

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8335 OF 2004

Employees State Insurance Appellant
Corporation

Versus

Bhakra Beas Management Board & Respondents
Anr.

WITH

CIVIL APPEAL NO. 8336 OF 2004

O R D E R

CIVIL APPEAL NO. 8335 OF 2004

Heard learned counsel for the parties.

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.

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

It appears that the appellant had issued a notice under Section 45-A 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.

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.

This Court has recently held in the case of Fertilizer & Chemicals Travancore Ltd. Vs. Regional

Director, ESIC & 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."

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.

Appeal allowed. No order as to the costs.

Civil Appeal No. 8336/2004

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.

Appeal allowed. No order as to the costs.

.....J.
(MARKANDEY KATJU)

.....J.
(ASOK KUMAR GANGULY)

NEW DELHI;
SEPTEMBER 17, 2009

