

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION No.3311/2016

WITH

FIRST APPEAL NO.1/2006

M/s Amin Transport Pvt. Ltd. through its Director Vrs. The Joint Director, Sub-Regional Office,
Employees State Insurance Corporation, Nagpur and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S. Ghatge, Advocate for the Applicant/Appellant.
Mr. V.P. Maladhure, Advocate for respondent Nos.1 and 2.

Coram : S. B. Shukre, J

Dated : 20/12/2016

Heard.

By the order passed on 1st April, 2016, this Court directed that this appeal be put up for final hearing in the regular course. However, a subsequent development changed the scenario.

It appears that there was a visit made by the social security officer of the respondents to the establishment of the appellant and inspection was taken. The social security officer then called upon the appellant to make the compliance with the provisions of ESI Act w.e.f. 1st August, 2016. This fresh demand of compliance is not from any earlier date but w.e.f. 1st August, 2016 as per the communication sent by Shri V.S. Kadhao, social

security officer, ESI, Nagpur Region to the appellant which is not in dispute.

Thus, it is obvious that respondents have changed their stand in the instant case. The reason for the change of the stand is not really discernible from the fresh affidavit-in-reply filed by the respondents though it is stated in the reply that social security officer visited the premises on some date, which appears to be of 14/09/2016, as orally informed by learned counsel for the appellant. The learned counsel for the respondents states that the said officer was not aware of the fact that his office has also placed demand for compliance w.e.f. 01/04/1996 and onwards and that is the reason why the officer wrongly mentioned in this communication that the compliance was to be made from 1st August, 2016. This new communication, however, in spite of the reply so given by the respondents, for the reasons best known to them, has not been withdrawn by them. No officer superior to the said social security officer has called for his explanation in this regard. If the explanation has not been called by the superiors of the said social security officer and the said communication has also not been

withdrawn by them, this Court would have to draw adverse inference against the respondents. In fact, two opportunities were given to the respondents to take necessary action in the matter, but in vain. It is obvious that the respondents are in agreement with the above-stated communication made by the said social security officer and that they have no sufficient evidence to show that the establishment of the appellant is coverable from any earlier date. Therefore, the stand of the appellant that his establishment is coverable not from any earlier date but from the date as mentioned in the said communication i.e. 1st August, 2016 would have to be accepted.

The learned counsel for the respondents has submitted that a detailed final hearing in the matter should be held. I do not find that it is necessary because of all those subsequent developments and the department is also not withdrawing the communication dated 1st August, 2016 in spite of ample opportunity given to it. This communication stands totally contrary to whatever has been stated by the department and placed on record by it so far, and it being later in point of time,

it would have to be accepted as it is.

The learned counsel for the respondents has relied on the Judgment rendered by the learned Single Judge of Andhra Pradesh High Court in the case of *Rayalseema Concrete Sleepers Pvt. Ltd. Vrs. Employees. State Insurance Corporation and others, reported in 2008 (1) CLR 516*, wherein the learned Single Judge has taken a view that in case of a letter issued by employee of inferior cadre contrary to the decision taken by the superior officers, it cannot be held that the decisions taken by the superior officers are unsettled. True it is, an employee of lower cadre cannot unsettle or change the decision of the superior officers. In the instant case, the subsequent communication is certainly issued by an officer of inferior cadre and it would not have the effect of changing the decision taken by the superior officer in the ordinary course of things. That is the reason why, on the last occasion, a specific query was made to the learned counsel for the respondents as to what action respondents have proposed to take against the inferior officer, who had issued the communication and it was replied that suitable instructions in the matter would be

taken and an affidavit-in-reply would be filed. It is indeed filed. But, it disappoints us. I have already discussed the nature of the reply filed by the respondents. The reply nowhere says that the communication has been withdrawn. It also does not say that any action is proposed against the inferior officer. Therefore, in a fact situation like this, an inference would have to be drawn that the superior officers are in agreement with what has been done by the inferior officer and if it were not so, certainly, some concrete action in the matter would have been taken. Ultimately, the previous decision was based upon the inspection report of another social security officer and that previous report today stands contrary to the report of the present social security officer. In such a case, this Court would have to consider as to what the the superior officers and the department think of these two apparently contrary reports and the inference earlier drawn by me is only based on such a perspective. Therefore, the facts of this case distinguish themselves from the facts of the said case in *Rayalseema Concrete Sleepers Pvt. Ltd. (supra)* and as such, I am of the humble view, this case renders

no assistance to the respondents in the present case.

In the circumstances, this appeal deserves to be disposed of in terms of the communication which is at Annexure-B to the Civil Application No.3311/16 issued by the social security officer. The appeal stands allowed in terms of the communication vide Annexure-B and the impugned orders are quashed and set aside. The appellant's establishment shall be coverable as per the communication (Annexure-B) w.e.f. 1st August, 2016. Any amount deposited so far shall be adjusted against the bills payable by the appellant.

In view of above, the application is allowed. Consequently, the First Appeal stands disposed of in above terms. No order as to costs.

JUDGE

Choulwar