

IN THE HIGH COURT OF BOMBAY AT GOA.**APPEAL UNDER E. S. I. NO. 6 OF 2007.**

The Regional Director,
Employees
State Insurance Corporation
Panchadeep Bhavan, Panaji, Goa.

.....Appellant.

Versus

Mr Sunil Pai Proprietor
Of M/s. Mahalsa Sercive Station
Opp. Essar Colony, Borbhatt,
Taleigao, Goa.

.....Respondent.

Mrs. A. Agni, Senior Counsel with Ms. Kalpa Govenkar, Advocate for the applicant.

Mr. V. Palekar, Advocate for the respondents.

Coram:- C. V. BHADANG, J.

Date:- 13th August, 2015

ORAL JUDGMENT

By this appeal the Employees State Insurance Corporation ("the Corporation" for short) is challenging the judgment dated 17.7.2007 passed by the Employees State Insurance Court ("the ESI Court " for short) in Employees Insurance Case no.14/2005. By the impugned judgment, the application filed by the respondent under Section 75 of the Employees State Insurance Act, 1948("the Act" for short) has been allowed thereby declaring that the respondent's establishment is not covered under the provisions of the Act.

Further the ESI, Court has quashed the impugned orders dated 19.7.2005 and 7.11.2005 passed by the Appellant Corporation under Section 45-A of the Act as null and void.

2. Brief facts are that the respondent is a proprietary concern. It was claimed before the ESI Court that the proprietor Mr. Sunil Pai is educated up to class VII and was not conversant with any language other than Konkani. The respondent is carrying on business of providing/undertaking washing of vehicles. According to him, since commencement of the business, till the date he approached the ESI Court, the respondent had not employed statutory minimum number of employees required for the establishment/business being covered under the Act. By a notice dated 23.12.2004, the appellant/corporation called upon the respondent to show cause as to why contribution should not be determined on the basis of assumed wages. The respondent was also called for personal hearing on 27.1.2005. The respondent eventually visited the office on 31.12.2004 and he was informed by the Deputy Director of the appellant that the appellant had found more than 10 employees employed in the establishment of the respondent. The appellant issued an order dated 19.7.2005 wherein on the basis of inspection report, it was found that the respondent establishment is covered under the

provisions of the Act. The appellant determined the amount of ₹ 21,548/- as contribution on the basis of assumed wages.

3. The learned ESI Court framed two issues. Parties led oral and documentary evidence. The respondent examined himself while on behalf of the appellant/Corporation Insurance Inspector Mr. Y. K. Vadsara was examined as DW1. The Presiding Officer of ESI Court placing reliance on the decision of Karnataka High Court in the case of *Employees State Insurance Corporation Vs. Subbaraya Adiga*(II LLN, 452) (Criminal Petition No.1318 of 1987) found that list of the employees prepared by the Employees' State Insurance Inspector in the course of his visit (in order to find out whether the provisions of the Act are attracted) must contain the name, father's name, place from which the employee hails, the designation, the length of service, emoluments and the signature or thumb impression of the employee. It was found that these particulars were lacking. The ESI Court also found that on the date of the visit by the Inspector, the Inspector had not found more than 10 persons being employed. It was found that salary voucher and rough dairy (which were referred to by the Insurance Inspector in his report) were not produced. The ESI Court also found that order made by the appellant under Section 45-A of the Act was not a reasoned

order and the basis for determination has not been properly set out. In that view of the matter, the application came to be allowed as aforesaid.

4. Feeling aggrieved, the Corporation is before this Court.

5. I have heard Smt. Agni, the learned Senior Counsel appearing for the appellant and Shri V. Palekar, the learned Counsel appearing for the respondent.

6. It is submitted by Smt. Agni, the learned Senior Counsel for the appellant that the decision of the Karnataka High Court in the case of *Subbaraya Adiga*(Supra) has been referred and considered by the Hon'ble Supreme Court in the case of *Srinivasa Rice Mills and others Vs. ESI Corporation, (2007)1 SCC 705*. It is submitted that in paragraph 30 of the judgment, the Hon'ble Apex Court has held that such a statutory obligation to furnish name and other particulars of the employees is on the employer.

7. It is next submitted that once the Insurance Inspector had found the number of employees, employed were 10 or more, it would necessarily entail coverage. In other words, it is submitted that it is not necessary that for entire period for which

coverage is claimed the number of workmen should conform to the statutory minimum. It is next submitted that in an application under Section 75 of the Act, the employer is obliged to implead the employees or at least some of them, and/or union, representing such employees as the party respondent. Reliance in this regard is placed in the decision of the Apex Court in the case of Fertilizers and Chemicals Travancore Limited Vs. Regional Director, Employees' State Insurance Corporation and others, (2009) 9 SCC 485. It is submitted that the real beneficiaries under the Act are employees and Corporation only acts as a watchdog. It is submitted that the employees having not been made parties, the impugned order has to be set aside and matter will have to be remanded.

8. On the contrary, it is submitted by Shri Palekar, the learned counsel for the respondent that there is no substantial question of law involved in the appeal. It is submitted that same set of employees which were in employment during the relevant period, may not be in employment, as of today and no useful purpose would be served by remanding the matter.

9. I have considered the rival circumstances and the submissions made.

10. On hearing the learned counsel for the parties, I find that on the basis of the judgment in the case of *Fertilizers and Chemicals Travancore Ltd.*(supra), the matter will have to be sent back to the ESI Court, for disposal in accordance with law, after employees are impleaded as the party respondents. The Hon'ble Apex Court in the case of *Fertilizers and Chemicals Travancore Ltd.* (supra) has held in paragraphs 7,8 and 9 thus;-

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. 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 (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 parties concerned in labour matters are the employer and the workers. ESI Corporation will not be in any way affected if the demand notice sent by it under Sections 45-A/45-B is quashed.

9. 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 ESI Corporation. 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.

11. It can thus be seen that the employees or at least some of them need to be joined as the respondents. The learned Counsel appearing for the respondent undertakes to supply names of the employees who were in the employment of the respondent

during the relevant period and to implead them as party respondents.

12. In that view of the matter, the impugned judgment passed by the ESI Court dated 17.7.2007 is quashed and set aside and the matter is remanded back to the ESI Court for disposal in accordance with law. Parties to appear before the ESI Court, on 23.9.2015.

13. The rival contentions on merits are kept open.

14. Appeal is allowed in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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