Amar Service Station, (Dealer HPC) Vs The Assistant Regional Director, ESI Corporation and Another

Court: Andhra Pradesh High Court

Date of Decision: July 27, 2007

Acts Referred: Employees State Insurance (General) Regulations, 1950 â€" Regulation 10B
Employees State Insurance Act, 1948 â€" Section 1(3), 2(12), 2A, 44, 44(2)

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: P. Sridhar Rao, for the Appellant; Pushpinder Kaur, for the Respondent

Judgement

P.S. Narayana, J.
This Civil Miscellaneous Appeal is filed u/s 82 of the Employees State Insurance Act, 1948, hereinafter, in short,

referred to as Act, for the purpose of convenience, by the appellant aggrieved by the order dated 24.3.2006 made in E.I. Case No. 76 of 2001

on the file of Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad.

2. The appellant herein as petitioner filed EI Case No. 76 of 2001 on the file of the Employees Insurance Court and Chairman, Industrial Tribunal-

I, Hyderabad, u/s 75(1)(g) of the Act praying for declaration that the provisions of the Act are not applicable to the establishment of the appellant-

petitioner and to set aside the order in proceedings No. 52Q/15552/17600/2000, dated 7.9.2000, issued by the 2nd respondent. The Employees

Insurance Court, hereinafter, in short, referred to as Court, for the purpose of convenience, on the strength of the evidence of PW. 1, RWs. 1 and

2, Exs. P1 to P5 and Exs. R1 to R7, came to the conclusion that the appellant-petitioner is not entitled to the relief prayed for and accordingly

dismissed the petition with costs giving liberty to the 1st respondent to withdraw the amount of Rs. 16,000/- deposited by the petitioner u/s 75(2B)

of the Act towards part-payment of the impugned order. Aggrieved by the same, the present Civil Miscellaneous Appeal had been preferred.

3. Sri P. Sridhar Rao, learned Counsel representing the appellant had taken this Court through the evidence of PW. 1, RWs. 1 and 2 and would

maintain that except the inspection note relied upon, absolutely there is no other material placed before the Court. The counsel also would maintain

that the duty is cast upon the concerned Inspector to note down the details of the names of the employees, the addresses and other particulars, but

just on the vague inspection note, fastening the liability cannot be sustained. The learned Counsel placed strong reliance on the decision of the

Division Bench of Karnataka High Court in Regional Director, E.S.I. Corporation v. Karnataka Asbestos Cement Products and Anr. 1999 III

L.L.J. 235 (Supp). The learned Counsel also would submit that even otherwise reasonable opportunity was not given to the appellant-petitioner to

explain whether the Act would be applicable or not and on this ground also the impugned order is liable to be set aside. The counsel also placed

strong reliance on the decision reported in Employees'' State Insurance Corporation v. U.P. Hotel and Restaurants Limited and Anr. 1975 Lab.I.c.

1025. The counsel also incidentally pointed out to certain of the discrepancies in the evidence of RWs. 1 and 2 and would maintain that in the light

of the same, it is a fit matter where an opportunity to be given to the parties to let in further evidence, if they require to do so and to make an order

of remand to the said effect.

4. Per contra, Smt. Pushpinder Kaur, learned Counsel representing the respondents would maintain that a clear finding had been recorded that

notices had been issued and they were also received by the appellant and hence there is no question of affording further opportunity. The counsel

also would submit that the Civil Miscellaneous Appeal would lie to this Court only when a substantial question of law had been raised in the light of

the specific language of Section 82 of the Act. The counsel also pointed out to Sections 45, 45A and 77 of the Act and would maintain that if these

provisions are carefully scrutinized, the appellant-petitioner approached the Court in a way at a belated stage having not availed the opportunity

given to the appellant. Even otherwise, in the light of the view expressed by the Apex Court in E.S.I.C. Vs. C.C. Santhakumar, , these

proceedings are to be decided in a summary manner. In the light of the material available on record, the order which had been questioned in EI

Case No. 76 of 2001 was made in accordance with the procedure and hence the same not to be disturbed. The counsel also while further

elaborating her submissions had placed strong reliance on the decision reported in Srinivasa Rice Mills and Ors. v. ESI Corporation (2007) 1

SCC 705, wherein the Apex Court had referred to the judgment of the Division Bench of Karnataka High Court and further explained under what

circumstances furnishing of the name, father''s name, place, etc., to be noted or recorded and what are the duties and obligations of the employer in

furnishing such details and would maintain that in the light of the ratio laid in the said decision, the view expressed by the Division Bench of

Karnataka High Court need not be followed by this Court.

5. Heard the counsel on record and perused the oral and documentary evidence available on record and also the findings recorded by the Court

below.

6. The parties hereinafter would be referred to as petitioner and respondents as shown in EI Case No. 76 of 2001 for the purpose of convenience.

7. It was averred in the petition as hereunder:

The petitioner M/s. Amara Service Station, HPC Dealer, Trunk Road, Near Gandhi Statute, Nellore-2 is carrying on the business of the Petrol

Bunk since 20 years. It is submitted that the petitioner never employed 10 or more employees at any point of time right from the starting of the

establishment and as such the petitioner is not liable to pay any contributions as alleged by the respondent-Corporation. It is submitted that the

petitioner never employed 10 or more and as such the petitioner establishment does not come under the purview of the ESI Act. The petitioner

submits that the respondent-Corporation has issued show cause notice dated 12.4.2000 calling upon the petitioner to pay an amount of Rs.

48,706/- for the period from April, 1998 to September, 1999 and moreover the petitioner establishment never engages more than 9 at any point

of time till today. Therefore, the order passed by the respondent is illegal, unjust, void and contrary to law and also the provisions of ESI Act. The

petitioner further submits that he was also issued with C-19 notice dated 9.8.2000, calling upon the petitioner to pay an amount of Rs. 48,706/-

plus interest Rs. 8,528/- totaling together Rs. 57,234/- for the period from April, 1998 to September, 1999 and also interest upto May, 2000 and

moreover the attendance register and salary register reveals only 9 employees engaged by the petitioner; therefore the ESI Act does not attract the

provisions of the ESI. Therefore, the said order is bad in law. The petitioner further submits that the above information was also informed to the

ESI Inspector during the time of inspection and at the same time this information was also brought to the notice of the respondent-Corporation, in

spite of that the respondent No. 2 is now taking coercive steps to recover the amount which is illegal, unjust and contrary to law and without

jurisdiction. Therefore, the present petition is filed questioning the applicability of the Act to the petitioner establishment.

It is submitted that the Inspector visited the establishment of the petitioner and recommended for coverage as if the petitioner employed more than

10 employees covering the establishment under the ESI Act. However, mere enlisting of the names by Inspector will not be sufficient for coverage

under the ESI Act and the same was reported in ESI v. Supper Tailors 1999 LLR 116, Karnataka High Court, moreover without there being any

details of the inspection by the Inspector of ESI will also does not attract the provisions of ESI Act and the same was reported in Karnataka

Cement Asbestos v. ESI Corporation in 1991 LLR 775, Karnataka High Court. The petitioner submitted that as per the decision rendered by the

Hon''ble High Court of Allahabad in the case of U.P. Hotels and Restaurant v. ESI Corporation reported in 1975 LIC 1025 , an opportunity

should be given to the employer before allotting a code number to the employer. The said principles will apply with equal forces to the facts of the

present case also. The action of the respondent is thus is in violation of principles of natural justice. The petitioner submits that no reasonable

opportunity was given to the employer, before passing ad hoc assessment orders and the Hon''ble High Court of A.P. has directed that the

respondent-Corporation should pass a speaking order by giving opportunity to the employer in the reported in Andhra Pradesh Handloom

Weavers Co-oprative Society Ltd. Vs. Employees'' State Insurance Corporation, Hyderabad, . The petitioner further submits that he has

approached this Court for his redressal after having utilized all his efforts and the same has been in vain.

8. The respondents resisted the petition by filing a written statement taking a specific plea that the petition is time barred. It was pleaded as

hereunder:

The respondent states that the petitioner factory is covered under the ESI Act and the intimation of coverage in C-11 was sent to the petitioner

vide this respondent''s letter bearing No. 52-15552-42, dated 15.5.1998 which was duly received by the petitioner. In the event of any grievance

against the same, the petitioner is at liberty to approach the appropriate judicial forum u/s 75 of the ESI Act and this is expected to be so within 3

years from the date on which the cause of action arose, as per Section 77(1-A) of the ESI Act, 1948 as amended, which is reproduced hereunder

for ready reference. (1-A) every such application shall be made within a period of three years from the date on which the cause of action arose. In

the instant case the cause of action arose on 15.5.1998 on which the communication of coverage was sent to the petitioner and which was

received by him and therefore he is legally bound to raise the dispute within 3 years from 15.5.1998 in the E.I. Court. He did not do so.

Therefore, he is not entitled to be heard by this Court in violation of the statute. Hence, this respondent prays that the petition is liable to be

dismissed even on that ground itself. The inspector of records conducted by the Inspector of the Corporation which led to the coverage of the

factory is valid in law u/s 45 of the ESI Act and the respondent''s decision to cover the Unit is correct. The brief facts of the case are as follows:

The petitioner is amenable to the coverage u/s 1(3) & 2(12) of the ESI Act as per the contents of the Inspection Report dated 17.4.1998 of the

Inspector of this respondent who visited the petitioner''s factory on 17.4.1998 and submitted the report. It is clear from the same that the

petitioner''s factory is engaged in the activity of pumping and sale of HPC Petrol and Diesel and servicing of vehicles with the aid of power and

employed 12 persons for wages on 17.4.1998. Hence, the factory attracts the provisions of Section 2(12)(a) of ESI Act. Accordingly, the factum

of coverage was informed to the petitioner vide this respondent''s letter No. 52-15552-42, dated 15.5.1998 which was duly received by the

petitioner. The inspection of records was carried out on the basis of the employer''s records in his presence and in his own premises.

The petitioner failed to comply with the provisions of the Act which he is liable to comply. Hence, the respondent, after following due process of

law, issued the show cause notice bearing No. AP/Ins.VIII/52-15552-42, dated 22.2.2000 calling upon the employer to show cause as to why an

amount of Rs. 48,706/- should not be determined as contributions due from him on ad hoc basis for the period from 17.4.1998 to 9/1999 and

recovered from him u/s 45(C) to 45(I). The petitioner was given not only 15 days time to show cause but also was afforded an opportunity of

personal hearing on 7.4.2000. The petitioner has refused to take delivery of the notice as seen from the remarks of the postal authorities at

28.2.2000. The deliberate action of the petitioner in refusing the notice is neither warranted nor appreciated at all. The petitioner failed to respond

either by assigning the reasons by availing the opportunity of the personal hearing on 7.4.2000 or by submitting the records before the Inspector of

the respondent Corporation who again visited the petitioner''s factory on 7.2.2001 but approached this Court with ulterior motives and unclean

hands, only to gain the sympathy of this Court. It is clearly established that the petitioner is procrasting the litigation without any valid and justified

grounds. Hence, the action taken by the respondent Corporation is perfectly legal, valid and within jurisdiction. The allegations of the petition in un-

numbered para on pages 2 and 3 of the petition that they never employed more than 9 persons and the C-19 notice dated 9.8.2000 is issued in a

most arbitrary manner is not correct and hence denied. The Inspector of the respondent- Corporation visited the petitioner''s factory on 17.4.1998

and contacted Sri V. Ramakrishna, Manager, who is said to be the son of the owner for submission of the records. However, the Manager did not

produce the required records on the plea that they were with their Accountant. Upon verification of the premises and physical count of the persons

employed therein, the Inspector observed that the petitioner is having 2 petrol pumps, 1 diesel pump and service station, which are working 24

hours a day and having 2 cashiers, 6 pump boys, 2 service station employees, besides one Accountant and one Manager, are working in the

factory premises, the factory is amenable u/s 2(12)(a) of the Act.

Accordingly the factum of coverage of the petitioner''s factory under the Act was brought to the notice of the petitioner vide Inspector''s visit note

dated 17.4.1998 which was duly acknowledged by the Manager of the petitioner. On the basis of the report submitted by the Inspector, the

respondent-Corporation after examining the requirements of Section 2(12)(a), has issued the coverage intimation in Form C-11 dated 15.5.1998

with a request to comply under the provisions of the Act. But the petitioner failed to comply under the Act. Accordingly, the Corporation under

due process of law, has issued a notice in Form C-18 date 22.2.2000 calling upon the petitioner to show cause as to why contributions should not

be assessed on ad hoc basis as provided u/s 45A and be recovered u/s 45-C to 45-I of the Act. The action taken by the respondent Corporation

is perfectly legal, valid and within the jurisdiction.

The allegation of the petitioner in page 3 of petition that mere enlisting the names will not be sufficient for coverage and no opportunity was given

before coverage is not correct and hence denied. The coverage of a factory under the Act is by application of Act itself and does not require any

reminder or visit of an Inspector for coverage. As per the mandatory provisions contained in Section 2A that every factory or establishment to

which this Act applies shall be registered within such time and in such manner as prescribed under Regulation 10B of the ESI(G) Regulation 1950

framed under the Act. According to which the Act applies for the first time, shall furnish to the appropriate Regional Office not later than 15 days

after the Act become applicable to the factory or establishment, declaration of registration in writing in Form-01 and the Corporation after receipt

of such Form-01 will allot a code number and communicate the same to the employer for further compliance. Failure to submit the above return,

the Corporation in accordance with the provisions of Section 44(2) called upon the employer to submit such return for registration and

accordingly, the Inspector visited the factory on 17.4.1998, but the petitioner failed to produce the records. The Inspector, upon physical

verification has furnished the required details for coverage u/s 2(12)(a) which was duly acknowledged and counter signed by the petitioner herein.

Hence it is not correct to say that there are no details for coverage of the petitioner''s factory under the Act. The petitioner himself counter signed

the visit note, which contained the details of employees, usage of power and manufacturing activity which are the postulate elements for the

coverage of a factory u/s 291(2)(a) of the Act. As mentioned supra, the coverage of a factory under the Act is by application of law itself, and

hence no opportunity need be given before covering a factory under the Act. The case laws cited by the petitioner are not applicable to the present

circumstances of the case. The allegation is therefore denied. Another allegation of the petitioner that no reasonable opportunity was given before

passing the order on ad hoc basis is totally incorrect, false and misleading this Court. In this connection it is submitted that the petitioner failed to

comply in accordance with the provisions of Section within the time limit. The respondent after following the due process of law has issued a notice

in form C-18 dated 22.2.2000 proposing to assess the contributions on ad hoc basis for the period from 17.4.1998 to 30.9.1999 and also

afforded an opportunity to represent his case personally on 7.4.2000 in case of any grievance objection on coverage/compliance under the Act.

However, the petitioner has deliberately refused to take delivery of the notice due to obvious reasons best known nor submitted any record

furnishing the actual contributions due and the respondent-Corporation having no other alternative has passed the order u/s 45A dated 7.7.2000

duly following the principles of natural justice. Thereafter also the petitioner did not comply under the Act and the respondent-Corporation has

preferred a claim in form C-19 dated 9.8.2000 before the 2nd respondent herein to effect the recovery of the contributions due from the petitioner

as provided u/s 45-C to 45-I of the Act. The Recovery Officer who is the 2nd respondent herein has also issued another notice in form CP2 dated

7.9.2000 calling upon the petitioner to pay the amount due within 15 days of the receipt of the same along with further interest till the date of

payment. Even this did not result in the payment of the same by the petitioner. Hence the Regional Office has resorted to initiation of coercive steps

one amongst which is the issuance of prohibitory orders/garnishee proceedings in accordance with the powers conferred upon him 2nd and 3rd

schedules of I.T. Act, 1961 and I.T.C.P. Rules, 1962 read with Section 45-H and 45-G of the Act as amended. However, the petitioner did not

avail the opportunity but approached this Court with ulterior motives only to avoid the deposit of amount as provided u/s 75(2-B) of the Act.

9. On the strength of the respective pleadings of the parties, the following issues were settled by the Court:

1. Whether the petitioner is not liable to be covered under the ESI Act as it is engaged only nine persons?

2. Whether the petitioner is not liable to pay any amount as demanded in the recovery order dated 7.9.2000?

3. To what relief?

10. The partner of the petitioner was examined as PW. 1 and Exs. P1 to P5 were marked. As against this evidence, RWs. 1 and 2 were examined

and Exs. R1 to R7 were marked. The Court below appreciated the evidence of PW. 1, RWs. 1 and 2 and further recorded findings in detail at

paragraph 11 arriving at a conclusion that the petitioner failed to avail the personal hearing though show cause notice had been issued and in view

of the fact that the contributions were not paid for the above period u/s 75A of the Act and further in view of the admission made by PW. 1 that

certain notices had been received by him, the stand taken by RW. 2 had been relied upon and a finding had been recorded that reasonable

opportunity had been given and hence in the light of the same, there is no illegality in the said order and accordingly dismissed the petition with

costs.

11. RW. 1 in cross-examination no doubt deposed that other than the visitor''s note he had not filed any document showing that 12 workers were

working in the factory at the time of his visit and he had not recorded the individual statements of each of the worker and he had also not noted

down the names of the workers in his visit note. He further deposed that nobody obstructed him to note the names of the workers and to record

their statements etc. He had denied the other suggestions. No doubt RW. 1 deposed about Ex. R1, the visit note dated 17.4.1998 and Ex. R2 the

preliminary inspection report dated 17.4.1998.

12. In the evidence of RW. 2, he deposed relating to Ex. R3, the intimation; Ex. R4 notice; Ex. R5 the postal cover written as refused; Ex. R6 the

order and Ex. R7 the letter. In the cross-examination this witness deposed that it is true that the petitioner-establishment was covered basing on

Ex. R2 inspection report, but names of the employees were not mentioned in Exs. R1 and R2 and it is true that in Ex. R1 there is over-writing with

regard to the employees. The witness, however, added that the total number of employees are tallying, but the concerned Inspector did not initial

the said over-writing. He further deposed that the individual statements of the employees are not available in Exs. R1 and R2. Ex. R3 is showing

that the petitioner employed more than twelve employees, and the details of the inspection and the names of the employees will not be available in

Ex. R3 intimation about the coverage. This witness had denied certain suggestions.

13. The evidence of PW. 1 is to the effect that since he never employed more than nine employees at any point of time, the provisions of the Act

cannot be made applicable.

14. In E.S.I. Corporation case 1975 Lab. I.J. 1025 the Division Bench of Allahabad High Court at paragraphs 4 and 5 observed as hereunder:

There can be no doubt that the Corporation is a statutory authority and in applying the provisions of the Act to a particular employer, it exercises

statutory functions conferred by the Act upon it. Before deciding this question of the applicability of the Act, the Corporation is required to collect

materials relevant to the question. It is then required to decide the question whether the Act applied or not to the establishment or factory. The

decision has to be objective and not subjective. It cannot also be disputed that the decision of the Corporation seriously affects the rights of the

employers inasmuch as if the Act is held applicable to them they have to pay certain amounts towards contribution to the Employees'' State

Insurance Fund and in case of default they become liable to penal action. In these circumstances, it cannot but be held that the Corporation must

act judicially when it decides the question whether the Act does or does not apply to a particular employer.

It was contended by learned Counsel for the appellant that since the Act sets up an Employees'' Insurance Court for decision of certain disputes

where the employer can get a hearing, it is not necessary to give a hearing at the stage of the decision by the Corporation. We are unable to agree

with this contention. Whether the function of the Corporation in deciding the question whether the Act applies or not to a particular employer is

quasi-judicial or not, does not depend upon whether there is any further remedy open to the employer or not. Learner counsel for the applied

relied upon a decision of the Supreme Court in Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, . In our

opinion, this case supports the view that we have taken rather than the view which the learned Counsel has contended for. It was held in this case

that the dividing line between administrative power and quasi-judicial power is quite thin and is being gradually obliterated, that the principles of

natural justice apply to the exercise of the administrative power as well. It would follow from this decision that the principles of natural justice

would apply even if it were held that the Corporation was only exercising an administrative power in deciding whether the Act applied or not to a

particular employer.

15. In E.S.I. Corporation v. Subbaraya Adiga ILR 1988 Kar 1806 it was held as hereunder:

A list of employees prepared by the E.S.I. Inspector in the course of his visit to an establishment, in order to find out whether the provisions of the

E.S.I. 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 employee, as the case may be, if at that time other persons other than the employees are present, the

names and addresses of atleast two of them with their signatures and also the signature of the Proprietor or Manager or the person-in-charge of the

establishment should be obtained at the end of the list and a copy of which be furnished to the establishment.

The above view, in fact, was followed even by the Division Bench of Karnataka High Court in Regional Director E.S.I. Corporation Case 1999

III LLJ (Supp) 235.

16. In Srinivasa Rice Mills case (2007) 1 SCC 705 the Apex Court, in fact, had referred to the decision of the Division of Karnataka High Court

at paragraph 28 and further recorded certain reasons at paragraphs 29 and 30 and it may be appropriate to have a look at the relevant paragraphs

in the said decisions, viz., 28 to 30 which read as hereunder:

Our attention has, however, been drawn to a decision of the Karnataka High Court in Regional Director, E.S.I. Corporation Vs. Karnataka

Asbestos Cement Products and Another, .In that case the High Court referred to its earlier decision in ESI Corporation v. Subbaraya Adiga

(1988) 57 FLR 613 (Kant) wherein it was stated : (FLR p.614) ''A list of employees prepared by the E.S.I. Inspector in the course of his visit to

an establishment, in order to find out whether the provisions of the E.S.I. 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 employee, as the case may be, if at

that time other persons other than the employees are present, the names and addresses of atleast two of them with their signatures and also the

signature of the Proprietor or Manager or the person-in-charge of the establishment should be obtained at the end of the list and a copy of which

be furnished to the establishment. On the basis thereof, in Karnataka Asbestos Cement Products it was directed : (FLR p. 639, para 5)

Learned Counsel for the Corporation, Sri R. Gururajan, submitted that the Employees'' Insurance Court erred in setting aside the demand of

contribution for the period 1.1.1986 to 31.5.1986, relying on the evidence relating to earlier period. This argument overlooks the fact that the

entire proceedings initiated was on the basis of the report of the inspector in regard to the previous periods. If that report had to go, all that

followed on account of the report should also go''. Indisputably, it is the statutory obligation of the employers to furnish the name, father''s name,

place from which the employee hails, the designation, the length of service, emoluments and the signature or thumb impression of the employee, as

the case may be, but the same would not mean that while issuing a notice, the authorities of the Act are bound to disclose the same. They in fact

without the names and other details of the employees furnished by the employer would not know thereabout. However, Section 45 of the Act

empowers the Inspector to take down the details of such employees. Presumably, only in a case where discrepancy arises between the information

furnished by the employer and the report that the Inspector may make pursuant to or in furtherance of these inspections and in such cases such

details may have to be furnished.

17. It is true that at paragraph 30 the Apex Court observed that indisputably, it is the statutory obligation of the employers to furnish the name,

father"s name, place from which the employee hails, the designation, the length of service, emoluments and the signature or thumb impression of the

employee, as the case may be, but the same would not mean that while issuing a notice, the authorities of the Act are bound to disclose the same.

They in fact without the names and other details of the employees furnished by the employer would not know thereabout. However, Section 45 of

the Act empowers the Inspector to take down the details of such employees. Presumably, only in a case where discrepancy arises between the

information furnished by the employer and the report that the Inspector may make pursuant to or in furtherance of these inspections and in such

cases such details may have to be furnished.

18. Section 45 of the Act dealing with Inspectors, their functions and duties reads as hereunder:

(1) The Corporation may appoint such persons as Inspectors, as it thinks fit, for the purposes of this Act, within such local limits as it may assign to

them.

(2) Any Inspector appointed by the Corporation under Sub-section (1) (hereinafter referred to as Inspector), or other official of the Corporation

authorized in this behalf by it may, for the purposes of enquiring into the correctness of any of the particulars stated in any return referred to in

Section 44 or for the purpose of ascertaining whether any of the provisions of this Act has been complied with-

(a) require any principal or immediate employer to furnish to him such information as he may consider necessary for the purposes of this Act; or

(b) at any reasonable time enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require

any person found in charge thereof to produce to such Inspector or other official and allow him to examine such accounts, books and other

documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine, with respect to any matter relevant to the purposes aforesaid, the principal or immediate employer, hi agent or servant, or any person

found in such factory, establishment, office or other premises, or any person whom the said Inspector or other official has reasonable cause to

believe to be or to have been an employee;

(d) make copies of, or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other

premises;

(e) exercise such other powers as may be prescribed.

(3) An Inspector shall exercise such functions and perform such duties as may be authorized by the Corporation or as may be specified in the

regulations.

19. Section 45A dealing with determination of contributions in certain cases reads as hereunder:

(1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance

with the provisions of Section 44 or any Inspector or other official of the Corporation referred to in Sub-section (2) of Section 45 is (prevented in

any manner) by the principal or immediate employer or any other person, in exercising his functions or discharging his duties u/s 45, the

Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees

of that factory or establishment: PROVIDED that no such order shall be passed by the Corporation unless the principal or immediate employer or

the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.

(2) An order made by the Corporation under Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the

amount determined by such order as an arrear of land revenue u/s 45B (or the recovery u/s 45C to Section 45I).

20. Further strong reliance was placed on the decision reported in E.S.I.C. Vs. C.C. Santhakumar, , wherein the Apex Court while dealing with

Sections 45-A to 45-I and Section 75 of the Act observed that these provisions would go to show that a summary method of determination is

contemplated.

21. As can be seen from the material available on record, it appears that though an opportunity had been given, the same had not been availed by

the petitioner. It is also true that the Apex Court observed that the statutory obligation to furnish the details would lie on the employer, but as can

be seen from the evidence of RWs. 1 and 2 especially certain admissions made in the cross-examination and the nature of the evidence of PW. 1,

it appears that simply on the visitor''s note, the strength of the employees had been written. It is true that the employer appears to have failed in

discharging his obligation in furnishing all the details, but in the light of the evidence of RW. 1, nothing prevented RW. 1 in noting such details. In the

light of the nature of admissions made by both RWs. 1 and 2, though some opportunity had been given and notices had been served and though

the petitioner had not availed the said opportunity, while fastening the liability and while arriving at a particular conclusion, the respondents are

expected to rely upon the acceptable material and in the light of the admissions made by RWs. 1 and 2 and since except the evidence of PW. 1,

there is no other evidence available on record, this Court is of the considered opinion that an opportunity to be given to both parties to further

substantiate their respective contentions, no doubt in the light of the views expressed by the Apex Court specified supra. It is made clear that the

petitioner may have to blame itself for its conduct though opportunity had been given the same had not been availed of. However, this order of

remand is being made in the light of certain admissions made by both RWs. 1 and 2 in arriving at a conclusion.

22. Accordingly the impugned order is hereby set aside and the matter is remanded. Let the Court give an opportunity to both parties to let in

further evidence and decide the matter afresh no doubt in the light of the ratio which had been laid down by the Apex Court in the judgments

specified supra 3 and 4.

23. Accordingly the appeal is allowed to the extent indicated above. There shall be no order as to costs.

24. It is now stated that the amount deposited is lying in deposit. Till appropriate orders are made by the Court, status quo obtaining as on today

to be maintained. Inasmuch as an order of remand is made, the matter to be disposed of at the earliest point of time. The petitioner and

respondents to appear before the Court on 10.08.2007.