

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

335 (3 cases)

Date of Decision : 14.05.2018

1.

FAO No.1764 of 1996 (O&M)

The Ambala District Co-operative Milk
Producers Union Limited, Ambala City

..... Appellant

Versus

Employees' State Insurance Corporation, Faridabad

..... Respondent

2.

FAO No.1670 of 1996 (O&M)

The Ambala District Co-operative Milk
Producers Union Limited, Ambala City

..... Appellant

Versus

Employees' State Insurance Corporation, Faridabad

..... Respondent

3.

FAO No.1765 of 1996 (O&M)

The Ambala District Co-operative Milk
Producers Union Limited, Ambala City

..... Appellant

Versus

Employees' State Insurance Corporation, Faridabad

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. K.K.Gupta, Advocate
for the appellant(s)

Mr. Vikas Suri, Senior Standing Counsel
for the respondent.

AJAY TEWARI, J. (Oral)

This order shall dispose of above mentioned three appeals.

These three appeals have been filed against three orders of the Employees State Insurance Court dismissing three applications under Section 75 of the Employees State Insurance Act, 1948 (for short 'the Act') which were moved by the appellant(s).

The case of the appellant(s) was that it was a District Level Co-operative Society which was a link between the Village level society and the State level society. Its job was to collect the milk from the collection centres set up by the different Village level societies and then to transport it and deliver it to the State level society. Firstly, it was not a manufacturing unit and secondly a significant part of its area of operation was not even covered by the provisions of the Act at the relevant time. The third argument raised was that before passing the assessment order no hearing was granted to the appellant(s). The ESI Court having dismissed the application, parties are before this Court. The same arguments have been raised before me.

Learned counsel for the respondent(s) has argued that it is not a sine qua non that a manufacturing process has to be undertaken by some establishment before it become eligible to the Act and even non manufacturing units who have more than 20 employees can be covered by the Act and the appellant(s) is one of such units because at the relevant time it had admittedly more than 50 employees on its rolls. As regards the second argument, learned counsel for the respondent(s) has relied upon the judgment of the Supreme Court in ***Transport Corporation of India Vs.***

Employees State Insurance Corpn., 2000(1) SCT 232 wherein their Lordships unequivocally held that merely because some employees of a unit are posted at areas where the Act is not in operation would not exempt the establishment; which has been followed by this Court in *Employees State Insurance Corporation Vs. New Azad Transport Co-operative Society Ltd. and another, 2009 (4) LLJ 597*. As regards the third argument, the learned counsel points out that the requirement of 'personal hearing' was introduced in the Act only by the amendment of Act, 1989 and prior thereto there was no proviso to the Section. In my opinion, that would not be a complete answer because even if there is no such requirement of the Act it would be a requirement of law that some opportunity be given to a person against whom a demand is being raised. In this context, I find that even as per the cases of the appellant(s) one notice was served upon them and it was their allegation that their objections were not considered properly. Consequently it was not a case where an ex-parte order has been passed.

Learned counsel for the appellant(s) has laid great stress on the fact that during his cross examination the Inspector accepted that the copy of the inspection report was not served upon him and that he further admitted that he had not even visited the unit.

Learned counsel for the respondent(s) has countered by arguing that this assertion would have been important if it was the case of the appellant(s) that infact it had lesser number of employees but a higher number mentioned without even visiting the premises but in the present case the Inspector has taken the figures from the records of the appellant(s) and accepted them.

In my opinion, the argument of the learned counsel for the respondent(s) carry more weight and there is no error in the judgments of the ESI Courts.

All the three appeals are dismissed.

Since the main cases have been decided, the pending Civil Misc. Applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

14.05.2018
Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No