

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1737 OF 2022

Schindler India Pvt. Ltd.] ... Petitioner

Vs.

Employees State Insurance]
Corporation & Anr.] ... Respondents

...

Mr. S.C. Naidu with Mr. Manoj Gujar, Ms. Divya Yajurvedi, Mr. T.R. Yadav and Mr. Harish Pithadia i/b C.R. Naidu & Co. for the petitioner.

Mr. S.S. Pathak for the respondents.

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 21ST FEBRUARY, 2022.

P.C. :-

1. I have considered the strenuous submissions of the learned counsel for the petitioner and the respondents. With their assistance, I have gone through the petition paper-book.

2. Considering the order that I am passing in this matter today,

I am not adverting to the merits of the submissions made, for the reason that I will have to make certain observations, which are likely to influence the ESI Court.

3. It would be suffice to state that the Hon'ble Apex Court (Three Judges' Bench) in the matter of **Sub Inspector Rooplal & Anr. v. Lt. Governor through Chief Secretary, Delhi & Ors.**¹ has observed in paragraph Nos.11 and 12 as under:

“11. Before us in these matters, Mr. P.P. Rao and Mr. S.K. Dholakia, learned senior counsel appearing for the parties contended that the latter Bench of the tribunal committed a judicial impropriety in taking a contra view from the earlier judgment without following the rule of precedent. They questioned the correctness of the finding of the tribunal in the impugned judgment as to equation of the two posts of Sub-Inspector based only on an unequal pay scale. The reliance on the O.M. dated 29.5.1986 was also questioned on the ground that same was not acted upon earlier and the existence of the same was not made known to all concerned at any relevant point of time. It is to be noted that the constitutional validity of the said O.M. is also challenged before us in W.P. No. 191 of 1999. We have heard the learned Additional Solicitor General and Sri Bimal Roy Jad on behalf of the respondents.

12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the

¹ (2000) 1 SCC 644

subsequent Bench of the tribunal was of the opinion that the earlier view taken by the coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law from the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of *Tribhuvandas Purshottamdas Thakar v. Ratilal Motilal Patel*, [1968] 1 SCR 455 while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same court observed thus:

"The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in Pinjare Karimbhai's case and of Macleod, C.J., in Haridas's case did not lay down the correct Law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline

required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of coordinate authority or of superior authority. Gajendragadkar, C.J. observed in Bhagwan v. Ram Chand.

"It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

3. In the case of this petitioner, for the Financial Year 2014-15, the proceedings under the Employees State Insurance Act, 1948 (for short, "**the 1948 Act**") reached the ESI Court in Misc. Application (ESI) No.44 of 2019. After analyzing the record available and the facts and circumstances of the case, the ESI Court took a *prima facie* view vide its interim order dated 26/11/2020 and directed this petitioner to deposit a particular amount as a condition under Section 75 of the 1948 Act, so as to

deal with the application filed by the employer.

4. In the instant case, an identical situation is before the ESI Court for the Financial Year 2015-16. Surprisingly, vide the impugned order, the present ESI Court forms an opinion, expressing due respect to the earlier decision of the Tribunal and take a completely different view, without assigning reasons. Paragraph Nos.21 and 22 indicate that the impugned order has been passed, without referring to the record placed before the court, which was done by the earlier Tribunal and a conclusion is drawn that, the present petitioner has miserably failed in substantiating its contention that the discretion be exercised under Section 75(2-B) of the 1948 Act.

5. In view of the above and in the light of the conclusions of the Hon'ble Apex Court in **Sub Inspector Rooplal (supra)**, as reproduced above, it would be appropriate to set aside the impugned order and direct the ESI Court to reconsider the miscellaneous application. No doubt, the ESI Court has the authority to take an independent view, if it finds that the view taken by the earlier Tribunal, in identical set of facts, does not impress the court. However, that would not mean that the ESI Court should proceed to take the view, without assigning reasons. While deciding the appeal finally, it could also rely upon Section 81 of the 1948 Act, if it finds that it is not possible to agree with the final view taken by the earlier Tribunal.

6. In view of the above, the impugned order dated 21/12/2021 is quashed and set aside and Misc. Application (ESI-EX) No.44 of 2020 is restored to the file of the learned ESI Court at Mumbai. The parties to the application would appear before the court on 14/03/2022. They would tender their written notes of submissions as well as case law to assist the court. Thereafter, the learned ESI Court is at liberty to proceed to decide the application afresh, by referring to the documents that have been filed or may be filed on 14/03/2022 and pass a reasoned order.

7. The writ petition is disposed off in the above terms.

[RAVINDRA V. GHUGE, J.]