

**IN THE COURT OF THE DISTRICT JUDGE-CUM-
ESI COURT, KHURDA AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 26th July'14.

E.S.I. Misc. Case No. 621 of 2005.

M/s. Prakash & Co., M.G. Chowk, At/P.O. - Jeypore, District –
Koraput-764 001, being represented by its Proprietor Sri Om
Prakash Halan.

... **Petitioner.**

- V e r s u s -

Employees State Insurance Corporation, Orissa, “Panchdeep
Bhavan”, Unit-IX, Janpath, Saheed Nagar, Bhubaneswar, District
– Khurda, being represented by its Deputy Director.

... **Opp. Party.**

Counsel :

For petitioner -- Shri S.K. Sarangi & Associates.

For opposite party -- Shri S.N. Patnaik & Associates.

Date of argument : 10.07.2014.

Date of judgment : 26.07.2014.

J U D G M E N T

This is a petition under section 75 of the Employees' State Insurance Act, 1948 (hereinafter called “the Act”) read with Rule 13 of the Employees' Insurance Court Rules, 1951.

2. The factual matrix leading to the case of the petitioner is that the petitioner has never employed more than

eight persons in its establishment on any given day. On 17.04.2001, the Employees' State Insurance Corporation (in short, "the Corporation") visited the establishment of the petitioner and prepared inspection report according to their sweet will, which was not known to the petitioner, and he only came to know about such fact on 12.05.2005. It is further averred, inter alia, that the petitioner received a notice dated 31.07.2001 issued by the Insurance Inspector, in which it was mentioned that the Inspector would visit their establishment on 04.09.2001. The petitioner again received a visit note dated 12.12.2001 wherein the Insurance Inspector verified the Attendance Register for the period 04/2001 to 12/2001 and other documents. It is the case of the petitioner that his establishment is not covered vide Ext.1, as he has never employed more than seven persons at any time in his establishment. From time to time, inspection report was served on the petitioner. The petitioner also made representation, but to no avail. He also requested for personal hearing and it was held on 12.04.2005, but the same did not yield any result. It is alleged by the inspecting party that on the date of their visit, the establishment of the petitioner employed ten persons, contravening the provisions of the Act. In spite of best efforts, the petitioner failed to convince the opposite party, for which he knocked at the door of the Court with prayer to declare that the Act is not applicable to his establishment, to quash the demand of amount with interest and damages as per the inspection held on 17.04.2001, and to quash the recovery proceeding in

Certificate Case No.13439 of 2005 before the Recovery Officer. Hence the petition.

3. The opposite party filed written statement pleading, inter alia, that the petition is not maintainable in the eye of law and there is no cause of action to file the case. The case is liable for dismissal for non-joinder of necessary party inasmuch as the Branch Manager, ESI Corporation, Jeypore, who made preliminary inspection, the Deputy Director (Revenue) of the Corporation, who issued the coverage notice dated in Form C-11 dated 14.05.2001, and the Recovery Officer are not made parties to the case. It is further averred that the case is barred by limitation under section 77 (1-A) of the Act, as it has been filed more than three years after service of the coverage notice in Form C-11. It is further stated that under section 1(6) of the Act, a factory or an establishment, to which the Act applies, shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time falls below the limit specified in it or the manufacturing process therein ceases to be carried on with the aid of power. It is also the case of the opposite party that on 17.04.2001, in presence of the Manager of the petitioner's unit, there was inspection of records. On physical verification, twelve persons were found employed for wages in the petitioner's unit. The Corporation prepared the report and obtained the signature of the Manager of the petitioner-establishment. Thereafter, notice in Form No. C-11 was issued on 14.05.2001 informing that the petitioner's unit falls within the

purview of the Act. Finally, on 12.05.2005, a corrected copy was provided to the petitioner. It is further stated that on 12.12.2001 the Inspector again verified the petitioner's unit and the opposite party issued the demand notice dated 07.11.2002 claiming Rs.3,687/- for the period 04/01 to 11/01. In spite of the notice, the petitioner failed to pay the contribution demanded vide Notice in Form No. C-18. So, the petition filed by the petitioner under the Act is not maintainable and not sustainable in the eye of law. In the above backdrop, it is averred that the petitioner's establishment comes under the E.S.I. coverage and, as such, the petition preferred by the petitioner is devoid of merit and the same is liable for dismissal.

4. On the aforesaid pleadings of the parties, the following issues have been framed :

I S S U E S

- 1) Whether the case is maintainable ?
- 2) Whether there is any cause of action for the petitioner to file this case against the opposite party ?
- 3) Whether the case is barred by time ?
- 4) Whether the petitioner-establishment is legally coverable under the E.S.I. Act ?
- 5) Whether the E.S.I. Act is applicable to the petitioner-establishment ?
- 6) Whether the claim of the opposite party is legal, valid and binding on the petitioner ?
- 7) Whether the petitioner-company is liable to pay the contribution dues to the E.S.I. Corporation ?
- 8) Whether the petitioner is entitled to the reliefs claimed ?

FINDINGS

ISSUE Nos.6 & 7 :

5. For the sake of convenience, both the issues are taken up together for being answered. It is well settled law that if neither of the parties leads evidence, petitioner's case will fail. So, the onus lies on the petitioner-establishment to prove that the claim of the opposite party is not legal, valid and binding on him.

6. The petitioner, in order to discharge his onus, has examined one witness and adduced documentary evidence. He has examined himself as P.W.1 and proved Ext.1, the letter dated 26.09.2005, wherein notice concerning certificate No. 13439/2005 for recovery of an amount of Rs.5,875/- was sent to the petitioner-establishment. He has also proved Ext.2 i.e. Form C-19 dated 09.09.2005 wherein Rs.5,873/- has been claimed by the opposite party basing on the inspection made on 17.04.2001. He has also proved his representation to the Corporation vide Ext.3 and the notice for inspection of his establishment on 04.09.2001 issued by the ESI Inspector vide Ext.6. But, at the same time, he has proved the Muster Roll vide Ext.7 for the period April, 2001 to March, 2003 and the Payment Register from 01.04.2001 to 31.03.2002. On going through the said documents, it appears that during the relevant period, six to seven persons were employed by him. In cross-examination, he has stated that on 17.04.2001, he was not present when preliminary inspection was made. Even he has denied to the suggestion given by the opposite party that the inspection was

held in the presence of Dharmendra Kumar Samantaray, who was the Manager of his unit, and he did not sign the preliminary inspection report prepared by the ESI Inspector. Even he has stated that he is not their employee. But, on going through Exts.7 & 8, it is found that said Dharmendra Kumar Samantaray was their employee throughout. Moreover, in para-17 of his cross-examination, he has admitted that he did not take any legal action against Dharmendra Kumar Samantaray for signing the report on behalf of their institution. When his name appears in the Muster Roll and Payment Register and no legal action has been taken against Dharmendra Kumar Samantaray, the evidence of P.W.1 is not satisfactory, cogent and clear to show that on 17.04.2001, his unit was not inspected. He has made representation stating that only two to three persons are required in shift at the petrol pump. If there is requirement of only two to three persons, why the names of seven persons figure in the Muster Roll and Payment Register. So, the evidence of P.W.1 and the records produced by him are not consistent, cogent and clear to prove that on 17.04.2001 there was no inspection and he only engaged seven persons as employees of his unit.

7. On the other hand, the opposite party has examined its Social Security Officer as O.P.W.1 and adduced documentary evidence. It is revealed from his evidence that Ext.B is the preliminary inspection report dated 17.04.2001 and Ext.C is the notice dated 14.05.2001 in Form No.C-11 towards intimating the coverage of the petitioner-establishment under the Act. I went

through Ext.B, which shows that on 17.04.2001, the Manager of local office, ESI Corporation, Jeypore, has visited the establishment of the petitioner and found ten persons, namely, Bhubana Mohanty, Sadanand Bag, Bishnu Raut, Trinath Padhi, Dhamendra Samantaray, Rama Rao, Sankar Rao, Sridhar, Ravi, & Prasad were present in the establishment. In fact, the visit note has also been appended to it where one of the employees, namely, Dharmendra Samantaray gave the information disclosing that he is the Manager of the Company. In fact, the seal of the Company has been appended to such visit note and inspection note. In his cross-examination, suggestion was given that there is no employee, namely, Dharmendra Samantaray in the petitioner-establishment to which he denied. As discussed above, when Dharmendra Kumar Samantaray is one of the employees as per the evidence of O.P.W.1 coupled with Muster Roll (Ext.7), Payment Register (Ext.8), and there is seal of the petitioner-establishment on the visit note and inspection note, the suggestion in cross-examination that he was not an employee is a futile exercise. Of course, he has admitted that he was not a party to the inspection for which he cannot say if the Muster Roll was produced before the Inspector during preliminary inspection or during subsequent inspection of the petitioner-establishment. Even if he is not a party to the inspection team, the evidence of O.P.W.1 cannot be undermined when P.W.1 has admitted in his evidence that he was not present at the time of inspection on 17.04.2001. But, the document vide Ext.B has not been seriously

challenged by the petitioner and this document appears to have been maintained in regular course of business by the Corporation. Moreover, it is available from the affidavit evidence of O.P.W.1 that one Anurag Kumar, the then Local Office Manager, now designated as Branch Manager, Branch Office, Jeypore of the Corporation conducted preliminary inspection of the petitioner-unit on 17.04.2001. He has also stated to have been authorised by the Corporation and he is the Social Security Officer in the Regional Office. There is no challenge to such evidence of O.P.W.1 by the petitioner. So, the evidence of O.P.W.1 coupled with Ext.B go to show that the document vide Ext.B is maintained in regular course of business for the Corporation in their official capacity, which proves that on 17.04.2001 there was inspection of the petitioner-unit. It is further revealed from the evidence of O.P.W.1 that on 12.12.2001, there was another inspection conducted in respect of the petitioner-establishment vide Ext.D. There is no serious challenge to such document in cross-examination of O.P.W.1. This document shows that one R.K. Singh, Insurance Inspector of the ESI, Berhampur Division, visited the petitioner-unit. It is revealed from the said document that the Attendance Register and the Salary Register seem to have been prepared for the case. But, the names of employees therein are the same employees mentioned in the inspection report dated 17.04.2001. So, the evidence of O.P.W.1 coupled with these documents go to show that there was demand of Rs.3,687/- towards contribution

payable by the petitioner and, at the same time, such demand has been sent by Registered Post as per the A.D. attached to the documents. Finally, the petitioner-unit was asked vide Ext.J, as revealed from the evidence of O.P.W.1, for personal hearing on 01.03.2004 at 11 A.M. Further, it is revealed from Ext.K that the petitioner-unit has informed that it is not manufacturing any product and, as such, it is not coming within the purview of the Act. Then, another notice was issued vide Exts.L & M referring to the inspection dated 17.04.2001. All these documents are not disputed by the petitioner during cross-examination of O.P.W.1. So, the evidence of O.P.W.1 coupled with those documents go to prove that on 17.04.2001, there was inspection to the petitioner-establishment and there was demand of Rs.3,687/- against the petitioner. But, the petitioner has always taken plea that his establishment is not coming under the purview of the Act. When it is found from the evidence of O.P.W.1 and the documents proved by him that on 17.04.2001 ten persons were employed by the petitioner in petitioner's establishment, the demand of contribution by the Corporation is legal and valid. Under section 2(m)(i) of the Factories Act, 1948, "factory" means any premises including the precincts thereof whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on. The "manufacturing process" has been defined under section 14-AA of the Act where it has got the same meaning assigned to

it in the Factories Act. Section 2(k) of the Factories Act defines “manufacturing process”, which means any process for pumping oil, water, sewage or any other substance. Since the petitioner-unit is a diesel or petrol retailer as per Ext.K, the letter of the petitioner, pumping of oil with the aid of power cannot be ruled out. So, the petitioner-unit is coming under the definition of “factory” as per section 2(k) of the Factories Act read with section 14-AA of the ESI Act. The “power”, as defined under the Factories Act, also includes electrical energy or any other form of mechanical energy. So, at any rate, it is proved by the opposite party that the petitioner-unit is coming within the purview of the Act.

8. From the foregoing discussion, it is found that the petitioner has not been able to prove that the claim of the opposite party as illegal and invalid and not binding on him. On the contrary, it is proved by the opposite party by cogent, positive and consistent evidence that the petitioner-establishment is liable to pay the contribution dues to the Corporation and the claim of the opposite party is legal, valid and binding on the petitioner. Hence, both the issues are answered accordingly.

ISSUE Nos.4 & 5 :

9. Both the issues being important and interlinked are taken up together for the sake of convenience. It has already been discussed in the foregoing paragraphs that ten persons were found employed in the petitioner-unit on the date of inspection on 17.04.2001 and it has one factory under the definition of the

Act. Thus, the Act is applicable to the petitioner-establishment and, as such, the same is legally coverable therein. Both the issues are answered accordingly.

ISSUE No.2 :

10. As discussed in the above paragraphs, the petitioner-establishment is liable to pay the contribution dues to the Corporation. It is revealed from the evidence of O.P.W.1 coupled with Ext.B and other documents that Rs.3,687/- as contribution is payable by the petitioner-establishment and the petitioner has always taken plea that he is not covered under the Act. When the claim of the opposite party is legal, valid and binding on the petitioner as per the above findings and the Act is applicable to the petitioner-unit, there is cause of action to file the case against the opposite party.

ISSUE No.3 :

11. The opposite party has taken plea that the case filed by the petitioner is barred by limitation. The petitioner has filed this case to declare that the Act is not applicable to his unit and the opposite party is not entitled to recover its dues vide letter dated 09.09.2005 for the period 04/2001 to 11/2001. In this case, it has already been held that the petitioner is liable to pay the contribution dues, as demanded by the opposite party, and the Act is applicable to him. So, the question of the claim being barred by time does not arise. This issue is answered accordingly.

ISSUE No.1 :

12. Since the establishment of the petitioner is legally

coverable under the Act, the Act is squarely applicable to them and there is valid claim made by the opposite party against the petitioner-establishment, the case filed by the petitioner that they are not liable to pay the contribution dues is not maintainable. Accordingly, the case is not maintainable.

ISSUE No.8 :

13. The petitioner has claimed many reliefs including the fact that they are not covered under the Act and the petitioner-establishment is not liable to pay any dues to the Corporation. As observed earlier, since the petitioner-establishment is liable to pay the contribution dues to the Corporation as per the demand and the case of the petitioner is not maintainable, the petitioner is not entitled to any relief. Hence ordered :

O R D E R

The E.S.I. Misc. Case being devoid of merit stands dismissed on contest against the opposite party with cost.

**District Judge, Khurda
at Bhubaneswar.**

26.07.2014.

Dictated, corrected by me and pronounced in the open Court this day the 26th July, 2014.

**District Judge, Khurda
at Bhubaneswar.**

26.07.2014.

List of witnesses examined for petitioner.

P.W.1 -- Om Prakash Halan.

List of witnesses examined for opposite party.

O.P.W.1 -- Sudhakar Das.

List of documents admitted in evidence for petitioner.

Ext.1	--	Letter dated 26.09.2005,
Ext.2	--	Form No.C-19 dated 09.09.2005,
Ext.3	--	Copy of letter dated 22.06.2005,
Ext.3/a	--	Postal receipt,
Ext.4	--	Notice in Form No.C-20 dated 29.11.2004,
Ext.5	--	Notice dated 11.07.2003,
Ext.6	--	Notice for inspection,
Ext.7	--	Muster Roll,
Ext.8	--	Payment Register,
Ext.9	--	Copy of letter dated 18.04.2005,
Ext.10	--	Copy of letter dated 02.12.2002,
Ext.10/a	--	Postal receipt,
Ext.11	--	Letter dated 22.02.2003,
Ext.11/a	--	Postal receipt, &
Ext.11/b	--	Postal A.D.

List of documents admitted in evidence for opposite party.

Ext.A	--	Evidence affidavit,
Ext.B	--	Preliminary inspection report,
Ext.C	--	Notice dated 14.05.2001,
Exts.C/1 & C/2	--	Postal A.D.,
Ext.D	--	Inspection report dated 12.12.2001,
Ext.E	--	Demand notice in C-18,
Exts.E/1 & E/2	--	Postal A.D.,
Ext.F	--	Letter dated 28.11.2002,
Ext.F/1	--	Postal A.D.,
Ext.G	--	Letter dated 02.12.2002,
Ext.H	--	Letter dated 02.01.2003,
Ext.J	--	Notice dated 22.01.2004,
Ext.J/1	--	Postal A.D.,
Ext.K	--	Reply of the petitioner dated 01.03.2004,
Ext.L	--	Notice dated 09.09.2005,
Ext.L/1	--	Postal A.D. &
Ext.M	--	Notice dated 26.09.2005.

**District Judge, Khurda
at Bhubaneswar.
26.07.2014.**

