2024:PHHC:058445

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.1465 of 1992
Date of Decision: 29.04.2024

Employees State Insurance Corporation

.....Appellant.

Versus

M/s 220 KV Grid Sub-Station, Bhakra Beas Management Board, Dhulkote (Ambala)

.....Respondent.

CORAM: ***HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

*****

Present:- Mr. Amrinder Singh Sidhu, Advocate for the appellant.

Mr. Tajender K. Joshi, Advocate for the respondent.
(joined through Video-Conferencing)

MEENAKSHI I. MEHTA, J. (Oral)

Feeling aggrieved by the judgment as handed down by learned Judge, ESI Court, Ambala City, (for short 'the ESI Court') on 11.08.1992, whereby the Application moved by the respondent-applicant (here-in-after to be referred as 'the respondent') under Section 75 of the Employees' State Insurance Act, 1948 (for short 'the Act') with the prayer to quash the order passed by the appellant, requiring it (respondent) to pay/deposit the amount of contributions under the Act, has been allowed, it (appellant) has preferred the instant appeal to lay challenge to the same.

2. Shorn and short of unnecessary details, the facts, as emanating from the perusal of the file and culminating in the filing of the present

appeal, are that the respondent had moved the above-referred Application, while averring that it was a Grid Sub-Station and no manufacturing process was being carried out in it and thus, it was not a 'Factory' and hence, the provisions of the Act were not applicable to it but the appellant had passed the afore-said order and had, thereby, directed it to pay/deposit an amount of Rs.32,155.20 Ps. towards the contributions under the Act for the period from May to December 1986, along-with interest thereon. The appellant (arrayed as the respondent in the Application) contested the claim of the respondent on various grounds. Then, the parties were put to the trial by framing the issues and after appreciating and evaluating the evidence as led by them on the record and hearing their respective counsel, the ESI Court has allowed the above-mentioned application, as already indicated in the opening para of this judgment.

3. I have heard learned counsel for the appellant-Corporation as well as learned counsel for the respondent-Grid Sub-Station in the instant appeal and have also gone through the file carefully.

4. Learned counsel for the appellant-Corporation contends that the respondent is a Grid Sub-Station and the process of transformation and transmission of the electrical energy is carried out in it and therefore, it is a 'Factory' as envisaged under the Act and it being so, it is liable to deposit/ pay the ESI contributions qua its employees and in these circumstances, it becomes explicit that the impugned order is not legally sustainable and deserves to be set-aside. To buttress his contentions, he refers to the verdict rendered by Hon'ble Supreme Court in ***Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director, Employees' State Insurance Corporation, AIR 1967 (Supreme Court) 1364***.

5. Per contra, learned counsel for the respondent argues that the respondent is a Sub-Station and no manufacturing process or generation of electrical energy/power is carried out in the same and hence, it cannot be construed to be a 'Factory' and is, thus, not covered under the provisions of the Act. He also relies upon the observations as made by the Apex Court in ***Workmen of Delhi Electric Supply Undertaking Vs. The Management of Delhi Electric Supply Undertaking, AIR 1973 (Supreme Court) 365***, in support of his contentions.

6. Explicitly, the respondent is 220 KV Grid Sub-Station. It is a matter of common knowledge that the Grid Sub-Station is a Sub-Station which receives the power from a Power Generating Station and transforms/ regulates the voltage with a Step-Down Transformer and then, transmits the same to the Distribution Sub-Stations. It is pertinent to mention here that Section 1(4) of the Act reads as under:-

> *"1(4) – It shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories:*
>
> *[Provided that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act]."*

Further, Section 2(12) of the Act defines "factory" as under:-

> *"2(12) – "factory" means any premises including the precincts thereof-*
>
> *(a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on,*
>
> *(b) xxxx*
>
> *but does not include a mine subject to the operation of*

> *the Mines Act, 1952 (35 of 1952) or a railway running shed.*"

> As per Section 2(14-AA) of the ESI Act:-

> *"manufacturing process" shall have the meaning assigned to it in the Factories Act, 1948 (63 of 1948)."*

> and as defined under Section 2(k) of the Factories

> Act, 1948:-

> *"manufacturing process means any process for –*
> *(i) x x x x x*
> *(ii) x x x x x*
> *(iii) generating, transforming or transmitting power; or*
> *(iv) x x x x x*
> *(v) x x x x x*
> *(vi) x x x x x*"

7. From the afore-quoted provisions, it becomes crystal clear that the premises where the process for generating, transforming or transmitting the power is carried out, is a "Factory" within the meaning of the Act and Hon'ble the Supreme Court has categorically observed in ***Nagpur Electric Light and Power Co. Ltd. (supra)*** that *"the premises where the process of transforming and transmission of the electrical energy is carried out, constitute a 'Factory'."* In the light of these observations, it is held that the respondent-Grid Sub-Station is a 'Factory' and therefore, the provisions of the Act would be applicable to it (respondent).

8. The observations, as made by the Apex Court in ***Workmen of Delhi Electric Supply Undertaking (supra)***, would be of no avail to the respondent because the facts and circumstances of the above-cited case are distinguishable from those of the present one. In the afore-referred case, it was observed that the nature of the work that the concerned workmen had to do, even as enumerated in their statement of claim before the Tribunal,

clearly showed that they had no part in any manufacturing process and their functions appeared to be to maintain the existing lines of the generation, transmission and transformation of power in their respective areas and to attend to installation and other incidental matters when a new connection had been given to a consumer and they had to attend the daily complaints from the consumers, keep regular reports and attend to the defects in the consumers' premises and they had to go out for the field work and also to sit in the office for the maintenance and preparation of the relevant records whereas in the instant case, as discussed earlier, the respondent is a Grid Sub-Station and the process of transformation and transmission of power/ electrical energy, is carried out in the same.

9. As a sequel to the fore-going discussion, the appeal in hand is, hereby, allowed and the impugned judgment, as passed by the ESI Court, is set-aside and the application, moved by the respondent under Section 75 of the Act, stands dismissed.

(MEENAKSHI I. MEHTA)
JUDGE

April 29, 2024
Yag Dutt

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*