

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO No.3506 of 2013 (O&M)  
Date of Decision:21.02.2015

Employees' State Insurance Corporation and others

....Appellants

Versus

M/s Haryana Gas Agency and another

....Respondents

**CORAM: HON'BLE MS. JUSTICE NAVITA SINGH**

Present: Mr. Vikas Suri, Advocate for the appellants.

Mr. Rajesh Sethi, Advocate for the respondents.

**NAVITA SINGH, J.**

1. The appeal is filed by the Employees' State Insurance Corporation and others challenging the order dated 25.3.2013 passed by Civil Judge (Senior Division), Hisar, whereby application under Section 75 of the Employees' State Insurance Act (Act for short) filed by the respondents was allowed.

2. The respondents had moved the Employees' Insurance Court challenging the order passed by the appellants on 11.9.2006 and subsequently on 4.3.2009 whereby it was held that respondent No.1 was not covered under the provisions of the Act and the amount demanded was not liable to be paid. The period covered was 30.5.2006 to 31.3.2008.

3. Counsel for the appellants argued that it was wrongly held by the court below that the establishment i.e. respondent No.1 was not covered under the Act and relied on Section 2(12) of the Act, which related to factories and not to establishments, which were more of shops. It was contended that on the date of inspection i.e. 30.5.2006, which was made by the officials of the appellant-Corporation in the premises of the respondents, twelve delivery boys in addition

to two drivers, two cleaners, one Manager, one computer operator and one clerk were found employed. The document was Ex.R1. In the report relating to that inspection, the establishment was found to be a non-power using unit and all the employees mentioned above were stated to be posted at the place of business i.e. Gas Godown, Auto Market Road, Sirsa. The visit note was signed by Mohan Lal, Manager, whereas the respondents had pleaded in their petition that the inspection was not conducted as per law. It was also pleaded by respondents that the ESI Inspector did not visit the premises in presence of any authorized person, regarding which counsel for the appellants argued that Manager of the respondents was present and it was admitted by respondent No.2, who was partner of respondent No.1, in his cross examination that at the relevant time Mohan Lal was the Manager.

4. Reliance was placed by counsel for the appellants on Royal Talkies, Hyderabad and others Vs. Employees' State Insurance Corporation (1978) 4 Supreme Court Cases 204 where it was held by Supreme Court that persons employed in the canteens and cycle stands of cinemas would be construed as employees of the owner of the cinema theatres, though the canteens and cycle stands may not be run by the owners themselves. Learned counsel for the appellants contended that the delivery boys engaged by the respondents, therefore, would be covered and they would be deemed to be the employees of the respondents. The question, however, is not here whether the delivery boys would be covered or not but the question would be whether the establishment i.e. respondent No.1 would be covered under the Act or not.

5. Counsel for the appellants then argued that there was notification of the Haryana Government of 6.9.2011 which shows that shops were covered under the Act. Counsel for the respondents, however, rightly argued that the

notification covered shops w.e.f. the period of twelve months preceding the date of notification which would mean upto September and October 2010 whereas the period in dispute was here upto 2008.

6. Counsel for the appellants then relied on L.P.G. Delivery Employees' Union Vs. Indian Oil Corporation Ltd. where the L.P.G. Delivery Employees' Union had moved the High Court of Judicature at Madras for being covered under the Act as they wanted the benefits of the legislation and their request was allowed. The said reported case, however, will not be applicable to the dispute here.

7. The court below relied on certain rulings which were given at page 25 of the impugned judgment and were ESIC Vs. Swaroop Theatre Belgaum and others 2002 (1) LLJ 737 Kant; Moinoddin s/o Khodboddin Vs. State of Maharashtra 2003 IILLJ 1040 Bom.; ESIC Vs. Tariq Butt and another 1994 (2) DRJ 348 and Regional Director ESI Vs. Karnataka Asbestos Cement 1991 (2) Kar LJ 264. All the said cases were applicable to the facts here and the lower court was rightly influenced by the verdicts of different High Courts.

8. Counsel for the respondents argued that the Tribunal was right in holding that mere mention of the number of employees and their designation in the inspection report did not suffice. Rather the name, father's name, name of the native place, designation and length of service of each employee was required to be included and signatures/thumb impressions of the employees were to be taken. In the present case, only the designation was mentioned and even names were not mentioned. The respondents produced before that court the relevant record to show that the unit, being run without aid of powers, had not employed more than 20 persons at any point of time. The respondents had produced the attendance register and income tax returns with details of salaries

of employees given therein. From that record, it was clear that the number of persons employed during the period under consideration was less than the required number.

9. The Corporation cannot arbitrarily make a demand under the Act without following the proper procedure and without making inspection as per law. Simply because the Inspector entered in the report that twelve delivery boys and some other persons were found engaged, it would not become gospel's truth especially in view of the fact that the respondents had produced the attendance register and income tax returns.

10. The court below, thus, did not err anywhere in coming to the conclusion that the demand made by the appellants was illegal because respondent No.1 was not a factory and was not also covered on account of any notification of the Government under Section 1 (5) of the Act. The Act has its application to factories other than seasonal factories and if the State Government with the approval of the Central Government makes a notification extending the provisions of the Act to any other establishment, then and only then such establishment would be covered. The notification shown by counsel for the appellants was of a later date and did not apply at the given time. Also the number of employees was less than that required for the Act to apply, as already mentioned.

11. The appeal is dismissed.

**(NAVITA SINGH)**  
**JUDGE**

21.02.2015  
Ishwar

**Whether to be referred to reporter: Yes**