

**HONOURABLE SRI JUSTICE N. BALAYOGI**  
**CIVIL MISCELLANEOUS APPEAL No.223 of 2007**

**JUDGEMENT:**

This Appeal is filed under section 82 (2) of the Employees' State Insurance Act, 1948 aggrieved by order dated:19-12-2006 in E.S.I. No.37 of 2000 on the file of the Labour Court, Guntur, in dismissing the Petition holding that the petitioner is liable to pay ESI contributions from February, 1997. The notices issued are valid.

2. The contention of the appellant/petitioner is that, the cold storage has been functioning since February, 1997. He employed only five workers at all times. For them, only has been paying contributions since 1999. The ESI Inspector, after verifying the records, obtained signatures of the appellant/ petitioner on blank papers and misused the signed papers as if the petitioner employed 12 employees. Thereafter, issued notices dated:7.9.2000 and 10.9.2000, calling upon him to pay ESI contributions to a tune of Rs.79,312/-.

3. The contention of the respondents is that the Inspector of the ESI Corporation visited the unit of appellant / petitioner on 27.3.1997 and observed that the appellant/petitioner employed more than ten workers. More so, the appellant/petitioner himself furnished employment strength in form-01, besides endorsed the same on the visit note of the Inspector. That, on 25.6.1999, another Inspector

visited the unit and after inspection found that the appellant/petitioner engaged more than ten workers from 3/97 to 5/99. Basing on the above pleadings, the following points were settled for consideration.

- (1). Whether the petitioner employed less than 10 workers in the Unit?
- (2). Whether the notices issued by the respondent are valid?
- (3) To what relief?

4. In support of the appellant/petitioner, PW1 was examined and Exs.P1 to P3 were marked. On behalf of the respondent, RW1 was examined and Exs.R1 to R6 were marked.

5. Now, the point that arises for determination is:

*Whether the findings and conclusion arrived by the Presiding Officer, Labour Court, Guntur, suffers from any legal infirmity, warranting interference?*

The learned Counsel for the appellant contends that the appellant/petitioner never appointed ten workers and it is not a manufacturing unit. The officials of the respondent obtained signatures of the appellant/petitioner on blank papers and used the same as if the factory employed ten workers. It is the further contention of the Counsel for appellant/petitioner that the respondents have to prove that appellant/petitioner has employed more than ten workers.

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6. *Per Contra*, the respondents contend that in form-01 as well as in evidence, PW1 admitted that he employed ten workers and since it is a cold storage running the factory with the aid of power. The other material on record ie., evidence of RW1 notice issued in form-C-11, the proceedings of the Director, demand notice coupled with copies of ESI contributions show that the appellant/petitioner employed more than ten workers under section 2(12) of the ESI Act. There is nothing wrong or error in the order of the Labour Court warranting interference.

7. The Counsel for appellant / petitioner drawn attention of this Court to the evidence affidavit of PW1 who reiterated pleadings in the petition. The entire evidence in the chief examination and cross of PW1 and RW1 go to suggest that PW1 is the Managing Director of M/s. Chaitanya Cold Storage Private Limited. It is the evidence in chief examination that PW1 is the employer of the Cold Storage with 12 employees and also obtained license for running cold storage.

It is pertinent to note that RW1-Insurance Inspector of PICI Branch, ESI Corporation, Sub-Regional Office, Vijayawada, visited the Cold Storage on 27-3-1997 and Sri R. Venkateswarlu, Managing Director was present and he was asked to produce the records who has shown muster for 3/1997 and the Inspector verified the same. In the chief examination, PW1 admitted that the Insurance Inspector of ESI Corporation visited the Cold Storage and according to him, the

Insurance Inspector obtained signatures of the Managing Director on blank papers and used the same as if PW1 stated that he employed 12 workers and liable to pay contributions for the said 12 employees.

8. The further consistent evidence of RW1 is that, at the time of inspection, he supplied registration form to the appellant/petitioner who signed on it and submitted relevant information. Ex.R2 is the inspection report and Ex.R5 is the form-01.

9. That, in Ex.R5 which is signed by R. Venkateswarlu with designation and stamp of appellant/petitioner – Sri Chaitanya Cold Storage Private Limited, Managing Director, where under he specifically stated that the said Cold Storage Private Limited is situated in D.No.9-125, Bypass Road, Ankireddy Palem of Guntur District and the business carried by mentioning as Cold Storage with license No.LR.No.R.Dis.B/GNT/2184/96, Dt:7.8.1996 and the factory started with effect from 1.3.1997 and R. Venkateswarlu who signed on paper is shown as Managing Director and also mentioned that factory is being used with power 125 KVA Generator. Against column No.11 (a), the total employees employed for wages including those employed through immediate employers including a contractor whether manual, clerical, supervisory, those connected with administration of purchased of raw materials or distribution of sale of products is shown as ten male members. The wages are paid for the preceding month to the employees as given in query No.13 on 01-3-

1997. Against column No.13 (i), the first date since 1.3.1997 on which 10/20 persons were employed for wages in factory premises, it is stated as Yes. Against column No.13 (iii) in the table mentioned that employees employed as on 1.3.1997 as ten only. The report of RW1 under Ex.R2 specifically mentioned that the factory started functioning from 1.3.1997 and since inspection 125 KV Generator electricity connection is also being used. The employees mentioned in the month of March, 1997 is ten as mentioned in form-01 and under Ex.R5, it is covered with 1.3.1997.

10. That, Ex.R2 further go to suggest that when the Insurance Inspector verified muster for the month of March, 1997 there were ten persons employed for wages. Power-125 KV Generator is also being used for manufacturing process of the factory. Ex.R3 shows that the Plans received through the reference Lr.No.B1/2098/96, dt:2-8-96 of the General Manager, District Industries Centre, Guntur approved under Factories Act, 1948. The Insurance Inspector-RW1 submitted visit note, copy which was furnished to R. Venkateswarlu wherein there is a specific assertion that the factory is engaged in Cold Storage Chillies and electric power is also being used in the manufacturing process for 3 compressors, 2 pumpsets and 1 generator (125 KV) with ten persons engaged in the factory. Since the employer has engaged ten persons for wages and the factory is running with the aid of power (Generator). RW1 submitted under Ex.R5 along with Ex.R4 to the Regional Officer, Hyderabad. Though RW1 was cross-examined at

length, appellant/petitioner could not elicit any favourable material to support the case of PW1.

11. Further, it is also clear from Ex.R1 that on 25.06.1999, the Inspector visited the appellant/petitioner Cold Storage on prior intimation for verification of the records to recommend final date of coverage and inspection. At the time of inspection on 25.6.1999, R. Venkateswarlu, Managing Director of the appellant/petitioner has produced the attendance register, wages register from 1.1.1997 to 31.5.1999, cash book and ledger from 1.4.1996 to 31.3.1998. The employer is covered provisionally from 1.3.1997 since the employer has engaged 12 employees from 1.2.1997, the coverage goes back to 1.2.1997. The employer has not satisfied compliance. Therefore, the employer ie., the appellant/petitioner was directed to pay Rs.35,998/- towards contribution from 1.2.1997 to 31.3.1998 and also from 1.4.1998 to 31.5.1999. As the appellant/petitioner did not pay the amount, Ex.R6 dated:29.4.1997 was issued basing on the particulars submitted by the Managing Director in respect of factory. Report of the inspection conducted by Insurance Inspector of the factory on 27.3.1997 under Ex.R2 clearly stated that factory falls within the purview of section 2 (12) /1(15) of the Act with effect from 1.3.1997 Prev., and directed the appellant/petitioner to return the enclosed form-01 duly filled in. It is also mentioned in Ex.R6 that appellant/petitioner factory has been allotted Code No.52-13934-03.

12. The material on record further go to suggest in support of his contention that appellant / petitioner has not produced the attendance register, wages register and records of the factory, in response to the notices to show that number of employees are less than ten.

13. Further, during the cross-examination, PW1 admitted that he signed the visit note on 25.6.1996 under Ex.R1. Section 2 (12) of ESI Act reads as follows:

“Sec.2(12) of ESI Act defines factory as follows:-

‘Factory’ means any premises including the precincts thereof.

a). Whereon 10 or more persons employed or were employed for wages on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

b). Whereon 20 or more persons are employed or were employed for wages on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act”.

In view of the above definition, to say that the petitioner’s Unit is a factory within the meaning of sec.2(12), it must show that the petitioner employed 10 or more workers in his Unit on the visit by the respondent.

14. Further, PW1 admitted in form-01 as well as in cross-examination that he is using power 125 KV generator and also using 75 HP Motor Generator and other machinery for the purpose of preserving agricultural produce such as chillies etc. It is also clear from the ledgers as well as from the attendance registers from

1.3.1997 that the appellant/petitioner paid Rs.20,700/- towards wages for 12 workers. When he contended that he employed 5 persons and they are not paying wages to 12 workers, he should have produced wages register as well as attendance registers to disprove the inspection conducted on 25.6.1999 under Ex.R2-preliminary inspection report and Ex.R4- visit note. Further, under Ex.R1- copy of observation report, appellant/petitioner is admittedly custodian of the records, having in possession and suppressed the same which leads to adverse inference. More so, the evidence of RW1 under Exs.R1 to R6, the factory covered with Code No.52-13934-03 and under Ex.R3, the Director of Factories, Andhra Pradesh, Hyderabad, approved the plans and received through the General Manager, District Industries Centre, Guntur as per the Factories Act, 1948.

15. Under the facts and circumstances discussed above, clearly go to show that on 27.3.1997 RW1 inspected the factory with prior notice. R. Venkateswarlu-Managing Director was present who produced the muster for 3/97, verified it. Then, he supplied form-01 under Ex.R5 which is duly filled in by the Managing Director under the seal and stamp of the appellant/petitioner. That, on the basis of the inspection report and visit note under Ex.R2 and Ex.R4 and after verification of records of the factory and as per the form-01 submitted by R. Venkateswarlu under Ex.R2, the Corporation initiated action, calculated amount as per the wages and paid to the workers. Therefore, once the Managing Director of the appellant/petitioner

factory submitted form-01, again he cannot go back and contend that the factory has only five workers and the factory is not coverable under provisions of the E.S.I. Act.

16. Hence, in view of the facts and circumstances discussed above and findings therein, I am of the considered view that the Presiding Officer, Labour Court, Guntur, having marshalling the facts based on oral and documentary evidence of both the parties and strictly in accordance with law came to conclusion that factory of appellant/petitioner is covered under E.S.I Act which has ten or more persons. Therefore, the notices dated:7.9.2000 and 10.9.2000 issued by the respondents are legal, valid and does not suffer from any legal infirmity and accordingly, findings of the Presiding Officer, Labour Court, Guntur, does not warrant any interference and the issue is answered accordingly.

17. However, the appellant's Counsel submits that in pursuance of the orders in CMA.M.P.No.472 of 2007, dated:16-3-2007, appellant/petitioner deposited Rs.15,000/- as a condition for grant of stay, besides deposited Rs.40,000/- before the ESI Court, in total deposited an amount of Rs.55,000/-. Having considering the same, respondent/s to verify and recover only the balance amount, if any.

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18. In the result, Civil Miscellaneous Appeal is dismissed while confirming the orders dated:19-12-2006 in E.S.I. No.37 of 2000 on the file of the Labour Court, Guntur.

Miscellaneous Petitions, if any, pending in this Appeal, shall stand closed.

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JUSTICE N. BALAYOGI

09-04-2018

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**DATED:09-04-2018**

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