

(2010) 12 CAL CK 0021

Calcutta High Court

Case No: C.O. No. 576 of 2005

Careway Transport of India.

APPELLANT

Vs

Employees' State Insurance
Corporation

RESPONDENT

Date of Decision: Dec. 13, 2010

Acts Referred:

- Employees State Insurance Act, 1948 - Section 75(1)

Citation: (2011) 1 CHN 392

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Swapan Kumar Mallick and Prasun Ghosh, for the Appellant; None Appears, for the Respondent

Judgement

Prasenjit Mandal, J.

This application is directed against the order dated December 22, 2004 passed by the learned Judge, Employees' Insurance Court, Calcutta, West Bengal in E.S.I. Case No. 117 of 1993 thereby dismissing the said case on contest.

2. The short fact is that the Petitioner is a registered partnership firm engaged in road transport business and it never engaged 20 or more persons at any time. In July, 1993, the Petitioner received a letter from the opposite party contending that the Petitioner is covered under the provisions of E.S.I. Act and so it is required to be registered by submitting the prescribed form No. 01. The Petitioner contended that at no point of time, it employed 20 or more persons in its establishment. So, question of registration under the provisions of the said E.S.I. Act does not arise. The Petitioner has a small office in Siliguri and other provinces outside West Bengal where the provisions of the E.S.I. Act have no force. Therefore, the Petitioner is not covered under the provisions of the said E.S.I. Act. So, it filed the case u/s 75(1)(g) of the E.S.I. Act, 1948 which was rejected by the impugned order. Being aggrieved, this

application has been filed.

3. Now, the point for consideration is whether the learned Judge, E.S.I. Court is justified in rejecting the case of the Petitioner.

4. Upon due consideration of the submission of the learned Advocate for the Petitioner and on perusal of the materials on record, I find that the insurance inspector, O.P.W. No. 1, visited the office of the Petitioner and found that the number of employees of the Petitioner was 21 from December 4, 1992. He held the inspection on August 20, 1993. He has deposed in Court to that effect and in support of his deposition he has stated that after inspection he prepared and submitted a survey report which has been marked as exhibit "A". This inspector has deposed in his official capacity and from his deposition, I find that he signed on the relevant register of the Petitioner. The contention of the Petitioner is that such signature of the inspector of the opposite party does not bear any official seal. This contention, I hold, cannot be accepted because the inspection was held on the spot and the official seal cannot be carried to that place to avoid any further untoward incident or complications. When the witness himself proves his signature on the register of the Petitioner and he proves his survey report, I am of the view that there is nothing to disbelieve in his statement. From the other papers submitted by the opposite party, it appears that the Petitioner is covered under the Employees' Provident Fund Act, 1952. The Petitioner was brought under the purview of the E.P.F. Act on the basis of the report of the enforcement officer who inspected the records of the Petitioner and found that 20 persons were employed on April 1, 1992. That was the paper of the Petitioner. Therefore, the statement of the O.P.W. 1 (inspector) not only gets support from his survey report, but also from other documents of the Petitioner.

5. It is interesting to note that the Petitioner has withheld the best witness, i.e., the partners of the firm to say the actual number of employees engaged in the establishment of the Petitioner. Only the learned Counsel who has no direct knowledge about the day to day affairs of the Petitioner but looks after the case on behalf of the Petitioner, has been examined as P.W.1. So, it is crystal clear that the Petitioner has withheld the best witnesses who can say about the day-to-day affairs of the Petitioner, but, has examined one expert on legal matters to get rid of the steps taken by the inspector of the opposite party.

6. As regards, the other document, i.e., the attendants register, it can well be prepared at any time to show that only 4 persons are employed in the establishment of the Petitioner. So, without corroboration by other documents relating to financial matter, this attendance register cannot be considered as genuine. Therefore, the contention of the Petitioner that it has 4 employees only, has been rightly rejected by the learned Judge, E.S.I. Court.

7. In view of that matter, I find that the findings of the learned Judge are based on materials on record and that the same are not perverse at all. Therefore, there is

nothing to interfere with the impugned order.

8. Accordingly, I hold that this application is meritless. It is, therefore, dismissed. Considering the circumstances, there will be no order as to costs.

9. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

Later :

10. Heard learned counsel for both the sides. Mr. Moitra, learned counsel for the opposite party intends to file supplementary affidavit on this day. Since the judgment is ready and the supplementary affidavit has not been filed earlier, the same is not accepted.