

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). 1013 OF 2005

EMPS. STATE INSURANCE CORPORATION

Appellant (s)

VERSUS

DHANYA CONSUMERS (P) LTD.

Respondent(s)

(With office report )

Date: 17/09/2009 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.

For Respondent(s) Mr. B.V.Deepak, Adv.for  
M/S. T.T.K. Deepak & Co.

UPON hearing counsel the Court made the following  
O R D E R

The Appeal is allowed. No order as to costs.

(Parveen Kr. Chawla)  
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.1013 of 2005

Employees State Insurance Corporation ..Appellant

versus

Dhanya consumers (P) Ltd. ..Respondent

O R D E R

Heard learned counsel for the parties.

This Appeal has been filed against the impugned  
order of the Kerala High Court dated 6th January, 2004.

It appears that the appellant issued notice under  
Section 45A of the Employees State Insurance Act, 1948 (for

short 'the Act') in respect of the employees as well as employer's contribution under the Act. The respondent challenged the said demand notice by filing a petition under Section 75 of the Act before the Employees Insurance Court which was dismissed.

Aggrieved against the order of the ESI Court, the respondent filed an appeal before the High Court under Section 82 of the Act.

The High Court by the impugned order has allowed the appeal and set aside the order of the ESI Court and quashed the proceedings initiated by the ESI Corporation.

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In Fertilizers & Chemicals Travancore Ltd. vs. Regional Director, ESIC & Others reported in (2009) 11 SCALE 766, this Court in paragraphs 5 to 13 held as follows:

"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.

6. 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 at least some of the persons concerned, as respondents.

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

8. 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.

9. 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

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clearly against the rules of natural justice.

10. 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.

11. 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.

12. 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.

13. In the present case the workmen concerned

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were not made parties before the Employees Insurance Court, nor was notice issued to them by the said Court."

Following the aforesaid decision and without going into the merits of the controversy involved, this appeal is allowed on the short ground that the workers of the respondent-employer were not made parties, and were not heard by the ESI Court or the High Court. Hence, we set

aside the orders of the High Court and ESI Court and remand the matter to the Employees Insurance Court for deciding it afresh in accordance with law expeditiously after impleading some of the workman, if not all of them, or their trade union in a representative capacity. All questions of law and fact are left open to the parties to be raised before the Insurance Court.

No order as to costs.  
.....J.  
[MARKANDEY KATJU]

NEW DELHI; .....J.  
SEPTEMBER 17, 2009. [ASOK KUMAR GANGULY]