was raised and decided against the appellant-Store. It has been argued

that earlier, the case was filed on 17.7.1980 and thereafter on 22.1.1994 and the same were respectively decided on 24.4.1981 and 26.3.1999 regarding assessment for different periods and it was held that appellant-Store is covered under the definition of 'establishment'. The earlier decision between the parties has become final and will be operated as *res-judicata*.

Learned counsel for respondent No. 1 has further argued that under sub-section (5) of Section 1 of the ESI Act, the appropriate Government is competent to extend the provisions of this Act by notification to any other classification or class of establishments, industrial, commercial, agricultural or otherwise. He has also relied upon sub-section (6) of Section 1 of the ESI Act, which provides as under :-

“Section 1. xxxxxxxxxx xxxxxxxxxx xxxxxxxxxx

(2) to (5) xxxxxxxxxx xxxxxxxxxx xxxxxxxxxx

(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.”

It has been argued that once it is found that at one time, the number of person was within the prescribed limit, the appellant-Store will continue to be covered by the ESI Act. Learned counsel has also produced Notification No. 3077-5-Lab-75/9070, dated 24.3.1975, issued by the Labour and Employment Department of

Haryana Government, vide which in the exercise of powers under sub-section (5) of Section 1 of the Employees' State Insurance Act, 1948, the Governor of Haryana had extended the provisions of the said Act to the following class of establishments :-

“ XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX

1. Any premises including the precincts thereof whereon ten or more persons but in any case less than twenty persons, are employed or were employed for wages on any day of preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; but excluding mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed or an establishment which is exclusively engaged in any of the manufacturing process specified in clause (12) of section 2 of the Employees' State Insurance Act, 1948 (34 of 1948).

XXXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX "

After hearing both the parties and going through the relevant provisions, I am of the view that the appellant-Store is covered within the definition of 'establishment', as extended by the said notification dated 24.3.1975. Therefore, the demand of Rs. 2,83,192/- by the respondents cannot be called illegal.

It being so, the present appeal is found to be without any force and the same is dismissed.

(KULDIP SINGH)
JUDGE

10.3.2015
sjks