

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

CIVIL MISCELLANEOUS APPEAL No.621 of 2009

JUDGEMENT :

This Civil Miscellaneous Appeal is filed, questioning the order dated 08.04.2009, passed in E.S.I. Case No. 3/2006, by the Presiding Officer, Labour Court, Guntur. The case before the Lower Court is filed by the present appellant, as the petitioner therein, seeking a relief that the order dated 04.05.2006, passed by the respondents, is illegal and to declare that the provisions of the ESI Act are not applicable to the petitioner.

2. The case set up in the Lower Court is that the petitioner is carrying on business as a Chilli Processing Centre, which has only seasonal work of three to four months in a year. It is also alleged that at no point of time, the appellant was engaging more than 10 people at once. Therefore, the appellant / petitioner contends that the provisions of the E.S.I. Act are not at all applicable and that the respondents wrongly passed the impugned order. The respondents contention is that the appellant is carrying on business with more than 25 people and that he is amenable to provisions of E.S.I. Act and that after giving due opportunity only the Act is made applicable to his case.

3. Basing on the pleadings, the parties went to Trial. For the petitioner, one witness was examined as PW.1 and Ex P1 to Ex.P3 were marked. On behalf of the respondents one witness was examined as R.W.1 and Ex.R1 to Ex.R3 were marked. After considering the oral and documentary evidence, the Lower Court came to the conclusion

that the applicant is liable under the E.S.I. Act and that therefore, he has to pay the Contribution. Challenging the said orders, the present appeal is filed.

4. This Court has heard Sri P.Ramgopal Reddy for the Petitioner and Sri G.Venkateshwerlu for the respondents.

5. The case of the appellant / petitioner, as argued, is that the order / letter dated 04.05.2006 and the consequential letter dated 18.08.2006 are illegal and inoperative. The counsel argues that the provisions of the E.S.I. Act are not applicable, since, the petitioner is not carrying on any manufacturing process, much less, by employing the requisite number of people, at any point of time. He also states that no opportunity was granted before the impugned order was passed and that it is contrary to the rules of natural justice etc.

6. In reply thereto, the learned counsel for the respondents argued that the appellant was employing more than 25 people and that on 04.04.2006, R.W.1 inspected the premises in the presence of the appellant himself and came to a conclusion that more than 20 people were working in the premises. The respondents argued that based on the said inspection, a notice was issued to the respondent on 04.05.2006, which is only a consequence of the inspection dated 04.04.2006. According to the respondents, the petitioner was aware of the entire sequence of events and that his own admissions resulted in letter dated 04.05.2006 being issued. Therefore, they argue that the purpose of the Act is being adhered to and that their actions are correct. The learned counsel, therefore submitted that the impugned order is perfectly valid and that the appeal deserves to be dismissed.

7. This Court on an examination of the facts and the submissions made, notices that Ex.P1 is the letter dated 04.05.2006, which is the subject matter of the challenge. This court notes that both the petitioner and the respondents had filed the said document. This letter dated 04.05.2006 emanates from inspection by RW1 on 04.04.2006 wherein he found that the appellant was doing contract work of grading and packaging chillies, by employing more than 20 people. The inspection report, which is marked as Ex.R.1, clearly states that the employer was present at the time of inspection and also gave Form No.1, which is marked as Ex.R.2. Ex.R.1 contains an enclosure, which is signed by the appellant A.W.1 himself. This clearly states that more than 20 people were employed in the establishment. Ex.R.2 (Form 01) is the second document which contains the signatures of the appellant, wherein A.W.1. / the appellant admits that there are 15 male and 10 female employees, working in the establishment, since 01.04.2006.

8. In addition to the documentary evidence, which is highlighted above, this Court notices that the appellant examined himself as A.W.1. In his chief examination he speaks of the notice dated 04.05.2006 and subsequent order dated 18.08.2006. He also mentions that he submitted a representation, questioning the contents of the letter dated 04.05.2006. In the cross-examination, he admits that he was present on 04.04.2006 when the E.S.I. Inspector visited the unit. He also admits that the signature on Form No.01 (R.W), belongs to him.

9. In the light of these two admissions, this Court finds that the applicant was aware of the inspection and was physically present when the inspection of the premises was carried out. Therefore, he cannot now say that the inspection dated 04.04.2006 (Ex.R.1) or the letter

dated 04.05.2006 (Ex.E.1) (R.3) were issued to him without following the rules of natural justice etc. This Court notices that the rules of natural justice cannot be laid down in a straight jacket formula and their applicability depends on the facts and circumstances. The purpose of the rules of natural justice is to ensure that the appellant has an opportunity to rebut or to answer any allegations made against him. In the case on hand, this Court is of the opinion that there is more than sufficient compliance of the said rules. Based on the admission of P.W.1, this Court holds that he was present when the inspection took place. The signature on Ex.R.2 clearly shows that he submitted Form 0.1. Both the inspection on 04.04.2006 and the Form 01 submitted by him (R.1 and R.2) are clearly acknowledged by him. The order dated 04.05.2006 is only a consequence of what is stated in these two documents. In addition, this Court also notices that there is no effective cross examination on the contents of the Ex.R.1 and R.2 nor is the so called representation submitted by the petitioner in the oral evidence filed. In the absence of any such document to show that contents of the Ex.R.1 and R.2 are not correct, this Court holds that the petitioner was aware of the consequences / action that is to be taken.

10. In this case, based on the admissions of P.W.1, and the inspection by RW1 the order dated 04.05.06 Ex.P.1 was issued. Therefore, this Court holds that the case set up by the petitioner is not correct and both the letter dated 04.05.2006 and the consequential letter dated 18.08.2006 are correctly and validly issued. The Lower Court, in the opinion of this Court, did not commit any error, whatsoever, in passing the impugned order. This Court holds that there are no merits in the appeal.

11. For all these reasons, the impugned order of the lower Court is upheld and the appeal is dismissed.

12. The Miscellaneous petitions pending, if any, shall stand closed.

D.V.S.S.SOMAYAJULU,J

Dated: 07.06.2018

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

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Dated: .05.2018

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