HON'BLES RI JUSTICE D.V.S.S.SOMAYAJULU

CMA.No.159 of 2007

J UD G M E N T:

This appeal is filed against the order dated 18.12.2006 passed in E.I.Case No. 26 of 2003 by the Employees Insurance Court & Chairman, Industrial Tribunal-I, Hyderabad.

The petitioner/appellant is a firm engaged in apparel exports. It has its manufacturing unit in Balanagar area. The said unit was brought under the Employees' State Insurance Act, 1948 (for short 'the Act') and the appellant firm was also regularly paying contributions under the Act from the year 1998. The current dispute arose out of the alleged failure of the employer/appellant to pay contributions for certain periods for the year 2000-01. After going through the procedures, the ESI Corporation determined the compensation payable with interest etc., and gave an order under section 45-A of the Act on 26.09.2002, which was followed by a claim letter dated 28.02.2002. The appellant challenged the said demands on various grounds by filing E.I Case No.26 of 2003. The ESI Corporation resisted the case and stated that their demand was legal and valid. After the pleadings were completed, issues were framed. For the petitioner/appellant, one witness was examined and Exs.P1 to P.10 were marked. For the respondents one witness was examined and Exs.R.1 to R.7 were marked. After hearing the parties, the ESI Court passed order on 18.12.2006, which is now challenged in this appeal.

This Court has heard Sri P.Ramabhoopal Reddy, learned counsel for the appellant and Sri P.Rajasekhar, learned counsel for the respondents.

The learned counsel for the appellant argued that the order under section 45-A of the Act marked as Ex.P.1 is totally wrong and erroneous. He also argued that Ex.P.2 demand notice dated 28.02.2002, which is issued consequent to Ex.P.1 is also wrong and that this is the reason why they have challenged both Exs.P1 and P.2 in the Court below. The learned counsel argued that no proper notice or hearing was given before the order under Section 45-A of the Act was passed and that no inspections were carried out of the unit as alleged. He also pointed out that the evidence in the lower Court about the flash floods that affected the factory were not taken into consideration by the Court below and that the Officer concerned of the Balanagar Industrial Estate certified about the flash floods vide Ex.P.9. Therefore, learned counsel argued that penal action should not have been taken against his client because the alleged default, if any, is not willful and the failure to produce the records was only because of the floods in which all the records were washed away. The learned counsel also relied upon judgment reported in

Employees State Insurance Corporation v. Karnataka Asbestos Cement Products[1] and argued that the Inspector, when he visits the factory, should take names, signatures, thumb impressions etc., of the employees. In the absence of such data and details, he argued that the Inspector's report cannot be accepted. He also pointed out that relying upon a judgment reported in ***A.P.Handloom Weavers Co-operative society Ltd., Narayanaguda, Hyderabad v. E.S.I.Coporation, Hyderabad***[2]**,** before passing order under 45-A of the Act, the ESI Corporation must have credible information to come to a conclusion of the contributions etc., payable. He also argued that if the Corporation fails to obtain the information, the Employees Insurance Court has to exercise its power and direct the ESI Corporation to make a provisional assessment and then a final assessment. Therefore, he argues that the entire action has to be set aside as it is wrong and contrary to the law.

In reply thereto, the learned counsel for the Corporation argued that the conduct of the appellant totally estopps him from challenging the order under Section 45-A of the Act. Learned counsel points out that there were periodic visits in this case and that the petitioner himself has filed Ex.P.6, which show the visit to the factory. Similarly, Ex.R.1 shows the details of the earlier visits made by the Inspector. The

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[1] 1991 FLR 638
[2] LLJ(II) 1988 515

reply to Ex.R.1 is Ex.R.2 dated 30.12.2001 by which the partner of appellant firm and RW.1 clearly requested for postponement of the inspection. Therefore, the learned counsel argued that the order under 45-A of the Act was preceeded by visits and also notices.

Learned counsel also argued that Ex.P.5 which is filed by the appellant is a letter dated 28.10.2002 issued as a reply to the order dated 26.09.2002, which is now impugned in the appeal. Learned counsel points out that even after the impugned order was given under 45-A of the Act, the appellant has paid the contributions. Therefore, he argues that the appellant has accepted the demand notice issued and acted upon the same. The last submission of the learned counsel is that the floods if they are fully true occurred in a specific period, namely August, 2000, but for the period before and after 2001 also the factory was fully functional and as such, the demand by the Corporation is valid.

This Court, on an examination of the facts, notices that there is substantial force in the submissions made by the learned counsel for the respondents. The floods, if any, in August, 2000 did not have such a long lasting impact. The conduct of the appellant also shows that they have reacted to the notice dated 29.06.2002 by making the payments and furnishing the copies of the challans of the contribution paid before and after the floods also. In addition, the oral evidence of PW.1, who is Managing Partner of the appellant firm, is also important. Exs.R.1 and R.2 documents were admitted by him in his cross-examination. They speak of the visit of the Inspector and also the request to postpone the inspection. He also admits that the factory was functioning even after the floods and that the workers are being engaged and they are being paid monthly salaries. He, however, admits that the Bank statement to show the payment of the salaries is not filed. He also admits that income tax returns are being submitted. From November, 2000 onwards, admittedly as per PW.1, the returns were not submitted to the Corporation. Therefore, the reading of his cross-examination makes it clear that the so called floods did not have a long lasting impact. That the factory was functioning and that the workers were being paid wages etc., is borne out by the cross examination. The operation of the factory, the payment of wages by cash by withdrawing from the Bank, the filing of the income tax returns etc., leads to a conclusion that the floods did not have a long term detrimental effect and that the factory was functioning normally. Therefore, this Court has no hesitation to hold that the impugned order that is passed in this case does not suffer from any infirmity warranting interference by this Court. The documents filed by the respondents and the petitioner show that inspections did take place and that Ex.R.3 notice shows that the appellant was given an opportunity. Despite periodical inspections and notices, the appellant did not choose to pay the amount or pay the amount demanded. He also did not introduce any evidence to show that the quantification of the demand was wrong. The fact that the factory is in operation and wages etc., are being paid is admitted by PW.1. No evidence to the contrary is introduced to show the loss of the records or that the floods caused the loss of records which prevented the appellant from paying the contributions. The contributions are a percentage of the wages paid. Since the evidence reveals that the factory was operational and that wages were being paid nothing prevented the appellant from paying the contributions.

Therefore, on a review of all the evidence and the submissions, this Court holds that there is no ground made out to set aside the impugned order. The conduct of the appellant is not above board and no tangible reasons are made out to interfere.

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

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU,J

Date: 20.04.2018
KLP