

SUPREME COURT OF INDIA

Fertilizers & Chemicals Travancore Ltd.

Vs.

Regional Director Esic

C.A.Nos.917-918 of 2004

(Markandey Katju and Asok Kumar Ganguly JJ.)

20.08.2009

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 Sec. 45-A 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 that 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.