

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7884 OF 2004

EMPLOYEES STATE INSURANCE CORPN. & ANR.

Appellant (s)

VERSUS

M/S. HOTEL PRESIDENT

Respondent(s)

(With office report)

Date: 10/09/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s)

Mr. V.J. Francis,Adv.
Mr. Anupam Mishra, adv.

For Respondent(s)

None

UPON hearing counsel the Court made the following

O R D E R

No one has appeared on behalf of the respondent
despite service of notice.

Heard learned counsel for the appellant.

The appeal is allowed and the impugned judgment
of the High Court as well as that of the Employees
Insurance Court are set aside and matter remanded to the
Employees Insurance Court for a fresh decision in
accordance with law after impleading the concerned
workmen or their representatives or the trade union
representing them as a party. The Employees Insurance
Court is directed to decide the case preferably within a
period of four months from the date of production of copy
of this order. No order as to the costs.

(Ajay Kr. Jain)
Court Master

(Indu Satija)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7884 OF 2004

Employees State
Corporation & Anr.

Insurance

....

Appellants

Versus

M/s. Hotel President

....

Respondent

O R D E R

No one has appeared on behalf of the respondent despite
service of notice.

Heard learned counsel for the appellant.

This appeal has been filed against the impugned judgment and order of the Guwahati High Court dated 18.11.2002 whereby the appeal filed by the respondent herein has been allowed.

It appears that a notice had been issued by the appellant herein against the respondent on 13.08.1993 under Sections 44 and 45 of the Employees State Insurance Act, 1948 (hereinafter for short 'the Act'). That notice had been challenged by the respondent before the Employees Insurance Court by filing a petition under Section 75 of the Act. The Employees Insurance Court by its order dated 29.01.1997 dismissed the said petition on the ground that the same was premature. Against the said order of the Employees Insurance Court, the respondent herein filed an appeal under Section 82 of the Act before the High Court which has been allowed by the impugned judgment and order. Hence, this appeal by special leave.

This Court recently in the case of Fertilizers & Chemicals Travancore Ltd. Vs. Regional Director, ESIC & Ors. 2009 (11) SCALE 766 held that in cases relating to labour statutes workers are the necessary parties because labour statutes are made for the benefit of the workmen. It appears that neither before the Employees Insurance Court nor before the High Court, the workmen were made a party nor anyone of them nor their union impleaded as a party. In our opinion this is in violation of the principles of natural justice. As held by this Court in the case of Fertilizers & Chemicals Travancore Ltd. (supra) the Employees State Insurance Corporation will not suffer in any way if an order is passed in favour of the employer and it will only be the workmen who will suffer.

On the facts of the present case, we set aside the impugned judgment of the High Court as well as that of the Employees Insurance Court and remand the matter to the Employees Insurance Court for a fresh decision in accordance with law after impleading the concerned workmen or their representatives or the trade union representing them as a party. Since the notice in question concerns the year 1993, we direct that the Employees

Insurance Court shall decide the case preferably within a period of four months from the date of production of copy of this order.

Appeal allowed. No order as to the costs.

.....J.
(MARKANDEY KATJU)

.....J.
(ASOK KUMAR GANGULY)

NEW DELHI;
SEPTEMBER 10, 2009