

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 23-09-2019

Passed on 24-10-2019

MA No. 77 of 2017

1. The Regional Director Employees State Corporation 107 Jagannath Chowk, Ramnagar Road, Kota, Raipur Chhattisgarh.
2. Employee State Insurance Corporation, Through Assistant Regional Director, Panchdip Bhawan, Nandanagar, Indore Madhya Pradesh

---- Appellants

Versus

- M/s Akash Wires Through U. N. Agrawal Proprietor, 14 B New Industrial Area, Rawanbhata, Raipur Chhattigarh..

---- Respondents

For appellants : Mr. Pradeep Saxena, Advocate.

For respondent : Mr. N.K.. Vyas, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV ORDER

1. This appeal is preferred under Section 82 of the Employees State Insurance Act, 1948 against the order dated 21-4-2017 passed by the Employees Insurance Court-cum-Labour Court, Raipur CG in case No.121/ESI Act/2002 wherein the letter issued to respondent for registration of employees and

establishment under Section 2(12) of the ESI Act, 1948 (for short, the Act, 1948”) and observation made in this regard by the Insurance Inspector is quashed by the said Court.

2. As per appellant, Insurance Inspector visited the respondent unit and made observation sheet that 17 workers are working and manufacturing activities were found carried out in the premises. The detailed visit note was recorded and handed over to the employer, thereafter, notice was issued to respondent as per Ex.P/7. The respondent challenged the said notice under Section 77 of the Act, 1948 and court passed the order in favour of respondent.

3. Learned counsel for the appellants would submit as under:

- i) Respondent is running two establishments in the name of Akash Wires and Askash Cables and it should be clubbed together and after clubbing both, the number of employees working there are more than ten, therefore, case should be remanded back for re-hearing.
- ii) Reliance has been placed in the matter of **Deputy Regional Director, ESI Corporation, Trissur vs. Trade Links**

Enterprises, Ernakulam, reported in 2003(3) Labour Law Journal 523.

4. On the other hand, learned counsel for the respondent would submit as under.

- i) As per Ex.P/2, six employees were working with the respondent/company, as per Ex. P/3 six persons were employed in the company and as per Ex.P/5 seven persons were working in the company.
- ii) Though it is mentioned in the Inspection Report (Ex.D/1) that eleven persons were working but their names were not mentioned in the said report.
- iii) As per the law laid down in the matter of **Regional Director ESI Corporation vs. Karnataka Asbestos Cement Products and another, reported in (1999) Suppl-3 LLJ 235**, it is held that in order to find out whether the provisions of ESI Act, are attracted to it, must contain the name, father's name, place from which the

employee hails, the designation, the length of service and the signature or thumb impression of the employees may be mentioned in the inspection report.

- iv) As per Section 2 (12) of the Act, 1948, an establishment comes within the purview of a factory when ten persons or more persons are regularly employed.
- v) In the inspection report which was filed in the present case is related to Akash Wires. Akash Wires is also owing Akash Cables, but the same is not objected before the trial Court.
- vi) As per Section 82 of the Act, 1948, the appeal shall lie before this court on the substantial question of law and case of the appellants cannot travel beyond the record of the trial court and the finding of the trial court is not perverse, therefore, the appeal is not maintainable.

5. I have heard learned counsel for the parties and perused the record of the court below including the order.

6. As per definition of factory in Section 2 (12) of the Act, 1948, ten or more persons are employed and they are working for the last 12 months, therefore, core issue for consideration of the case is whether respondent has employed ten persons for the last 12 months from the date of inspection. In the present case, observation sheet was produced as Ex.P/6 in which names of ten persons are not mentioned which ought to have been mentioned with full particulars as per the law laid down as mentioned above. In absence of particulars, it was not established that ten or more persons were employed by the respondent, therefore, this court has no reason to take a contrary view what is recorded by the trial court. Case of Akash Cable cannot be clubbed in the present case as per argument advanced on behalf of the appellant because as per Section 82 of the Act, 1948 the appeal shall lie before this court only on substantial questions of law. As the issue of Akash Cable was not clubbed before the trial Court, this court cannot travel beyond the record of the trial court. The case law cited by learned counsel for the appellant does not help as the same is very clearly distinguishable to the facts of the present case.

7. In view of the above, the appeal is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju