HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL MISCELLANEOUS APPEAL No.282 OF 2006

JUDGMENT:

This Civil Miscellaneous Appeal was filed against the Judgment in E.I.Case No.71 of 2002, dated 22.12.2005 passed by the Employees Insurance Court and Chairman, Industrial Tribunal-I at Hyderabad. The appellant herein filed a petition under Section 75(1)(g) of the Employees' State Insurance Act (ESI Act, for brevity) for declaring the action of the first respondent in passing an Order under Section 45-A of the ESI Act on 21.07.2000 and consequential Prohibitory Order issued by the second respondent on 30.03.2001.

It is the case of the appellant that the appellant establishment is not covered by the provisions of the ESI Act as they are employing only five to six persons. The first respondent without issuing any notice passed the Order under Section 45-A of the ESI Act allowing the claim of the first respondent Corporation for the period from 01.04.1998 to 30.09.1999 for an amount of Rs.99,910/-. It is further submitted that the respondents calculated the contributions for eighteen months for twenty employees on assumed wages of Rs.3,575/- per month though the notice was issued for six months only.

A written statement was filed on behalf of the respondents stating that the appellant Establishment is covered under ESI Act and the intimation of coverage in C-11 was sent to the appellant by letter dated 12.07.1991 and the same was not challenged.

It appears that the first respondent issued a show cause notice on 05.05.2000 calling upon the appellant to show cause why an amount of Rs.83,655/- should not be determined as contributions due from him on adhoc basis for the period from April, 1998 to September, 1999 and recovered from him under Sections 45-C to 45-I of the ESI Act. The appellant failed to respond. Accordingly, final order was passed on 21.07.2000 determining an amount of Rs.83,655/- towards contribution for the period from April, 1998 to

September, 1999 along with interest at 15% per annum. The same was communicated to the appellant but the appellant did not comply. In those circumstances, a Certificate of Recovery was issued. When the appellant did not respond, the second respondent initiated coercive steps and issued prohibitory order.

The Tribunal framed the following issues.

1. Whether the 45A Order dated 21.07.2000 issued by the ESI Corporation is liable to be set aside?
2. Whether the petition is barred by limitation as contended by the ESI Corporation?
3. To what relief?

Before the Tribunal, the appellant was examined as P.W.1, got examined P.W.2 and Exs.P.1 to P.10 were marked. The Insurance Inspectors of the first respondent were examined as R.Ws.1 and 2 and marked Exs.R.1 to R.7.

With respect to issue Nos.1 and 2, the Tribunal came to the conclusion that the plea of the appellant as not covered under the provisions of the ESI Act was negatived. The Tribunal noticed that the appellant did not avail the opportunity in spite of giving several opportunities and in view of the intimation notice dated 31.01.1991, it was held that the Unit is covered under ESI Act. Accordingly dismissed the petition with costs by order dated 22.12.2005.

In view of the dismissal of the application of the appellant on the basis of the evidence, which is not perverse, this Court does not see any ground to interfere with the said Order.

The Civil Miscellaneous Appeal is accordingly dismissed. Consequently, miscellaneous applications pending, if any, shall stand closed.

A.RAMALINGESWARA RAO, J

10.08.2017
pln