

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc Appeal (C) No. 20 of 2008

1. Employees State Insurance Corporation, through Regional Director, Employees State Insurance Corporation, Raipur (Chhattisgarh)
2. Recovery Officer, Employees State Insurance Corporation, 18 South Evenue, Choubey Coloney, Raipur (Chhattisgarh)

---- Appellants

Versus

1. Mohan Jute Mills Limited, Sarangarh Road, Raigarh, through Managing Director
2. Director of Supplies and Disposals, Ministry of Commerce, Directorate of Supplies and Disposals, 6 Esplande East, Colcatta 700069
3. Deputy Controller of Accounts, Ministry of Commerce, Directorate of Supplies and disposals, 15 RN Mukharjee Road, Colcatta, 700001

---- Respondents

And

Misc Appeal No.104 of 2008

1. Employees State Insurance Corporation, through Regional Director, ESIC, 18 Avenue, Choubey Coloney, Raipur (Chhattisgarh)
2. Recovery Officer, ESIC, 18 Avenue, Choubey Coloney, Raipur (Chhattisgarh)
3. Branch Manager, ESIC Near PWD Office, Chakkaradhar Nagar Road, Raigarh (CG)

---- Appellants

Versus

- Mohan Jute Mills Limited, through Managing Director, Sarangarh Road, RAigarh, RAigarh - CG

----Respondent

For Appellants : Shri LP Dubey, Advocate
For Respondents : Shri Amrito Das, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Sharad Kumar Gupta

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

14.11.2017

1. These appeals are by the Employees State Insurance Corporation.

2. We have heard the learned counsel for the appellants and the learned counsel appearing for the Establishment.

3. These are appeals under Section 82 of the Employees' State Insurance Act, 1948 (hereinafter refer to as, 'the Act'). Having heard the learned counsel for the appellants- Corporation and the first respondent- Establishment, we formulate the following as the substantial question of law that arises for decision in these appeals.

"Did the Employees' State Insurance Court (ESI Court) act in violation of law in entertaining a dispute between the first respondent principal employer and the Corporation without the principal employer depositing, with the ESI Court, 50% of the amount due from the principal employer as claimed by the Corporation."

4. The facts are not in dispute. That the principal employer-first respondent owes dues to the Corporation was not disputed before the ESI Court. The ESI Court also did not enter any finding that the amount claimed by the Corporation is not due to it from the principal employer.

5. Sub-section 2 B of Section 75 of the Act reads as follows:

"No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty percent of the amount due from him as claimed by the Corporation"

(emphasis supplied)

6. The afore-quoted provision is to the effect that the principal employer is not eligible to raise any dispute for consideration of the ESI Court unless deposit in terms of that provision is made. The embargo created by that provision operates at the point of time of institution. Hence, the principal employer was ineligible to raise any dispute before the Court as done. The ESI Court, therefore, acted contrary to the provisions contained in Section 75 (2B) of the Act in deciding the matter from which these appeals arise. The substantial question of law framed in these appeals are answered accordingly. As a fall out of this decision, the impugned orders are liable to be vacated.

7. It is to be noted that, even going by the contents of the impugned orders, all that the principal employer was given was the facility to pay off the entire outstanding instalments. However, the learned counsel for the Corporation submits that even such facility was not utilised by the employer and no amount was paid. Obviously, therefore, this is an abundantly fit case, where the Corporation should be at liberty to reach at amount due to it at the earliest.

8. In the result, these appeals are allowed setting aside the impugned orders.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge