

'REPORTABLE'

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 1870 OF 2011

EMPLOYEES' STATE INSURANCE CORPORATION

Appellant(s)

VERSUS

KAKINADA MUNICIPALITY & ORS.

Respondent(s)

J U D G M E N T

K. M. JOSEPH, J.

(1) Respondent No. 1 is a municipality. There is a factory which ran under the name and style of M/s. Victoria Water Works and controlled by the first respondent. The said factory was covered under the Employees' State Insurance Act, 1948 (hereinafter referred to as 'Act' for brevity) from 12.01.1965. Contributions under the Act were paid by the respondent No. 1, according to the appellant till 31.12.1996. The appellant issued show cause notices proposing assessment for the period from which the first respondent was in default in the matter of payment of

contributions. Various orders demanding sums as found due from the first respondent were issued. A speaking order under Section 45A of the Act was passed on 04.10.2001. It is on 05.02.2002 that the first respondent filed application purporting to be under Section 75(1)(g) of the Act before the Employees Insurance Court. The reliefs which have been sought in the said application are noticed as follows:

"(1) to declare that the Petitioner Municipality being a local self Government, functioning under the statute and providing better amenities to its employees is covered by the provisions to sub-section 4 of Section 1 of ESI Act, 1948.

(2) To declare that the provisions of ESI Act are not applicable to the employees working in Water Works Department of the Petitioner Municipality as the Petitioner Municipality is providing better and superior benefits and facilities than by the 1st Respondent Corporation.

(3) Alternately direct the Respondents to grant exemption under Section 90 of ESI Act, 1948 and also set aside the attachment order dated 15.01.2002.

(4) And pass such other relief/reliefs to which the petitioner may entitled to in law and equality.

(5) To pass such other or further orders as it deems fit and proper."

(2) The Insurance Court, in fact, granted a stay, on payment by respondent No. 1 of Rs.3 lakhs. Evidence was taken and the Insurance Court rejected the application which must be treated as essentially an application under Section 75 of the Act. Against the same, the first respondent filed a statutory appeal as provided under Section 82 of the Act. It is by the impugned judgment, the High Court allowed the appeal filed by the first respondent and proceeded to set

aside the impugned order passed by the Insurance Court.

(3) We have heard Shri Santosh Krishnan, learned counsel for the appellant, and Shri C. Nageswara Rao, learned senior counsel appearing on behalf of the first respondent.

(4) Shri Santosh Krishnan, learned counsel for the appellant, would point out that the High Court has overlooked the relevant statutory provisions contained in the Act. It is his case that the first respondent was running the factory which attracted the provisions of the Act as contained in Section 1(4):

"It shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories."

He would further contend that there is a proviso to the said provision which reads as follows:

"Provided that nothing contained in this subsection 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."

He would submit that with reference to its terms that the factory which is run by the first respondent cannot be described as a factory which is owned by the Government or a factory which is controlled by the Government. In this regard, he sought to receive reinforcement from the provisions of Section 90 of the Act. Section 90 reads as

follows:

"90. Exemption of factories or establishments belonging to Government or any local authority. – The appropriate Government may, after consultation with the Corporation, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment belonging to any local authority from the operation of this Act, if the employees in any such factory or establishment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act."

He would submit that prior to the omission in the said section, the section contemplated also a factory run by the Government. He would submit that the words which were omitted by the Act 29 of 1989 were the words "the Government or". The cumulative result of these provisions is, according to him, that the factory in question which is run by the first respondent, a local authority, is a factory which is governed by Section 1(4). If it is a factory, it would be governed by the provisions of the Act. In other words, contributions are payable in terms of the Act in regard to the employees of the factory. He would further point out that the High Court has erred in considering the matter as if the Insurance Court had jurisdiction to consider the question of exemption. The power of exemption is conferred only upon the Government in regard to a factory which belongs to/ is controlled by the local authority. He would submit that the power of exemption is located in the provisions beginning with section 87 and falling under

Chapter VIII of the Act. The power of exemption under Section 90 as also in the other provisions is hedged in with the limitation or condition that the appellant-Corporation must be heard. In other words, E.S.I. Court did not have any jurisdiction to decide the matter in the manner in which the first respondent contended and what is more, in the manner in which the High Court has finally decided the matter. In this regard, he drew our attention to the judgment of this Court reported in *Zuari Cement Limited v. Regional Director, Employees' State Insurance Corporation, Hyderabad and Others* (2015) 7 SCC 690. In fact, he would submit that the judgment of the High Court in the said case, which has been confirmed by this Court, was present in the mind of the High Court. However, the High Court has erred in seeking to draw support from the order passed by this Court in the decision reported in *Municipal Committee, Abohar v. Regional Commissioner, E.S.I. Corpn. and Another* (1996) 7 SCC 488. He would contend that the High Court erred in drawing support from the said decision which is only an order. There is no discussion of the legal issues involved in the said case. The order of this Court is bereft of precedential value, with the support of which alone, it could not have been treated as law under Article 141 of the Constitution of India.

(5) *Per contra*, Shri C. Nageswara Rao, learned senior

counsel for the first respondent, would support the order of the High Court. He would attempt to bring it under the proviso to Section 1(4). He would further submit that this is a case where the employees of the factory run by the first respondent were in receipt of benefits which were better than the benefits under the Act.

(6) We may notice the scheme of the Act briefly. The Act was enacted in the year 1948 with the object of giving certain benefits to employees in case of sickness, maternity and employment injury.

(7) Section 75 (1) deals with the powers of the Insurance Court and the questions it is authorised to decide:

“75. Matters to be decided by Employees’ Insurance Court. – (1) If any question or dispute arises as to –

(a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee’s contribution, or

(b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

(c) the rate of contribution payable by a principal employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

(ee) any direction issued by the Corporation under section 55-A on a review of any payment of dependants’ benefit, or

(g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the

Employees' Insurance Court under this Act, such question or dispute subject to the provisions of sub-section (2A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (2A), the following claims shall be decided by the Employees' Insurance Court, namely : -

(a) claim for the recovery of contribution from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer;

(d) claim against a principal employer under section 68;

(e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and

(f) any claim for the recovery of any benefit admissible under this Act."

Subsection (2) of Section 75 thus no doubt deals with certain claims to be decided by the Court.

(8) We may notice further, apart from Section 1(4) and Section 90 which we have already noticed, Sections 87, 88 and 89.

"87. Exemption of a factory or establishment or class of factories or establishments. - The appropriate Government may by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time:

Provided that such exemptions may be granted only if the employees' in such factories or establishments are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act:

Provided further that an application for renewal shall be made three months before the date of expiry of the exemption period and a decision on the same

shall be taken by the appropriate Government within two months of receipt of such application.

88. Exemption of persons or class of persons.— The appropriate Government may, by notification in the Official Gazette and subject to such conditions as it may deem fit to impose, exempt any person or class of persons employed in any factory or establishment or class of factories or establishments to which this Act applies from the operation of the Act.

89. Corporation to make representation.— No exemption shall be granted or renewed under section 87 or Section 88, unless a reasonable opportunity has been given to the Corporation to make any representation it may wish to make in regard to the proposal and such representation has been considered by the appropriate Government."

(9) Considering Section 1(4) of the Act, it is clear as daylight, that the Act is to apply to all factories including factories belonging to the Government other than seasonal factories.

A factory is defined under Section 2(12) as follows:

"(12) "factory " means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed;"

Section 14AA defines 'manufacturing process':

"(14AA) "manufacturing process" shall have the meaning assigned to it in the Factories Act, 1948 (63 of 1948)"

(10) In the facts of this case, there is no dispute that the first respondent was running a factory within the

meaning of the Act, insofar as it is undertaking manufacturing activities within the meaning of the expression 'manufacturing process' as defined in Section 14AA. The proviso to Section 1(4), undoubtedly, operates as an exception to the main provision. In other words, from the generality of factories that stand covered under the Act, the legislature has carved out an inroad by providing that the Act would not apply to the factory which belonged to the Government. It also makes it clear that the provisions of the Act will not apply to a factory under the control of the Government. This is however subject to the further condition in the proviso that the employees of such a factory, which is either owned or controlled by the Government, should be otherwise in receipt of benefits substantially similar or superior to the benefits provided under the Act. It is upon satisfaction of these conditions that even a factory which is owned or controlled by the Government would stand exempted from the purview of the Act.

(11) As far as the facts of this case is concerned, the first respondent does not have the case that the factory in question is a factory which is owned by the Government. As far as the question relating to control of the Government is concerned, learned senior counsel for the first respondent has, in fact, upon being queried as to whether he has a case that it is under the control of the Government, he does not

address us on the issue on the lines that the Government controls the factory. He very fairly does submit that the factory is under the control of the first respondent. The first respondent is a local body. It might be true that it is a creature of statute, being created under the relevant Act. It also has a constitutional position after the amendment of the Constitution. But the words used in the Act are that the factory must be under the control of the Government. Any further doubt, in this regard, which we may entertain, is banished by the provisions of Section 90.

(12) Section 90 contemplates exemption of factories or establishments belonging to the local authority. Initially, the said provision contemplated power to exempt any factory or establishment belonging to the Government or any local authority. After the omission of the words 'the Government or' by Act 29 of 1989 with effect from 20.10.1989, the said provision contemplates power with the appropriate Government after consultation with the Corporation (E.S.I. Corporation) to exempt any factory or establishment belonging to any local authority from the provisions of the Act. It must be noticed that proviso to section 1(4) was inserted by the very same amendment with effect from 20.10.1989. The results of this legislative exercise cannot be overlooked. The position, therefore, is that in respect of a factory, which is belonging to a local authority, unless power of

exemption is exercised by the Government, it would be covered by provisions of section 1(4) of the Act. In other words, it would be a factory like any other factory. It would have to be compliant with the provisions of the Act. This is for the reason that a factory or an establishment belonging to or under the control of the Government alone are within the purview of the proviso, which in turn is subject to the imperative condition or rather the indispensable requirement that the employees are in receipt of the substantially similar or superior benefits than provided under the Act.

(13) Having reached the said conclusions, the time is ripe for us to notice the law as laid down by this Court in *Zuari Cement Limited* (supra). In the said case also, which emanated from the same High Court, the appellant therein sought an exemption from the Act but by approaching the Court under Section 75. The argument ran that the Court had jurisdiction by virtue of Section 75(1)(g). The discussion is to be found in paragraphs 12, 13 and 14:

12. As discussed earlier, in terms of Section 87 of the Act, only the appropriate government has the power to grant exemption to a factory or establishment or class of factories or establishments from the operation of the Act. In fact, the appellant-factory itself has obtained exemption from the appropriate Government-State Government under Section 87 of the Act for the period from 1986 to 1993. Likewise, the rejection of exemption was also under Section 87 of the Act. While so seeking the relief of declaration from the ESI Court that the appellant is entitled to exemption from the operation

of the Act is misconceived. Contrary to the scheme of the statute, the High Court, in our view, cannot confer jurisdiction upon the ESI Court to determine the issue of exemption. The ESI Corporation, of course, did not raise any objection and subjected itself to the jurisdiction of the ESI Court. The objection as to want of jurisdiction can be raised at any stage when the Court lacks jurisdiction, the fact that the parties earlier acquiesced in the proceedings is of no consequence.

13. The Employees' Insurance Court is a tribunal specially constituted for the purpose of deciding any controversy that may arise on the matters enumerated in Section 75 of the Act. A reading of Section 75 of the Act would show that the ESI Court has full jurisdiction to decide all the matters arising between the employer and the Corporation under the Act. Section 75 of the Act sets out the matters to be decided by the ESI Court. As per Section 75(1)(g) of the Act, the ESI Court is empowered to decide any matter which is in dispute between the employer and the Corporation in respect of any contribution or benefit or other dues payable or recoverable under the Act or any other matter required to be or which may be decided by the ESI Court under the Act and such question or dispute subject to the provisions of sub-section (2-A) shall be decided by the ESI Court in accordance with the provisions of the Act. When considered in the light of clauses (a) to (d) in Section 75 (1) of the Act, the expression "any other matter" occurring in Section 75(1) (g) only means any other dispute between an employer and corporation or a person and Corporation pertaining to the contribution or benefit or other dues payable under the Act or any other matter required to be decided by the ESI Court under the provisions of the Act. Grant or refusal of exemption by the appropriate government cannot be said to be a dispute between the employer and the Corporation. For grant or refusal of exemption, a specific provision is prescribed under the Act, it cannot be brought within the ambit of "any other matter" required to be decided by the Employees' Insurance Court under this Act.

14. As per the scheme of the Act, the appropriate government alone could grant or refuse exemption. When the statute prescribed the procedure for grant or refusal of exemption from the operation of the Act, it is to be done in that manner and not in any other manner. In State of Jharkhand v. Ambay Cements,

(2005) 1 SCC 368, it was held that
"26.....It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way."

(14) We have no reason to take a different view. The power of exemption is indeed only with the appropriate Government. If a factory or establishment is covered under the Act then subject to the power of the Government to take it out of the purview of the Act by an act of exemption, which, in turn, can be done only after consulting the E.S.I. Corporation and by following the other requirements as provided therein, the said power cannot be availed of by the Insurance Court while deciding an application under Section 75 of the Act.

(15) We have already noticed the reliefs which have been sought in this case. We have also found that section 1(4) applies. The proviso to section 1(4) does not apply. The result is none of the reliefs which have been sought for by the first respondent could have been given. The reliefs were rightly refused by the Insurance Court. The Insurance court did not frame the issue and find that the first respondent was providing superior benefits. The High Court, in the impugned judgment, has made the following findings:

"39. On a careful analysis of the facts of the present case and also the findings recorded by the court below the following essential aspects are not in serious controversy.

(1) The appellant-petitioner-Municipality is a local body governed by the provisions of the A.P. Municipalities Act;

(2) In the light of the relief prayed for it is clear that no application or representation had been made by the Municipality praying for exemption;

(3) The details relating to the better facilities provided to the employees also had not been deposed elaborately;

(4) The Municipality made certain payments relating to contribution for certain periods."

(16) However, the High Court has proceeded to rely upon judgment of this Court in *Municipal Commitee, Abohar v. Regional Commissioner, E.S.I. Corpn. and Another* (1996) 7 SCC 488. The High Court has premised its stand partly on the judgment of this Court in *Municipal Commitee, Abohar* (supra).

(17) It is rightly pointed out by Shri Santosh Krishnan, learned counsel for the appellant, that it is an order. In the said case, no doubt, the appellant was a municipality running Waterworks; the employees were sought to be covered under the Act and after notice was issued, an order under section 45-A of the Act was passed against which an appeal was carried to the Insurance Court which confirmed that the employees were covered under the Act. Thereafter, we notice the following:

"3. The question is whether the employees of the Municipal Corporation are also covered under the Act? The employees of the Corporation are governed by the statutory rules made under the Act and in some cases in other States the benefits of the Government scales of pay etc. have been extended. However, the fact remains that they are provided with the health scheme and are also eligible to medical facilities and reimbursement of the amounts spent by the employees concerned. Under these

circumstances, the coverage of employees under the Act is per se illegal.”

We may notice that the said order does not reveal any discussion of the legal issues. There is no consideration of the statutory provisions in question.

We see merit in the argument of the learned counsel for the appellant that the High Court should not have treated this as a precedent which it should follow, particularly, having regard to the factual matrix in this case and the statutory provisions in place.

(18) The upshot of the above discussion is that the impugned judgment of the High Court is unsustainable and is liable to be set aside.

(19) There is another aspect of the matter. Having noticed that the first respondent is obliged by the provisions of the Act to make contributions in regard to the employees of the factory and the attempt made before the Insurance Court to seek and get an exemption was without foundation in law, the fact remains that the power is lodged under Section 90 of the Act to grant exemption. In other words, the fact that the impugned judgment is being set aside would not stand in the way of the appellant seeking the benefit of exemption under Section 90 of the Act.

(20) Resultantly, the appeal is allowed and the impugned judgment is set aside. We, however, make it clear that this

is without prejudice to the right of the first respondent to seek the benefit of exemption as contemplated under Section 90 of the Act.

Needless to say, in any such proceeding as is provided by Section 90, the Government would necessarily have to consider the version of the Corporation by way of consultation. No orders as to costs.

....., J.
[K.M. JOSEPH]

....., J.
[PAMIDIGHANTAM SRI NARASIMHA]

New Delhi;
September 28, 2021.

ITEM NO.101

COURT NO.10

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 1870/2011

E.S.I CORPORATION

Appellant(s)

VERSUS

KAKINANDA MUNICIPALITY & ORS.

Respondent(s)

[AS ITEM NO. 101]

Date : 28-09-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s)

Mr. Santosh Krishnan, AOR

For Respondent(s)

Mr. C. Nageswararao, Sr. Adv.
Mr. Sateesh Galla, Adv.
Mr. M. Vinodin Routh, Adv.
Mr. N. Rajaraman, AOR

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

The appeal is allowed in terms of the signed
reportable judgment.

(NIDHI AHUJA)
AR-cum-PS

(RENU KAPOOR)
BRANCH OFFICER

[Signed reportable judgment is placed on the file.]