

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CMA No. 463 of 2007

ORDER:

This is an appeal filed against the order dated 07.02.2007 in EIC.No.74 of 2002 passed by the Chairman, Industrial Tribunal-1-cum-Employees Insurance Court, Hyderabad.

The appellant is a firm, which was issued a notice demanding payment of contribution etc., under the Employees State Insurance Act, 1948 (for short 'the Act') as they have 10 employees in their firm and were using electric power for manufacturing activity. As the firm denied the allegation, the ESI authorities issued proceedings demanding payment of the contributions etc. The appellant thereupon filed a case before the designated Court. Pleadings were filed, evidence was taken by the lower Court and documents were marked. For the petitioner, two witnesses were examined and Exs.P.1 to P.8 were marked. For the respondents, two witnesses were examined and Exs.R.1 to R.9 were marked. In addition, Exs.X.1 to X.5 were marked through a third party witness. The petition filed by the present appellant was dismissed. Hence, this appeal.

Heard Sri K.Sarva Bhouma Rao, learned counsel for the appellant and Smt.Pushpinder Kaur and Sri P.Rajasekhar, learned counsel for the respondents.

The genesis of this dispute stems from an inspection that is supposed to have taken place on 10.05.2000. As per the provisions of the Act, the Inspector is entitled to inspect the premises to ensure compliance with the Act. The entire dispute in this case centers around the inspection dated 10.05.2000. The demands of the respondent were based on this inspection and its findings. The said inspection was supposedly carried out by RW.1 on 10.05.2000 and the Inspection Report is marked as Ex.R.1.

The contents of the report reveal that the Inspector visited the factory on 10.05.2000. He noted that no records were made available for his verification and that Form-01 is also obtained. The Inspector noticed that the factory is undertaking manufacturing process with the aid of electric power and that as per Form-01, the number of employees is 10. The Form-01 dated 10.05.2000 was marked as Ex.R.2. These two documents are highlighted right at the beginning by this order as they are basis for this dispute. Subsequently, the first witness (Sri K.Vijay Prasad) was examined on behalf of the appellant, but he has denied his signature on Exs.R.1 and R.2. He stated that no inspection was conducted on 10.05.2000.

After DW.1 denied his signature on Ex.R.1, Sri Appala Sadhu was examined as RW.1. He clearly deposed that he visited the factory on 10.05.2000 and that he prepared a preliminary inspection report dated 10.05.2000. The

documents marked through this witness Exs.R.1 to R.3. Ex.R.1 is the visit note, Ex.R.2 is the Form-01, Ex.R.3 is the preliminary inspection report. Both in his chief and cross-examination, he asserted that he visited the factory on 10.05.2000 and the document Ex.R.1 was signed by Managing Partner and that Form-01 was also submitted on that day by Sri K.Vijay Prasad himself. Nothing was elicited in the cross-examination to the contrary to discard this testimony. This witness was followed by RW.2, who deposed about the subsequent notices and correspondence between the parties.

The appellant/petitioner, who disputed his signature on Exs.R.1 and R.2 also signed on a number of papers which were filed in the Court including the deposition recorded in the Court. A *prima facie* examination of the signature on Exs.R.1 and R.2 with the other admitted signature of the Managing Partner/P.W.1 available on record makes it clear that they are all signed by the same person. Even the lower Court came to a conclusion based on a comparison of the signatures that they appear to be of the same person. The appellant did not take any steps to get the signatures examined by any expert as it is his claim that the signatures on Exs.R.1 and R.2 do not belong to him.

If the document Ex.R.1 is intrinsically examined also, it clearly shows that Form-01 was also obtained on the same day. This aspect of the entry in Ex.R.1 to this effect "Form-01

is obtained” is not the subject matter of cross-examination. The appellant did not deny this part of the evidence of the document which recorded that Ex.R.2 was obtained on 10.05.2000. The contents of Ex.R.2 show that more than 10 people are working and drawing wages to Rs.6,500/- per month in a premises/factory that uses electric power for manufacturing purpose.

The licence obtained for the factory, which is marked as Ex.P.8 was obtained in November 2000, which also clearly shows that the appellant was planning to employ nine people at that point of time itself and also used 50 horsepower at the inception itself.

The appellant also examined Assistant Labour Officer, Circle-II as a witness on their behalf. He deposed that he visited the appellant's factory and found three workers working. However, in his a cross-examination, he clearly states that he does not remember the dates of his visit to the petitioner's factory. He admits that he did not verify all the registers maintained by the appellant's factory from inception till the date of inspection. He also agrees that he does not know whether 10 workers are working in the appellant's factory by the date of inspection by the ESI authorities namely 10.05.2000. Therefore, his evidence does not in any way advanced the case of the appellant.

The signatures on Exs.R.1 and R.2 are clearly of the PW.1. He did not take steps to disprove the same. Therefore,

after a review of the entire evidence on record and the submission made by both the learned counsels, this court is of the opinion that there are no grounds made out to interfere with the impugned orders. The inspection which is the basis for the demand made by the respondent is not disproved. No material evidence was let in by the appellant on whom the burden lies to disprove Exs.R.1 and R.2. No independent material like registers, muster rolls were filed to show how many people were employed in May, 2000. No statutory record is produced. Merely, by denying the signatures on Exs.R.1 and R.2 the appellant wants this Court to disbelieve the contents. The presumption in law is that official acts are correctly done/performed. The person who questions the same has to prove that the official acts are not correct. This Court is of the opinion that the appellant failed to prove his case.

For all these reasons, the order dated 07.02.2007 passed by the Chairman, Industrial Tribunal, Hyderabad is confirmed.

In the result, appeal is dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 27.11.2017
KLP