



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3460]

**FRIDAY ,THE NINTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL MISCELLANEOUS APPEAL NO: 1150/2011

Between:

M/s. Jaya Venkatarama Industries Limited

...APPELLANT

AND

The Esi Corporation And 4 Others and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.V SURENDRA REDDY

Counsel for the Respondent(S):

1.P RAJASEKHAR

The Court made the following:

HON'BLE SRI JUSTICE NYAPATHY VIJAY**C.M.A.No.1150 of 2011****JUDGMENT:**

1. The present Appeal is filed under Section 82 of the Employees State Insurance Act, 1948 against the Order in EIC.No.31 of 2004, dated 16.08.2011 passed by the Employees Insurance Court and Chairman, Industrial Tribunal-1 at Hyderabad.

2. The Appellant herein is the Petitioner in the EIC.No.31 of 2004.

3. The facts leading to filing of the present Appeal are as follows:-

The Petitioner/Appellant is an industry, which is situated in remote village of Inkollu, Prakasam District. The spinning mill was earlier run in the name and style of Purchur Cotton Growers Co-operative Spinning Mills Ltd., which has been set up in 1989 with 95% equity holding by the Government of Andhra Pradesh. As the spinning mill had become sick, it was closed from December, 2000 onwards. The Petitioner had purchased the mill being the highest bidder in November, 2022 and as per the terms and conditions of sale, the Petitioner has no obligation with regard to the salary dues and ESI contributions etc. While so, the Petitioner received a notice on 28.04.2004 from the Respondent No.2 demanding to pay Rs.89,373/-

as contribution for the period from April, 2003 to October, 2003. The said notice did not furnish any particulars and further no opportunity of personal hearing was given to the Petitioner. Though the Petitioner had submitted a reply, the Respondent No.2 initiated recovery proceedings on 16.06.2004 and also issued a demand notice on 17.06.2004. Hence, the application was filed before the Employees Insurance Court.

4. In the application, the Appellant/Petitioner contended that the ESI Scheme was not implemented in places like Ganapavaram Village near Chilakaluripeta in Guntur District, even though several textile, spinning, ginning and oil industries are located there. It is further stated that there is no E.S.I dispensary in and around Inkollu Village, where the Appellant/Petitioner factory is situated and therefore there is no justification on the part of the Respondent Nos.2 and 3 to demand the amount in the absence of any social security measure. It was also stated that the objective of the ESI Act is to provide health insurance to the employees and family members of the employees and that the nearest ESI dispensary being at a distance of 40 Kms. away from the location of the factory in question, there is no purpose in charging the amounts towards ESI from the Petitioner.

5. In the Writ Statement filed by the Respondent Nos.1 to 3 it was stated that the Petitioner factory was engaged in manufacture of cotton yarn with the aid of power and employees not less than 10 persons. As per the enquiry report, the Petitioner factory attracts the provisions of Sections 1(3) & 2(12) of the E.S.I. Act and as the Petitioner failed to pay the contributions as per the Act, the proceedings were issued and the same cannot be faulted with. It is stated that the medical facilities are provided to the Petitioner factory through panel of Doctor/Clinic at Inkollu and also in the ESI Hospital at Gunadala, Vijayawada catering to the needs of the workers and non-implementation of the ESI scheme is not relevant in areas like Chilakaluripeta and Ganapavaram in Guntur District.

6. The Respondent No.4 also filed a Counter Affidavit stating that there is no implementation of the ESI scheme in and around the premises where the Appellant factory is located is irrelevant for the purpose of the ESI Act. During pendency of the case, Respondent No.5 was brought on record.

7. The Respondent No.5 i.e. Workers' Union filed a Written Statement stating that the ESI dispensary is at a distance of 40 Kms. and that there is no direct bus or train to Inkollu and Chilakaluripeta. It

is further stated that there is no ESI dispensary in and around the premises of the Appellant factory.

8. On the basis of the pleadings, the following issues were framed by the trial Court;

(1) Whether the Petitioner factory is not amenable to the coverage under the ESI Act?

(2) Whether the Petitioner is not liable to pay any amount as demanded in the notices dated 16.06.2004 and 17.06.2004?

9. On behalf of the Appellant, one R.J. Raju and A. Uma Maheswar Rao are examined as P.Ws 1 and 2 and Ex.P.1 Xerox copy of Sale Deed, Ex.P.2 C-18 Notice dated 28.4.2004, Ex.P.3 Letter of Petitioner with Postal Receipt dated 10.05.2009, Ex.P.4 Copy of C-19 Notice dated 16.06.2004, Ex.P.5 Notice of Demand of defaulter dated 17.06.2024, Ex.P.6 Letter of Petitioner dated 22.06.2024, Ex.P.7 Oriental Insurance Company Ltd., Policy, Ex.P.8 Xerox copy of FD Rs.25,000/- dated 20.08.2003 (3), Ex.P.9 Xerox copy of DD Rs.36,946/- dated 26.12.2003, Ex.P.10 Letter of Petitioner dated 28.08.2003, Ex.P.11 Authorization letter dated 23.03.2009, Ex.P.12 Bank Receipt dated 24.03.2009 and Ex.P.13 Certificate issued by Panchayat Secretary of Inkollu dated. 23.11.2009 were examined.

10. On behalf of the Respondents, one T. Prakash and R.W.2 M. Lakshmi Kanthaiah were examined and Ex.R.1 Copy of C-11 Notice dated 17.04.2000, Ex.R.2 Copy of C-18 Notice dated 28.04.2004, Ex.R.3 Xerox copy of Gazette and Ex.R.4 Letter of Respondent dated 07.02.2000 were examined.

11. After considering the oral and documentary evidence, the ESI Court rejected the application of the Petitioner. Hence, the present Appeal is filed.

12. Heard Sri V. Surendra Reddy, learned Counsel for the Appellant and Sri P. Rajsekhar, learned counsel appearing for the Respondents.

13. The counsel for the Appellant contended that the Appellant factory was never intimated of the coverage under the ESI Act. It was further contended that the coverage under the ESI Act and before driving the Appellant factory under the coverage under the Act, if an opportunity was given to the Appellant factory, it would been possible for them to explain the non-availability of medical facilities at Inkollu Village and therefore the inclusion in E.S.I. Act is an unwarranted burden on the Appellant factory.

14. The substantial question that was raised by the Petitioner/Appellant was whether the application for granting exemption under Section 87 of the E.S.I. Act is an absolute requirement.

15. The Standing Counsel for the Respondent-Corporation contended that the order of the ESI Court cannot be faulted, as the scope of Appeal is being limited to substantial questions of law as required under Section 75 of the E.S.I. Act and further contended that no substantial questions arise for consideration and that the Appeal is liable to be dismissed.

16. Having heard the respective counsel, this Court opines as follows:-

There is no dispute to the fact that the Appellant factory is covered under the provisions of the E.S.I. Act. R.W.2 in his evidence had stated that a panel Doctor by name Dr.E. Krishna Murthy, who was attached to E.V.S. Memorial Hospital at Inkollu was extending medical services to the employees of the Appellant factory and a copy of the letter was also sent to the Appellant factory. It is further stated by R.W.2 that the insured employees are entitled to take treatment even with regard to serious ailments in Super Specialty Hospitals. Though the Appellant factory was said to have paid insurance to its employees under Workmen's Compensation Act, 1923 with the Oriental Insurance Company on the premise that there was no medical services available under the Act, the same *per se* cannot be a ground to exempt the Appellant factory from paying the E.S.I dues.

17. One of the grounds urged by the counsel for the Appellant is that Section 87 of the ESI Act does not mandate any formal application from the Appellant factory seeking for exemption and *suo motu* exemption can also be granted by the appropriate Government considering that the number of employees in and around the Inkollu Village does not require establishment of E.S.I dispensary.

18. This Court is of the opinion that the appropriate Government alone can consider this aspect as it requires a fact evaluation and an independent cause of action for the Appellant. As long as the premises is under coverage of E.S.I. Act, there cannot be any exemption for payment by the authorities constituted under the Act. This Court does not find any substantial question of law required to interfere with the order under challenge.

19. Therefore, this Court does not find any reason to interfere with the order passed by the Employees Insurance Court and Chairman, Industrial Tribunal-1 at Hyderabad. The C.M.A is therefore dismissed.

No order as to costs. As a sequel, pending applications, if any, shall stand closed.

NYAPATHY VIJAY, J

Date: 09.05.2025

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HON'BLE SRI JUSTICE NYAPATHY VIJAY

C.M.A.No.1150 of 2011

Date: 09.05.2025

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