HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A.No.1475 OF 2008

JUDGMENT:

The present appeal, under Section 82 of the Employees' State Insurance Act, 1948 (for short, 'the Act'), is filed aggrieved over the order, dated 06.02.2007, passed in E.S.I.No.13 of 2000 on the file of Presiding Officer, Labour Court, Guntur.

2. The only dispute in the present appeal is that whether the number of employees mentioned as '21' in the inspection notice, when RW.1 initially inspected, was correctly mentioned and whether the relevant details were secured by RW.1.

3. Sri P. Rajasekar, learned Standing Counsel for the appellant, would submit that a perusal of Ex.R1 would clearly show that sub-clause (ii) of clause (13), the Managing Director of the sole respondent- Chalapathi Housing and Finance Private Limited, in fact, mentioned the word 'yes', indicating that the persons employed were more than 20 and subscribed his signature on Ex.R1 and, therefore, the Court below was not right in passing adverse order against the appellant herein arriving at that the employees were less than 20 in number. Learned Standing Counsel also places reliance in **Regional Director, E.S.I. Corporation v. Safa International and others**[1], rendered by a Honourable Division Bench of the High Court of

[1] I L.L.J. 1999 (page 1005)

Kerala, in regard to the burden of proof, wherein it was held that if the liability under the Act or quantum of contribution is disputed, it is for the person so disputing or denying liability or quantum to prove by giving evidence in support of his claim.

4. No doubt, Sri P. Durga Prasad, learned counsel for the respondent, would support the order under challenge contending that every document and the subsequent inspection would clearly show that the respondent did not engage more than 17 workers, put together both, at the head-quarters and at the branch office, at any point of time and mainly places reliance on the findings recorded by the Court below.

5. There is no need to probe into the evidence on record once again. From the oral evidence of PW.1 and RWs.1 and 2 and the documentary evidence, it is clear that relevant details could not be collected by RW.1 and his evidence is also not that concrete to establish that he did collect all the details of 21 employees, whom he has termed as 'workers'.

6. As many as four circumstances, which were recorded by the Court below, would give rise to inferences adverse to the appellant's case. The first being that RW.1, while obtaining Form-01, also included the Director and the Managing Director, who were drawing salary more than Rs.6,500/- per month, even according to the particulars available with the establishment, as employees of the

respondent's establishment. The second circumstance is, the Directors salary is shown as Rs.1,32,000/- per year. RW.1 did not mention whether the Directors were included in those 21 employees or the 21 employees mentioned were only workers and his evidence is also not clear on that aspect of the case. The third circumstance is, Form-01 was expected to be sent subsequent to the first date of inspection by the Regional Officer i.e., RW.1 enabling the respondent to fill up the columns, but RW.1 did it simultaneously at the stage of initial inspection itself. No doubt, no codal rule is projected by the learned counsel for respondent, but, certainly, when the tentative initial inspection was done and having collected the relevant details, Form-01 would have been sent subsequently. If codal rules provide such a situation, certainly, the presumption is that the authority i.e., the appellant or RW.1, as the case may be, did not adhere to the same. Fourth circumstance is, RW.1, when he made initial inspection or his first visit to the premises, in order to differentiate between a customer and a worker, the Managing Director and an employee, did not collect relevant details to arrive at who were all drawing salary more than the limit prescribed by the ESI provisions, so as to apply the provisions of the Act or to view whether the respondent establishment falls within the provisions of the Act.

7. Thus, when viewed all these four circumstances, certainly, they stand adverse to the case of the appellant. Therefore, there is no merit in the present appeal.

8. The present Civil Miscellaneous Appeal is, accordingly, dismissed.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

June 28, 2018.
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