



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

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**FAO-2098-1999 (O&M)
Date of decision : 13.11.2024**

The Regional Director, Employees' State Insurance Co. Appellant

versus

Kamla Devi and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. H.S. Bhatia, Advocate
for the appellant.

PANKAJ JAIN, J. (Oral)

1. ESI Corporation is in appeal aggrieved of judgment dated 31.03.1999, whereby petition under section 75 of the ESI Act, 1948 by the respondent challenging recovery proceedings initiated by the Corporation stands allowed holding that the respondent is not covered under the 1948 Act.

2. Respondent No.1 is sole owner and proprietor of service station situated in Bhiwani. She leased out the same to one Charanjit Singh, who had employed seven persons. Respondent in petition under Section 75 of the 1948 Act claimed that the service station was not covered under the Act and the order passed by Corporation covering the business of the petitioner under the 1948 Act, even though the persons employed were less than 10, was illegal and cannot be sustained. Appellant-Corporation contested the petition claiming that an inception was carried on at the premises on 12.10.1993. It was found that more than 10 persons were working. Notice was served upon the employer.

Notice was responded too. After considering stand of the employer-



owner, order has been passed holding the establishment to be covered under the Employees' State Insurance Act, 1948. Respondent led evidence in form of income tax returns, balance sheet etc. to show that the service station was leased out to one Charanjit Singh in the year 1986 and the same is reflected in the tax returns. Corporation relied upon survey report Ex.D-1 to claim that more than 10 persons were found on the working of the service station at the time of inception and thus, the respondent was liable for paying contribution under 1948 Act.

3. Tribunal after considering evidence on record came to the conclusion that respondent-Kamla Devi was not running service station on the spot, as is reflected from books as well as income tax returns brought in evidence. There is no report and list of workers on the file. Report prepared by RW-1, Ramesh Bahadur, was a forged report. ESI Court further held that in a criminal complaint bearing No.122/21 of 1995, titled as Employees State Insurance vs. Kamla Devi, the respondent was tried before CJM, Faridabad qua same lapse. At no point of time, report was produced before the Criminal Court and thus, the same being doubtful cannot be relied upon in the present proceedings.

4. Mr. Bhatia, learned counsel appearing for the Corporation submits that the finding recorded by the ESI Court regarding report Ex. D-1 being forged and fabricated is perverse and cannot be sustained. He submits that the report was prepared by public servant. Discarding of a report by an employee who is a public servant under Section 93 of the Act, amounts to illegality. The impugned order passed by ESI Court being unsustainable in the eyes of law cannot be sustained.



5. I have heard counsel for the appellant and have carefully gone through the records of the case.

6. Mr. Bhatia is not in a position to dispute the fact that leasing out of service station has been proved on record. The same is reflected in the records filed with the taxation authorities since the year 1986. Careful analysis of oral testimony of Ramesh Bahadur, the author of the report itself shows that he admits that at the time the alleged survey was conducted, respondent was not found on the spot. He claims that she was called on the spot and her signatures were obtained, however, in the same breath he admits that he did not examine the books of the firm on the spot. He further submits that he asked for the records of the firm since its inception and not for the relevant period. He admits that attendance register was shown to him, but surprisingly he did not procure the copy thereof. He is totally at sea about the number of the lifts working at the service station. Considering the aforesaid facts, this Court finds that no exception can be taken to the findings recorded by the Courts below. Survey report produced on record by the Corporation being self-contradictory cannot be relied upon to formulate an opinion other than the one formulated by ESI Court.

7. Pure finding of fact have been recorded by the Court below. This Court does not find any substantial question involved in the present appeal as per the requirement of Section 82 of the 1948 Act to interfere in a well reasoned judgment passed by the ESI Court.

8. In view of above, present appeal is dismissed.



9. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

13.11.2024
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Whether speaking/reasoned :	Yes
Whether Reportable :	No