IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 8335 and 8336 of 2004

Decided On: 17.09.2009

Appellants: **Employees State Insurance Corporation**
Vs.
Respondent: **Bhakra Beas Management Board and Anr.**

Hon'ble Judges:
Markandey Katju and Asok Kumar Ganguly, JJ.

Acts/Rules/Orders:
Employees State Insurance Act, 1948 - Sections 45A, 45B, 46, 75, 75(1) and 82

Cases Referred:
Fertilizer & Chemicals Tranvancore Ltd. v. Regional Director, ESIC and Ors. : 2009 (11) SCALE 766

Disposition:
Appeal allowed

ORDER

1. Heard learned Counsel for the parties.

2. This appeal has been filed against the judgment and order dated 14.11.2002 of the High Court of Delhi at New Delhi whereby the appeal filed by the respondent No. 1 herein has been allowed and it has been declared that the respondent No. 1 Board is not liable to make any contribution towards the Employees State Insurance in respect of the impugned demand.

3. The facts in detail have been given in the impugned judgment and hence we need not repeat the same herein.

4. It appears that the appellant had issued a notice under Section 45A of the Employees State Insurance Act, 1948 (hereinafter for short 'the Act') for making employer's contribution towards the employees state insurance. The respondent No. 1 Board challenged that notice before the Employees State Insurance Court, Delhi. It appears that neither the workers concerned of the respondent No. 1 Board nor any one of them in representative capacity were made parties in the petition under Section 75 of the Act before the Employees State Insurance Court or before the High Court.

5. The Employees State Insurance Court decided in favour of the appellant and against the respondent No. 1 Board and directed the respondent No. 1 to pay its contribution towards the employees insurance. Against the said order of the Employees State Insurance Court, the respondent No. 1-Board filed an appeal under Section 82 of the Act before the High Court and the High Court has

allowed the said appeal holding that the sub-stations of the respondent No. 1 Board are not factories within the meaning of the Act. Hence this appeal by special leave.

6. This Court has recently held in the case of Fertilizer & Chemicals Tranvancore Ltd. v. Regional Director, ESIC and Ors. 2009 (11) SCALE 766 as under:

> 5. It may be noted that in its petition before the Employees Insurance Court, the appellant herein only impleaded the Employees State Insurance Corporation and the District Collectors of Alleppey, Palaghat and Cannanore as the respondents but did not implead even a single workman as a respondent.
>
> 6. Labour statutes are meant for the benefit of the workmen. Hence, ordinarily in all cases under labour statutes the workmen or at least some of them in a representative capacity, or the trade-union representing the concerned workmen must be made a party. Hence, in our opinion the appellant (petitioner before the Employees Insurance Court) should have impleaded atleast some of the persons concerned, as respondents.

7. The case of the appellant was that, in fact, none of the concerned persons was its employee and it was difficult to identify them.

8. In this connection we may refer to Section 75(1)(a) of the Act which states that if any question or dispute arises as to whether any person is an employee of the employer concerned, or whether the employer is liable to pay the employer's contribution towards the said persons' insurance, that is a matter that has to be decided by the Employees Insurance Court. Hence, in our opinion, the concerned person has to be heard before a determination is made against him that he is not an employee of the employer concerned.

9. The rules of natural justice require that if any adverse order is made against any party, he/she must be heard. Thus if a determination is given by the Employees Insurance Court that the concerned persons are not the employees of the petitioner, and that determination is given even without hearing the concerned persons, it will be clearly against the rules of natural justice.

10. It may be seen that Section 75 of the Act does not mention who will be the parties before the Insurance Court. Since the determination by the Insurance Court is a quasi-judicial determination, natural justice requires that any party which may be adversely affected or may suffer civil consequences by such determination, must be heard before passing any order by the authority/court.

11. In our opinion, wherever any petition is filed by an employer under Section 75 of the Act, the employer has not only to implead the ESIC but has also to implead atleast some of the workers concerned (in a representative capacity if there are a large number of workers) or the trade-union representing the said workers. If that is not done, and a decision is given in favour of the employer, the same will be in violation of the rules of natural justice. After all, the real concerned parties in labour matters are the employer and the workers. The ESI

Corporation will not be in any way affected if the demand notice sent by it under Section 45A/45B is quashed.

12. It must be remembered that the Act has been enacted for the benefit of the workers to give them medical benefits, which have been mentioned in Section 46 of the Act. Hence the principal beneficiary of the Act is the workmen and not the ESI Corporation. The ESI Corporation is only the agency to implement and carry out the object of the Act and it has nothing to lose if the decision of the Employees Insurance Court is given in favour of the employer. It is only the workmen who have to lose if a decision is given in favour of the employer. Hence, the workmen (or at least some of them in a representative capacity, or their trade union) have to be necessarily made a party/parties because the Act is a labour legislation made for the benefit of the workmen.

13. In the present case the workmen concerned were not made parties before the Employees Insurance Court, nor was notice issued to them by the said Court.

7. Neither the workers of the respondent No. 1 nor any one of them in representative capacity were impleaded either before the Employees State Insurance Court or before the High Court. In our opinion, this is in violation of the principles of natural justice. Hence, we allow this appeal, set aside the impugned judgment and order of the High Court as well as that of the Employees State Insurance Court and remand the matter to the Employees State Insurance Court for deciding the same after impleading the workers of the respondent No. 1 Board or their union in a representative capacity. Since, the case pertains to the year 1987, we request the Employees State Insurance Court to decide the same expeditiously.

8. Appeal allowed. No order as to the costs.

Civil Appeal No. 8336/2004

9. For the reasons stated in order passed in Civil Appeal No. 8335/2004, this appeal is also allowed and the impugned judgment of the High Court as also of the Employees Insurance Court are set aside and the matter remanded to the Employees State Insurance Court for deciding a fresh after impleading the workers of the Respondent No. 1 or their union in a representative capacity. Since, the case pertains to the year 1987, we request the Employees State Insurance Court to decide the same expeditiously.

10. Appeal allowed. No order as to the costs.

Equivalent Citation: 2009(11)SCALE766

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 917-918 of 2004

Decided On: **20.08.2009**

Appellants: **Fertilizers and Chemicals Travancore Ltd.**
Vs.
Respondent: **Regional Director, ESIC and Ors.**

Hon'ble Judges:
Markandey Katju and Asok Kumar Ganguly, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: C.N. Sree Kumar, P.R. Nayak and D. Prashar, Advs For Respondents/Defendant: G. Prakash B. Anand, V.J. Francis and Anupam Mishra, Advs.

Prior History:

From the Judgment and Order dated 30.10.2002 of the High Court of Kerala at Ernakulam in MFA No. 19 of 1994 and MFA No. 921 of 1993 (C)

Disposition:
Appeal allowed

ORDER

1. Heard learned Counsel for the parties.

2. These appeals have been filed against the common impugned judgment and order dated 30.10.2002 of the High Court of Kerala at Ernakulam whereby the appeal filed by the respondent-Employees State Insurance Corporation (hereinafter for short the 'ESIC') under Section 82(2) of the Employees State Insurance Act, 1948 (hereinafter for short 'the Act') has been allowed and the appeal filed by the appellant herein has been dismissed.

3. It appears that a demand notice was sent against the appellant company under Section 45A of the Act in respect of the employers contribution under the Act. The appellant challenged the said demand notice by filing a petition under Section 75 of the Act before the Employees Insurance Court, Alleppey. The Employees Insurance Court in its order dated 4.2.1993 made the following observations:

12. If reliance is made on the rational laid down by the High Court in the abovesaid decisions it is very clear that the identities of the employees should be an essential factor for bringing under coverage employees and paying contribution in respect of them. Here, in this case, because of the peculiar nature of the work arrangement, at Depots, it is impossible to register an employee engaged in the loading and unloading work under the ESI Scheme. If there is requirement, a group of headload workers will come and they do the work collectively and payments are received on tonnage basis. On behalf of this group engaged, one person will collect payment from the depot and distribute the same among themselves. Such labourers coming on one day may not be the same in next day. That is because of this peculiar nature of arrangement among workers on the basis of understanding or agreement reached between trade unions. After completing work in the depot they will go elsewhere and do identical nature of work. If such is the nature of work it is quite improper to compel the applicant to pay contribution on the payments given in various depots merely because they obtained the services of such workers. However as a principal employer the applicant cannot absolve themselves from the responsibility of covering such employees under the scheme because those employees are rendering service to them. Therefore it would be appropriate that in close co-operation with the ESI Corporation they should take effort at least now to ascertain the identities of those headload workers so as to cover them also under the ESI Scheme. The ESI Corporation will also make immediate arrangement for bringing all the loading and unloading workers in the depots under the ESI Scheme. The ESI Corporation shall work out the modus operandi for bringing these workers under the coverage. On such registration of the headload workers under the scheme, the applicant will pay contribution from the date of passing of the order passed under Section 45A of the ESI Act viz., 15.6.1989. The ESI corporation shall work out the contribution from that date in respect of workers who are brought under scheme and who were found to be working from that day onwards. With the above observation and direction, this application is disposed of.

4. Aggrieved against the said order dated 4.2.1993 of the Employees Insurance Court, both the appellant herein as well as the Employees State Insurance Corporation filed appeals before the High Court under Section 82 of the Act. The appeal filed by the respondent-ESIC has been allowed and the appeal filed by the appellant herein has been dismissed. Hence, the appellant is before us by way of the present appeal by special leave.

5. It may be noted that in its petition before the Employees Insurance Court, the appellant herein only impleaded the Employees State Insurance Corporation and the District Collectors of Alleppey, Palaghat and Cannanore as the respondents but did not implead even a single workman as a respondent.

6. Labour statutes are meant for the benefit of the workmen. Hence, ordinarily in all cases under labour statutes the workmen, or at least some of them in a representative capacity, or the trade-union representing the concerned workmen must be made a party. Hence, in our opinion the appellant (petitioner before the Employees Insurance Court) should have impleaded atleast some of the persons concerned, as respondents.

7. The case of the appellant was that, in fact, none of the concerned persons was its employee and it was difficult to identify them.

8. In this connection we may refer to Section 75(1)(a) of the Act which states that if any question or dispute arises as to whether any person is an employee of the employer concerned, or whether the employer is liable to pay the employer's contribution towards the said persons' insurance, that is a matter that has to be decided by the Employees Insurance Court. Hence, in our opinion, the concerned person has to be heard before a determination is made against him that he is not an employee of the employer concerned.

9. The rules of natural justice require that if any adverse order is made against any party, he/she must be heard. Thus if a determination is given by the Employees Insurance Court that the concerned persons are not the employees of the petitioner, and that determination is given even without hearing the concerned persons, it will be clearly against the rules of natural justice.

10. It may be seen that Section 75 of the Act does not mention who will be the parties before the Insurance Court. Since the determination by the Insurance Court is a quasi- judicial determination, natural justice requires that any party which may be adversely affected or may suffer civil consequences by such determination, must be heard before passing any order by the authority/court.

11. In our opinion, wherever any petition is filed by an employer under Section 75 of the Act, the employer has not only to implead the ESIC but has also to implead atleast some of the workers concerned (in a representative capacity if there are a large number of workers) or the trade-union representing the said workers. If that is not done, and a decision is given in favour of the employer, the same will be in violation of the rules of natural justice. After all, the real concerned parties in labour matters are the employer and the workers. The ESI Corporation will not be in any way affected if the demand notice sent by it under Section 45A/45B is quashed.

12. It must be remembered that the Act has been enacted for the benefit of the workers to give them medical benefits, which have been mentioned in Section 46 of the Act. Hence the principal beneficiary of the Act is the workmen and not the ESI Corporation. The ESI Corporation is only the agency to implement and carry out the object of the Act and it has nothing to lose if the decision of the Employees Insurance Court is given in favour of the employer. It is only the workmen who have to lose if a decision is given in favour of the employer. Hence, the workmen (or at least some of them in a representative capacity, or their trade union) have to be necessarily made a party/parties because the Act is a labour legislation made for the benefit of the workmen.

13. In the present case the workmen concerned were not made parties before the Employees Insurance Court, nor was notice issued to them by the said Court.

14. Also, the order of the Employees Insurance Court dated 4.2.1993, relevant portion of which we have quoted, is not a very happy one as no proper determination has been made therein as to whether the workmen concerned are the employees of the appellant and whether they are entitled to the benefit of the Act. No doubt some observations have been made that some labourers come on one day but they may not come on the next day. Having said so, a direction has been given that the ESI Corporation will after making inquiries about the identities of the said workers will register them and then extend the benefit of the Act.

15. In our opinion, the Employees Insurance Court should have itself made a proper investigation of the facts after getting evidence from the parties, including the workmen concerned, and after impleading them as party in the petition, it should have determined the question as to whether the persons concerned were the employees of the appellant or not.

16. For the reasons stated above, we set aside the impugned judgment and order of the High Court as well as the order dated 4.2.1993 passed by the Employees Insurance Court and remand the matter to the Insurance Court for deciding the same afresh after impleading some of the workmen, if not all of them, or their trade union in a representative capacity. Needless to say, the Employees Insurance Court will grant an opportunity to all the parties, including the alleged workmen, to lead documentary evidence or oral evidence and thereafter proceed in accordance with law.

17. We make it clear that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the controversy involved. All questions of law and fact are left open for the parties to be raised before the Insurance Court.

Appeals allowed. No order as to the costs.

Hon'ble Supreme Court of India's Judgement dated 17.09.2009 in the case of ESI Corporation V/s Bhakra Beas Management Board and Anr.

EMPLOYEES' STATE INSURANCE CORPORATION
PANCHDEEP BHAWAN: C.I.G., ROAD,
NEW DELHI-1100 02.
(ISO 9001:2000 CERTIFIED)
(http://esic.nic.in)

No. Estt./Legal/Misc./2009 **Dated:-30.09.09**

To,

The All R.D.s/J.D.I/c,
ESI Corporation,
R.O.s/ SROs/D.Os.

Subject:- **Forwarding of Hon'ble Supreme Court of India's Judgment dt. 17/09/09 in the case of ESI Corporation V/s Bhakra Beas Management Board and Anr – reg.**

Sir/Madam,

I am directed to attach herewith a copy of Supreme Court of India's Judgment dt. 17/09/09 in the above cited case wherein the Hon'ble Supreme Court has set aside the judgments of the Hon'ble Delhi High Court and E.I. Court on the ground that the employer has not impleaded the employees/ or their representative/their trade union as one of the respondents in E.I. Court who are actually the beneficiary of the scheme.

You are requested to kindly take full advantage and make use of the contents of this very important judgment while defending cases filed by employers in different courts in your region.

This issues with the approval of A.C.(Law) & (P&A).

Yours' faithfully,

Encl. : As attachment.

Sd/-
(O.P. ARORA)
DY DIRECTOR (LAW)

Copy to :

J.D. (System) Hqrs. Office alongwith a copy of above cited judgment for uploading the same on the website.

30/9/09
DY DIRECTOR (LAW)