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IN THE HIGH COURT OF DELHI

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FAO No.88/2002

Indian Oil Corporation Ltd. Appellant
through: Mr. Rajat Arora, Advocate

VERSUS

Employees State Insurance Corporation.....Respondent
through: Mr. K.P.Mavi, Advocate

FAO No.375/2003

Indian Oil Corporation Ltd. Appellant
through: Mr. Rajat Arora, Advocate

VERSUS

Employees State Insurance Corporation.....Respondent
through: Mr. K.P.Mavi, Advocate

RESERVED ON:
05.05.2008

DATE OF DECISION:
26.05.2008

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CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.**

1. The above captioned appeals lay a challenge to an order dated 24.12.2001 and order dated 30.01.2003 dismissing two

petitions filed by the appellant under Section 75 of the Employees State Insurance Act, 1948. In the petition filed before the learned Judge ESI Court which is the subject matter of FAO No.88/2002 a challenge was made to an order dated 5/11.12.95 passed by the competent authority under the ESI Act 1948 followed by a letter dated 27/28.5.1996 stating that the demand raised vide order dated 5/11.12.1995 has to be satisfied. In the petition filed before the learned Judge ESI Court which is the subject matter of FAO No.375/2003 challenge was to an order dated 13.5.1996.

2. Since the facts of both cases are near identical, at the hearing held on 5.5.2008, learned counsel for the parties stated that reference may be made to the facts of FAO No.88/2002. It may be stated that the dispute between the parties pertained to 2 LPG bottling plants of the appellant at Tikri Kalan Delhi and Shakurbasti Delhi. The dispute pertains to the employment of certain casual workers engaged through independent contractors to execute works relating to cutting grass, planting trees, wood work repair (carpentry) and repair of the boundary wall of the two complexes.

3. Undisputed position is that the appellant provides better medical facilities to its employees than what is available under the ESI Act 1948 and hence has obtained an exemption under Section 90 of the ESI Act 1948 from paying any contribution under the said Act.

4. Thus, for the employees of the appellant on its pay rolls and in respect of whom benefit of medical facilities is made

available by the appellant no contribution is payable under the ESI Act 1948. But, if the appellant does not extend the benefit of its medical facility to an employee or a category of employees, the appellant would be liable to pay contribution under the ESI Act 1948, but only for such employees who are covered under the said Act.

5. The dispute between the parties surfaced when an inspecting team from the office of the Employee State Insurance Commissioner inspected the two bottling plants of the appellant and noted that certain workmen were engaged in cutting grass, pruning and planting trees, executing carpentry work for repairing wooden fixtures and carrying out masonry work i.e. repairing existing structures. The names of these employees were not entered in the rolls of the appellant i.e. neither in the wage register nor in the attendance register. When an explanation was demanded from the appellant as to why names of these persons were not entered in the statutory registers maintained by the appellant, response was that these workmen were deployed at the site by independent contractors to whom the appellant had awarded different works. It was the case of the appellant that the works in question were not connected with the principal work being undertaken at the units i.e. bottling LPG gas in cylinders and that the works were neither incidental to or preliminary to or connected even remotely with the main work at the two units. It was stated that the persons were deputed by independent contractors to whom various works were

awarded and that the appellant did not exercise any supervisory control over the workmen. That none of the workmen was answerable to the appellant. That payments were made to the independent contractors as per work order issued to them and as per the contract after appellant was satisfied that the necessary works were executed.

6. Even to a lay man it would be apparent that the issue had to be decided with reference to the work contract awarded by the appellant to the contractors and the focus of the inquiry had to be in relation to Section 2(9), Section 2(13) and Section 2(17) of the ESI Act 1948 which define “employee”, “immediate employee” and “principal employer” respectively. The nature of the works being executed had to be considered and the nature of supervisory control, if any, exercised by the appellant had to be considered. For unexplainable reasons the authorities under the Act kept on seeking production of the statutory record containing the names of the workmen found working at the site and the appellant continued to respond that the question of such a record being available did not arise for the reason the workmen were the employees of independent contractors. The appellant did not draw attention of the authorities under the Act that the issue had to be determined, as noted above, with respect to the work orders issued to the independent contractors and in light of the definition of employee, immediate employee and principal employee. Even the authority under the Act did not focus on the core area of dispute. Each party

kept knocking at the wrong door. Obviously, entry was attempted through the wrong door. The result of such knocking was, the obvious, a wholly misdirected order passed not only by the authority under the ESI Act 1948 but even the learned Judge ESI Court who, as would be noted hereinafter went about determining the issue without considering the work order issued by the appellant to the independent contractors and without even considering Section 2(9), Section 2(13) and Section 2(17) of the ESI Act 1948.

7. I need not note in detail the contents of the two orders passed by the authorities under the ESI Act 1948. It would be sufficient to note that the authorities held against the appellant on two counts. Firstly, that certain workmen were found engaged in activities at the units of the appellant and secondly, no record pertaining to the employment and wages payable to the employees were produced before the authorities. In other words a best judgment assessment was framed under Section 45A of the ESI Act 1948.

8. Relevant part of the two orders passed by the ESI Court which are subject matter of challenge in the two appeals may be noted at this stage before proceeding with a reference to the statutory provisions applicable and the case law on the subject.

9. In the order dated 24.12.2001 learned Judge ESI Court has held as under:-

“12. The first submission of the Id. Counsel for the petitioner is that persons in respect of which the contribution has been claimed are not the employees of

the petitioner.

However, in letter Ex.PW1/2 written by the petitioner to the respondent, the petitioner has not challenged the persons in respect of whom the contribution is being demanded are not their employees. They only claimed that they have been depositing the contribution from time to time and further seeks some time to make the records of payment available. There was absolutely no contention that the employees are not their employees.

13. Not only this the basic test to determine whether a person is an employee or not under the Act is: whether he is under the control of the employer? Whether he is under the supervision of the employer? Here PW2 Sh. S.K.Puri has conceded in the cross-examination that the job done by the contractor was checked by the staff of the petitioner. He further conceded that the work done by the transport contractor was under their supervision and control. He further conceded that after grass cutting they would check whether the same had been done as per their specifications. He further conceded that they used to pay the contribution. All this make out that persons were working under the control and supervision of the petitioner and as such they were the employees of the petitioner. The submission of the Id. Counsel for the petitioner is, therefore, without force.

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17. In view of the above discussion, both issues are decided in favour of the respondents and against the petitioners."

10. In the order dated 30.01.2003 the learned ESI Court has held as under:-

"21. The first contention of the Id. Counsel for the petitioner is that the employees are not performing any integral or incidental work of the petitioner-Corporations and as such, are not liable to be covered under the Act. However, the workers employed in connection with the work of gardening, grass-cutting etc. cannot be said to be not employed in connection with the work incidental to the work of the petitioner-Corporation as it is they who make the premises and its surroundings fit for carrying out the operation of the petitioner-Corporation.

The Act provides for social security of the workers and cannot be interpreted in a manner as to exclude a set of workers who are employed by the employer but are deliberately given a nomenclature so as to suggest that they are not the employees under the Act. In a case reported as Royal Talkies Vs. ESIC 1978 II LLN 268, it was held that keeping the Cycle stand and running a Canteen within the cinema premises are incidental or adjunct to the primary purpose of the Theatre and, as such, the workers employed therein were held to be the employees within the meaning of Section 2(9) of the Act. In order to bring an employee within the sweep of the Act, it is enough that the work done by him be ancillary, incidental or may have some relevance or link with the object of the establishment. Here, the employees engaged in gardening, grass-cutting etc. are making the surroundings fit and appropriate for the operation of the petitioner-Corporation and, as such, they are employed in connection with the work of the petitioner-Corporation.

22. The next contention is that the employees of the independent contractors cannot be counted to be the employees of the petitioner-corporation in view of the authority of Calcutta Electricity Supply Corporation(supra). However, the facts of that case are quite different as in that case the contractors were electrical contractors who were holding certificate of competence in their own field and were required to obtain license before engaging in any contract. No such case is made out in the instant case as the work admittedly undertaken by them is of ordinary nature and not technical or specialised as was the case in the aforesaid case.

23. Not only this, on perusal of the material on the record, I find that the petitioner-Corporation was not totally averse to make payment regarding employees of the contractors employed by them. This is reflected in the documents. Ex. RW-1/6 & Ex. RW-1/7, wherein the petitioner sought time to furnish its details of the contractors and their compliance with the Act. Similarly, in the letter Ex. PW-1/4 dated 23-11-1995, the petitioner-Corporation expressed its inability to produce the necessary documents to explain the case. As such, it is clear that they deliberately withheld the documents and the necessary records from the respondent-Corporation as well as from this court and, as such, are liable to suffer for the same. Accordingly, the

submissions made by the Id. Counsel for the petitioner that the employees of the contractors are not the employees within the meaning of the Act as they were not performing any incidental or integral work of the petitioner-corporation or that they were employed by the independent contractors for whom the petitioner-Corporation is not responsible, cannot be accepted in view of the wide and sweeping meaning of the 'employee' as defined in Section 2(9) of the Act.

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29. In view of the above discussion, the authorities cited by the Id. Counsel for the petitioner regarding the definition of 'employee' and barred by limitation are of no help to the petitioner. The issue is accordingly decided in favour of the respondent and against the petitioner. ”

11. A perusal of the ESI Act 1948 would reveal that vide Section 39 thereof an employer is required to pay contributions in respect of such employee to the Employees State Insurance Corporation as are covered by the Act. Section 44 of the said Act requires an employer to maintain registers as required by law and furnish returns to the authority under the Act. Where, in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained, the Corporation may on the basis of the information available to it and after giving a reasonable opportunity to the employer of being heard, by an order, determine the amount of contributions payable in respect of the employees of that factory or establishment. Section 45A embodies the principles of best judgment assessment.

12. A forum of challenge is available under Section 75 of the ESI Act 1948 to an employer to question orders passed by the

authority under the Act relating to determination of liability of an employer to pay contribution pertaining to an employee. The forum is a Court having all the powers of a Civil Court.

13. The definition of the terms "Employee", "Principal employer" and "Immediate employer" under the ESI Act need to be noted. The term "employee" is defined under Section 2(9) as under:

"Section 2(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and-

(i) who is directly employed by the principal employer, on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961(52 of 1961), or under the standing orders of the establishment; but does not include -

(a) any member of the Indian naval, military or air

forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;"

14. The term "immediate employer" is defined under Section 2(13) as under:

"Section 2(13) "immediate employer", in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor;"

15. The term "Principal employer" is defined under Section 2(17) as under:

"principal employer" means-

(i) in a factory, the owner or occupier of the factory, and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948); the person so named;

(ii) in any establishment under the control of any department of any Government in India, the authority

appointed by such Government in this behalf or where no authority is so appointed, the head of the Department;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment;"

16. The definitions elaborately describe and determine the circumstances which bring a workman under the purview of the term "employee" for the purposes of the Act. The wide span of the definition of "employee" can be understood from the fact that an employee is someone associated with not just the principal activity of the factory or establishment but also any work "incidental to" or "preliminary to" or "connected with" or "Ordinarily part of" for "the work of the factory or establishment" or "purpose of factory or establishment".

17. Thus, in effect, the definition does not make any distinction between technical and non-technical employees and extends to skilled, semi-skilled, clerical and employees performing manual functions. Also, there is no distinction between those employed on time rate or piece rate basis. It hardly matters whether the employment is permanent, temporarily or casual. But the employment must relate to Section 2(9) of the Act.

18. However, the definition cannot be understood to include within its scope just every person engaged by an employer. If that was the intention of the legislature, an inclusive definition would not have been provided for the term "employee" and a general definition, interpreted liberally would have served the purpose as

good. In the decision reported as Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries. (1985 I.L.L.N. 249) it was held that even though the ESI Act 1948 is a beneficial legislation which needs to be interpreted liberally, the court is not to travel beyond the scheme of the statute and extend the scope of it to those not covered by the scheme of the statute on the pretext of extending statutory benefits. It was held that the Act does not have a universal coverage.

19. A bare perusal of Section 2(9) of the ESI Act 1948 makes it evident that to come within the compass of the definition of the term “employee” there has to be an employment. Now, the distinction between an employment and engagement has to be kept in mind. Further, the employment has to be in connection with the work of the establishment or incidental to or preliminary to but connected with the work of the establishment.

20. Employment of necessity involves a contract of service pursuant to which a person, called employee, enters into service of an employer in connection with some *integral part of the operations carried on* by the employer. The employment may be for a short period and may be paid for daily. It would be an employment bringing the employee within the sweep of Section 2(9) of the Act. On the other hand, a person engaged *casually in connection with processes which are not integral parts of or incidental to or preliminary to or connected with the operations of the*

establishment, though such engagement may be for long period, such deployment would not make the workman an employee as defined under Section 2(9).

21. In the decision reported as Gnanambikai Mills Ltd. Vs. ESIC (1970) 2 LLJ 233 it was held that the relevant question in deciding whether a casual employee would fall within the definition Section 2(9) of the Act was: *whether the work done by him is done in connection with the work of the factory and whether or not it is casual or precarious*. This was a decision of a Single Judge which was affirmed by the Division Bench in the decision reported as ESIC Vs. Gnanambikai Mills Ltd. (1974) Lab.IC 798. A caveat may be lodged. As held in the decision reported as ESI Corporation Vs. Ayurvedic ICP 1979 Ker.LT 897 the essential distinction between “engagement of a person to do particular items of work” and “employment of a person in service” has not to be lost sight of.

22. A Division Bench of the Kerala High Court, in the decision reported as Regional Director, ESIC Vs. P.R.Narahari Rao, while dealing with the subject at hand, in para 7 of the report, observed as under:-

“7. The oft repeated distinction is that between an “employment” and “engagement” if a person is engaged casually for a purpose unconnected with the operations of the establishment, or some work which does not form the integral part of such operations, he may not be an employee since there would be no employer-employee relationship between them only in consequence of the casual engagement for

purposes unconnected with the main operations of the establishment. On the other hand, if a person is employed, though casually and for a very short period of time, but in connection with the processes which are integral and connected with or incidental or preparatory to the operations of the establishment, then he may be an employee entitled to coverage under the Act.”

23. Another facet has to be considered. As held in the majority view of the Hon'ble Supreme Court in the decision reported as Calcutta Electricity Supply Corporation & Ors. Vs. Subhash Chandra Bose & Ors. 1992 ILLN 353 where the workman is deployed through a contractor the interplay of employee, immediate employee and principal employer has to be considered. This brings out the concept of supervision or supervisory control of the principal employer on the employee.

24. Before noting the relevant observations of the majority view of the Hon'ble Supreme Court in Subhash Chandra Bose's case (supra) it may be noted that “employment” denotes a larger concept than what is denoted by the term “engagement”. Employment connotes a master and servant relationship and a concept of non-casual service. Engagement connotes a casual employment, casually made for a casual work. In the decision reported as ESIC Vs. Ayurvedic Industrial Cooperative Pharmacy 1980 (40) FLR 409(Kerala), vide para 8, it was noted that there may be engagements which may not amount to service. Many instances can be envisaged where a person does work for another without entering into his service, and on the basis merely of a contract to

carry out such work. No doubt, service is also a contractual relationship, but where there is no case of a person entering into the service of another, employer-employee relationship does not come into being. For instance, a porter undoubtedly works for a passenger for wages but he is not an employee for the passenger whose work he does. Similarly, a plumber called into repair is no doubt paid for his work but for that reason he does not enter into a contract of service or employment. Instances need not be multiplied. It was held that one of the main distinguishing feature may be said to be disciplinary control.

25. The other facet of disciplinary control would be “*supervision*” which was highlighted by the majority view in Subhash Chandra Bose's case (supra). In para 13 and 14 of the said opinion it was observed as under:-

“13. In whatever manner the word “employee” under S. 2(9) be construed, liberally or restrictedly, the construction cannot go to the extent of ruling out the function and role of the immediate employer or obliterating the distance between the principal employer and the immediate employer. In some situations he is a cut-off. He is the one who stumbles in the way of direct nexus being established, unless statutorily fictioned, between the employee and the principal employer. He is the one who in a given situation is the principal employer to the employee, directly employed under him. If the work by the employee is conducted under the immediate gaze or overseeing of the principal employer, or his agent, subject to other conditions as envisaged being fulfilled, he would be an employee for the purpose of S. 2(9). Thus, besides the question afore-posed with regard to supervision of the principal employer the subsidiary question is whether instantly the contractual supervision exercised by the immediate employer (electrical contractors) over his employee

was exercised, on the terms of the contract, towards fulfilling self-obligation or in discharge of duty as an agent of the principal employer.

14. P.M. Patel case [1986- I.L.L.N. 55] (vide supra), can also be of no help to interpret the word “supervision” herein. The word as such is not found employed in S. 2(f) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, but found used in the text of the judgment. It appears to have been used as a means to establish connection between the employer and the employee having regard to the nature of the work performed. But what has been done in *Patel case* (vide supra), cannot *ipso facto* be imported in the instant case since the word “supervision” in the textual context requires independent construction. In the ordinary dictional sense “to supervise” means to direct or oversee the performance or operation of an activity and to oversee it, watch over and direct. It is work under eye and gaze of someone who can immediately direct a corrective and tender advice. In the textual sense “supervision” of the principal employer or his agent is on “work” at the places envisaged and the word “work” can neither be construed so broadly to be final act of acceptance or rejection of work, nor so narrowly so as to be supervision at all times and at each and every step of the work. A harmonious construction alone would help carry out the purpose of the Act, which would mean moderating the two extremes. When the employee is put to work under the eye and gaze of the principal employer, or his agent, where he can be watched secretly, accidentally, or occasionally, while the work is in progress, so as to scrutinize the quality thereof and to detect faults therein, as also put to timely remedial measures by direction given, finally leading to the satisfactory completion and acceptance of the work, that would in our view be supervision for the purposes of S. 2(9) of the Act. It is the consistency of vigil, the proverbial “a stitch in time saves nine”. The standards of vigil would of course depend on the facts of each case. Now this function, the principal employer, no doubt can delegate to his agent who in the eye of law is his second self, i.e. , a substitute of the principal employer. The immediate employer, instantly, the electrical contractors, can by statutory compulsion never be the agent of the principal employer. If such

a relationship is permitted to be established it would not only obliterate the distinction between the two, but would violate the provisions of the Act as well as the contractual principle that a contractor and a contractee cannot be the same person. The Employees' State Insurance Corporation claims establishment of such agency on the terms of the contract, a relationship, express or implied. But as is evident, the creation of deduction of such relationship throws one towards the statutory scheme of keeping distinct the concept of principal and immediate employer, because of diverse and distinct roles. The definition is well drawn in *Halsbury Laws of England* (Hailsham Edn.), Vol. I at page 193 as follows:

“An agent is to be distinguished on the one hand from a servant, and on the other hand an independent contractor. A servant acts under the direct control and supervision of his master and is bound to conform to all reasonable orders given to him in the course of his work; an independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with lawful instructions which may be given to him from time to time by his principal, is not subject to its exercise to the direct control and supervision of the principal.”

And this statement of law was used with approval by this court in *Superintendent of Post Offices v. P.K. Rajamma* [1977-II L.L.N. 41].”

26. The facts in Subhash Chandra Bose's case (supra) were that Calcutta Electricity Supply had awarded contracts through contractors to execute excavation works for laying underground cables under public roads as also the conversion of overhead electric lines. It was not in dispute that though the works were carried out outside the precincts of Calcutta Electricity Supply Corporation but related to the works ordinarily carried out by

Calcutta Electricity Supply Corporation. The dispute centered around as to whether Calcutta Electricity Supply Corporation exercised supervision over the workmen or whether the corporation measured, evaluated and determined the execution of the works for purposes of making payment to the contractors. For if the corporation exercised no supervision over the workmen engaged by the contractor it would not be liable, as held by the majority view, to make any contribution under the Act for such workmen on account of there being no employer-employee relationship and that the contractual supervision exercised by the immediate employer (the electrical contractor), over his employees would be exercised, on the terms of the contract, towards fulfilling a self-obligation or in discharge of duty to execute the work for the Calcutta Electricity Supply Corporation i.e. the principal employer. On facts, in para 19 of the report, factual discussion, concluded the debate in said case as under:-

“19. ...To the Division Bench of the High Court it is obvious that the Regional Director of the Employees ' State Insurance Corporation has nowhere found that there was actual supervision, either by the C.E.S.C., or its duly appointed agents, over works which were performed by the employees of the electrical contractors. All that has been found is that the said works on completion were checked by the C.E.S.C., and then accepted. Checking of work after the same is completed and supervision of work while in progress is not the same. These have different perceptions. Checking of work on its completion is an activity, the purpose of which is to finally accept or reject the work, on the touchstone of jobs specifications. Thereafter, if accepted, it has to be paid for. Undisputably electrical contractors

had to be paid on the acceptance of the work. This step by no means is supervision exercised. Neither can it be the terminating point of an agency when the interests of the so called principal and the so called agent become business like. Besides, the High Court has found that the work done by the employees was under the exclusive supervision of the electrical contractors or competent supervisors engaged by them under the terms of the contract and the licence. By necessary implication supervision by the C.E.S.C., or its agents stood excluded. Supervision rested with persons holding valid certificates of competency for which a register of supervision was required under the licence to be maintained. Under the contracts, the electrical contractors cannot in one breath be termed as agents of the C.E.S.C., undertaking supervision of the work of their employees and innately under the licence to have beforehand delegated that function to the holder of the certificate of competency. Thus we hold that on the contract read with or without the terms of the licence, no such agency factually or legally, stood created on behalf of the C.E.S.C., in favour of the electrical contractors, and none could be, as that would violate the statutory scheme of distinction well marked under Section 2(a) of the Act. The supervision taken was to fulfill a contractual obligation *simpliciter* and we leave it at that level."

27. A perusal of the impugned decisions as also the orders passed by the authority under the ESI Act 1948 reveals that neither has come to grip with the core issues required to be considered and decided. As noted above the authority under the ESI Act 1948 as also the learned Judge ESI Court went about determining the issue with respect to the appellant not showing the workers as employed by the appellant and in respect for whom admittedly no medical benefits were extended by the appellant. From the mere presence

of these workmen at the precincts of the appellant a presumptive conclusion was drawn that the works being performed by the workmen related to or were connected with the work of the appellant ignoring the concept of work as noted in various decisions hereinabove. Further, the decision in Subhash Chandra Bose's case (supra) in relation to supervisory control, though noted, has been totally ignored in its applicability.

28. As noted above the issue could not have been adjudicated without considering the work contracts awarded by the appellant to independent contractors. Further, in relation to the said work contracts, supervisory control of the appellant had to be considered; focusing on whether the appellant exercised supervisory control over the workmen deployed by the contractor or whether the supervisory control was limited to measuring the works and ensuring due completion thereof under the contract for purposes of making payment to the contractor as per the contract.

29. Thus, the matter calls for a remand.

30. Before concluding I may note that the appellant also took a stand before the learned Judge ESIC that the contractors engaged by the appellant had deposited, with the authority under the Act, the contribution to be deposited for the workmen deployed. Challans Ex. PW-1/6, Ex. PW-1/7, Ex. PW-1/8, Ex. PW-1/9, Ex. PW-1/10 and Ex. PW-1/11 were proved in evidence.

31. Thus, at the remanded stage this aspect of the matter would also be duly considered by the learned Judge ESI Court.

32. The appeals are accordingly allowed. Orders impugned in the two appeals are quashed. Matter is remanded to the ESI Court for fresh determination keeping in view the observations made in the present decision. It is made clear that since the original contracts awarded by the appellant to the independent contractors have not been brought on record, learned Judge ESI Court would grant an opportunity to the parties to bring on record the said agreements. Lastly, it is made clear that this Court has not expressed any opinion on the factual aspect of the controversy and nothing stated in the present decision would be construed as an expression on the merits of the factual controversy between the parties. This Court has set aside the impugned orders noting that the relevant evidence i.e. the work contracts have just not been considered. Law on the subject has been highlighted by this Court.

33. Parties are directed to appear before the learned Judge ESI Court on 1.7.2008. Proceedings would be revived in both petitions by the learned Judge ESI Court. Since considerable time has lapsed the matter would be decided expeditiously and preferably by the end of the current calendar year.

34. No costs.

35. TCR be returned forthwith.

MAY 26, 2008
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(PRADEEP NANDRAJOG)
JUDGE