IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER E.S.I. NO. 5 OF 2012

REGIONAL DIRECTOR, EMPLOYEES
STATE INSURANCE CORPORATION ... Appellant

Versus

M/S. LOTLIKAR PUMP HOUSE REP. BY
ITS PROPRIETOR MR. SHARAD LOTLIKAR ... Respondent

Mrs. A. A. Agni, Senior Advocate with Ms. Kalpa Govekar, Advocate for the Appellant.

Mr. G. Naik, Advocate for the Respondent.

Coram:- N. M. JAMDAR, J.

Date:- 25 February 2015

ORAL ORDER :

By order dated 22 January 2015 a notice for final disposal was issued. The respondent has been served.

2. Admit. Taken up for hearing forthwith. Filing of paper book and calling of records and pleadings is dispensed with.

2. By this appeal, the appellant Employees State Insurance Corporation challenges the judgment and order passed by the Employees Insurance Court, North Goa, Panaji dated 2 April 2011. The respondent had moved an application under Section 75 read with Section 77 of Employees Insurance Act.

3. It was the case of the respondent that they have a business of retail sale of petroleum products. They had engaged managerial and supervisory staff to assist the

proprietor in running the business. According to the respondent, the proprietor was unwell from 1999 to December 2004, and when he took charge in January 2005, he learnt that managerial and supervisory staff had misappropriated the amounts. According to the respondent, due to the proposed disciplinary action, the staff had resigned. It was the case of the respondent that they had never employed more than 9 employees from the commencement of the business and that they are not covered up by the Act. They had maintained the register, however it was misplaced. According to the respondent they received a notice from the appellant on 10 August 2005, whereby the provisions of the Act was extended to the establishment of respondent from 1 December 1994.

4. In the application filed before the ESI Court, issues were framed by the Court as to whether the respondent was covered under the provisions of the Act from 1 December 1994 to 31 July 2004 and whether the order dated 10 August 2005 was bad in law. The ESI Court, after considering the material produced on record, came to the conclusion that the respondent establishment was not covered. The Court also held that the requisite number of employees were not employed during the period of extension of coverage. Accordingly, the application was allowed by the impugned order.

4. Mrs. A. Agni, the learned Senior Advocate for the appellant has tendered, additional substantial question of law as to whether the impugned order was liable to be set aside

and quashed for failure to implead the employees as parties to application under Section 75. Leave to amend is granted. Amendment to be carried out within a week from today.

5. Mrs. Agni submitted that the matter needs to be remanded back to the ESI Court, since the Court has not followed the mandate laid down in the decision of the Apex Court in the case of ***Fertilizers and Chemicals Travancore Limited V/s. Regional Director, Employees' State Insurance Corporation & Ors.*** reported in ***(2009) 9 SCC 485***. In the said decision the Apex Court has observed as under:

> "*7. 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 persons concerned are not the employees of the petitioner, and that determination is given even without hearing the persons concerned, it will be clearly against the rules of natural justice. 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.

8. <u>In our opinion, wherever any petition is filed by an employer under Section 75 of the Act, the employer has not only to implead ESIC but has also to implead at least some of the workers concerned</u> (in a representative capacity if there are a large number of workers) <u>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</u>. After all, the real parties concerned 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 Sections 45-A/45-B is quashed.

12. 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.*"

6. The perusal of the above paras shows that the Apex Court has laid down a methodology to be followed by Court when application is filed by employer under Section 75 of the Act. The Apex Court has laid down that at least some of the workers need to be joined because it is ultimately for their benefit that the machinery under the Act is provided. The Apex Court has held that if such employees are not given representation in the proceedings initiated by the employer then decision rendered in favour of the employer will be in violation of the rules of natural justice. Mr. G. Naik, the learned Counsel for the respondent has not been able to controvert this legal position.

7. In view of this position, the impugned order passed by the ESI Court dated 2 April 2011 is quashed and set aside and the matter is remanded back to the ESI Court. The Court will accordingly call upon the respondents to furnish the names of the employees working with the respondent and then pass suitable directions to implead them in the proceedings before it and give them an opportunity to put forth their views as regard coverage of the Act. All contentions on merits of all the parties are kept open. Appeal shall stand disposed of in above terms. No costs.

N. M. JAMDAR, J.

NH/-