

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 336 OF 2019

The Regional Director, Employees State Insurance Corporation and anr.	.. Petitioners
Vs.	
M/s.C.Mahendra Exports Ltd.	.. Respondents

Mr.H.V.Mehta, for the Petitioner in WP/336/2019.
Mr.Mahesh A.Shukla, for Respondents.

CORAM : M.S.KARNIK, J.

DATE : 15th MARCH, 2019

P.C. :

. Rule. The respondents waive service. By consent,
Rule made returnable forthwith and heard finally.

2. By this Petition filed under Articles 226 & 227 of the
Constitution of India, the petitioners – Employees State
Insurance Corporation are challenging two orders dated
13/11/2018 passed below Exhibit 22-A and Exhibit 24 in

Application (ESI) No. 47/16 by the Employees Insurance Court.

3. Insofar as the application filed below Exhibit 22-A is concerned, the said application is an application made by the petitioner - Corporation for direction to the respondent to implead the employees or the trade union representing them as party to the proceeding i.e. Application (ESI) No. 47 of 2016. According to the petitioners, the employees were working for the respondents in Mumbai through Labour contractors or their agents. In the application it is submitted by the petitioners that the respondents have debited huge amount of labour charges under the account head 'processing charges'. Further those labour charges were paid through their agents or labour contractors mostly in the state of Gujarat. It is contended by the petitioners that the consolidated balance sheet was prepared in the Mumbai registered office. It was further contended that the respondents have 2 establishments, one in the State of Maharashtra and other in the State of Gujarat. When the petitioners claimed contribution, the respondents approached

the Employees Insurance Court under section 75 of the Employees State Insurance Corporation Act ('ESI Act' for short) and impleaded only the ESI Corporation as respondents. They failed to implead workers or trade union as necessary party.

4. Vide the impugned order, the Employees Insurance Court rejected the application for impleadment of the workers. The Court referred to the decision of the Apex Court relied upon by the petitioners in the case of **ESI Corporation Vs. Bhakra Beas Management Board and anr. (2009) 10 SCC 671**. The Court recorded the plea taken by the respondents as regards the amount paid to the outside party which was on principal to principal basis and that they are not aware about the employees, and that there is no union functioning in the premises of the respondent establishment. The Employees Insurance Court further took into consideration the plea of the respondents that they are not aware of any Union functioning on behalf of employees. It was in these circumstances that the Employees Insurance Court held that it is unable to direct the respondents

to implead workers, who are not known to the respondents as party to the proceedings. Insofar as impleadment of trade union is concerned, the Employees Insurance Court accepted the contention of the respondents that they are not aware of any trade union functioning, hence found it difficult to direct the respondents to implead a particular union. For all these reasons and the fact that the petitioners did not raise objection about the impleadment at an earlier stage, the Employees Insurance Court was of the opinion that the application made by the petitioner Corporation was nothing but an after thought only taking shelter of the decision of the Apex Court.

5. Learned Counsel for the petitioners, Shri Mehta, submitted that based on the decision of the Apex Court in the case of **ESI Corporation** (*supra*) the application deserves to be allowed. He invited my attention to the observations of the Apex Court in paragraphs 4, 5, 6 of the said decision.

6. Learned Counsel Shri Mehta contended that the Apex Court clearly held that principal beneficiary is the

workman and not ESI Corporation and therefore, it was necessary for the Employees Insurance Court to have directed the respondents to implead the workmen or at least some of them in their representative capacity, or their trade union.

7. Learned Counsel for the respondents vehemently opposed the application. According to him, they are not aware as to who are the workmen and moreover, there is no trade union functioning in the establishment. He invited my attention to the findings of the Industrial Court and further contended that though this Court has expedited the hearing of the application on an earlier occasion, the petitioners are filing applications after applications just to prolong the decision in the main proceedings. Learned Counsel for the respondents would urge that substantial monies are blocked in the process, with the result, the respondents are in financial doldrums and therefore on all these grounds also the interference with the impugned order is unwarranted.

8. Heard learned Counsel for the parties. I have

gone through the order passed by the Employees Insurance Court dated 13/11/2018 below Exhibit 22-A. I have also gone through the decision of the Apex Court in the case of **ESI Corporation** (*supra*).

9. To appreciate the present controversy, it is material to refer some of the observations of the Apex Court in **ESI Corporation** (*supra*) which read thus :

4. This Court has recently held in the case of Fertilizer & Chemicals Tranvancore Ltd. Vs. ESI Corpn. 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. 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.

6. The case of the appellant was that, in fact, none of the concerned persons was its employee and it was difficult to identify them. 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.

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 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. 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 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.

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 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.

10. 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."

5. 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.

6. 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. (emphasis supplied)

10. Thus, the Apex Court has clearly held that the persons concerned who are likely to be affected by the determination are required to be heard. The Apex Court has also observed 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. The Apex Court has observed that ESI Corporation is only the agency to implement and carry out the object of the Act and it has nothing to loose if the decision of the Employee's Insurance Court is given in favour of the employer. Thus, 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. I find that the application is rejected only on the plea raised by the respondents that there was no union in the establishment and that they are not aware about the employees working in the establishment.

12. Shri Mehta learned Counsel appearing on behalf of the petitioners submitted that the petitioners are aware of at least one union which was functioning in the establishment. He makes a request that in case an opportunity is given to the petitioners, the details would be furnished to the Employees Insurance Court.

13. Having regard to the magnitude of the contribution claimed by the petitioners from the respondents, I find it to be inconceivable that the respondents are not aware of the identity of any of its workmen, or trade union representing them. The Employees Insurance Court could have undertaken some

exercise as may be permissible to find out the identity of at least some of the employees and/or the trade union representing them. Disallowing the application on the plea of the respondents that the identity of the workmen is not known will defeat the interest of the workers who would be adversely affected by the order if determination is made against them. In this view of the matter, every possible effort should be made by the Court for the impleadment of the workmen. In such proceedings, ultimately, it is the interest of the workers that is paramount. Learned Counsel for the petitioners assured this Court that even the petitioners would render all possible co-operation in trying to establish the identify of some of the workmen and/or trade union representing them. If the object as propounded by the Apex Court viz. the interest of the workers is to be furthered and protected, then it is absolutely necessary for the Employees Insurance Court to undertake such exercise, may be with the assistance of the petitioners and after taking resort to such measures which can prove useful in ascertaining the identity of the workmen for there to be an effective

representation. In any case, when the respondents have taken a plea that they are not aware of the identity of the workmen or a trade union, then it surely cannot be expected that the respondents on their own would furnish details of the workmen. It is in this view of the matter, the aspect regarding impleadment needs further examination. It is surely not in the interest of justice to reject an application for impleadment, only on the ground that the same is made by the petitioners belatedly. As indicated earlier, in my opinion, the application needs to be scrutinized closely and all possible attempts have to be made to ascertain the identity of the workmen. In the present case, if the petitioners have come forward with a plea that the workers are to be impleaded, then it was incumbent on the part of the Court to have ascertained even from the petitioners details of such workmen and the trade union representing the workmen apart from the other permissible modes of identifying at least some of the workers or trade union. In this view of the matter, the impugned order dated 13/11/2018 passed below Exhibit 22-A deserves to be quashed

and set aside.

14. As regards order passed below Exhibit 24, the petitioners filed an application for direction to the respondents to furnish details of contribution paid by contractors, labour contractors or immediate employer and agreement entered with them in execution of job.

15. I have gone through the order passed. It appears that Employees Insurance Court has observed that the application is belated application and in any case, it is observed that the petitioners are at a liberty to take inspection of the concerned documents at an appropriate stage. As observed by the Employees Insurance Court, this request made by the petitioners can always be considered at a later stage and therefore I am not inclined to interfere with this order in the exercise of writ jurisdiction.

Hence, the following order :

ORDER

(i) The impugned order dated 13/11/2018 passed below Exhibit 22-A is quashed and set aside.

(ii) Matter is remitted back to the Employees Insurance Court for considering the application below Exhibit 22-A afresh on its own merits and in accordance with law.

(iii) The application Exhibit 22-A to be decided within a period of 6 weeks from today.

(iv) The parties undertake to appear before Employees Insurance Court on 19/03/2019 as I am informed that the matter is already listed for evidence on that date.

(v) Subject to what is observed above, the Petition stands rejected as against the order dated 13/011/2018 passed below Exhibit 24.

16. Rule is made partly absolute in the above terms with no order as to costs.

(M.S.KARNIK, J.)