NEUTRAL CITATION NO: 2022/DHC/003290

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

FAO 2/2021, CM APPL. 217/2021 (Interim Stay), CM APPL. 238/2021 (Addl. Doc.) and CM APPL. 1920/2021 (Interim Relief)

Date of Decision : 25.08.2022

IN THE MATTER OF:

M/S TREHUN SONS ..... Appellant
Through: Mr. Maneesh Gumber, Advocate

versus

EMPLOYEE STATE INSURANCE CORPORATION ..... Respondent
Through: Mr. V.K. Singh, Ms. Prachi Singh, Ms. Yakshi Rawal and Mr. Sourav Singh, Advocates with Mr. Arvind Bansal SSO, ESIC

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present appeal filed under Section 82 of the Employees' State Insurance Act, 1948 (hereinafter, referred to as the *'Act'*), the appellant has sought setting aside of the judgment dated 03.11.2020 passed by the learned Senior Civil Judge/Rent Controller (West), Tis Hazari Courts, Delhi in ESIC No. 16/2016. In addition, the appellant has assailed orders dated 17.01.2012 & 05.07.2012 passed by the Deputy Director**,** SRO, (North) and the Appellate Authority, SRO, Rohini, Delhi respectively.

2. A perusal of the paper book would show that the present proceedings originate from a Show Cause Notice dated 25.07.2011 issued by ESIC under

Sections 85(a) and 85(e) of the Act, whereby the appellant was asked to deposit employees' contribution of Rs.4,79,050/- for the period from 01.06.2006 to June, 2011. The aforesaid notice culminated into passing of a speaking order dated 17.01.2012 under Section 45-A of the Act, which was challenged by the appellant by way of an appeal under Section 45-AA of the Act. The same came to be dismissed vide order dated 05.07.2012, which in turn was challenged before the learned SCJ by way of an appeal filed under Section 75 read with Sections 76 & 77 of the Act. The said appeal came to be dismissed by way of the order impugned herein.

3. It is worthwhile to note that the entire case revolves around the allegation that despite having employed atleast 20 employees and thus being covered under the Act, the appellant has not paid the requisite contribution.

4. There is no gainsaying that labour statutes, such as the Act, constitute *'beneficial legislation'*, enacted for the welfare of employees/workmen. Besides ESIC, such workmen/employees, are also to be necessarily impleaded in petitions filed under Section 75 of the Act through self or in representative capacity. In this regard, this Court deems it expedient to advert to the following observations made by the Supreme Court in Fertilizers and Chemicals Travancore Limited *v.* Regional Director, Employees' State Insurance Corporation and Others reported as **(2009) 9 SCC 485:-**

> *"8. 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 at least 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 parties concerned in labour matters are the employer and the workers. ESI Corporation will not be in any way affected if the demand notice sent by it under Section 45-A/45-B is quashed.

9. 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 ESI Corporation. 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.

10. In the present case the workmen concerned were not made parties before the Employees' Insurance Court, nor was notice issued to them by the said court. Also, the order of the Employees' Insurance Court dated 4-2-1993, relevant portion of which we have quoted, is not a very happy one as no proper determination has been made therein as to whether the workmen concerned are the employees of the appellant and whether they are entitled to the benefit of the Act.

11. No doubt some observations have been made that some labourers come on one day but they may not come on the next day. Having said so, a direction has been given that ESI Corporation will after making inquiries about the identities of the said workers will register them and then extend the benefit of the Act.

12. In our opinion, the Employees' Insurance Court should have itself made a proper investigation of the facts after getting evidence from the parties, including the workmen concerned, and after impleading them as party in the petition, it should

have determined the question as to whether the persons concerned were the employees of the appellant or not."

5. Subsequently, the above observations have been reiterated by the Supreme Court in Employees' State Insurance Corporation *v.* Bhakra Beas Management Board and Another reported as **(2009) 10 SCC 671** and Employees State Insurance Corporation and Others *v.* Key Dee Cold Storage Pvt. Ltd. reported as **2022 SCC OnLine SC 650**.

6. In Employees State Insurance Corporation and Others *v.* Key Dee Cold Storage Pvt. Ltd. (Supra), the respondent had raised a challenge before the ESI Court against a show cause notice for remittance of contribution, and consequent steps for recovery, however, it failed to implead the factory's employees. While enunciating that non-joinder of necessary parties goes to the root of the matter and could also be fatal to a legal proceeding, the Supreme Court observed as follows:-

*"**28.** This Court in Delhi Gymkhana Club Limited v. Employees' State Insurance Corporation , through the opinion of Justice R. Banumathi, noted that the object of the ESI Act is to provide benefits to the employees and also to make provisions for certain other matters in relation thereto. As the ESI Act is a beneficial piece of social welfare legislation aimed at securing the well-being of the employees, a restrictive interpretation which will have the effect of defeating the objects of the beneficial legislation, should be eschewed by the Court.*

***29.** In the present matter, the respondent while challenging the show cause notice in the EI Court, failed to implead the factory's employees either individually or in representative capacity. Even the Union of India which issued the notification under Section 1(3) of the ESI Act expanding coverage of the beneficial legislation to the area where the factory of the respondent is located, was not arrayed as a party in the*

proceeding. In such circumstances, the decision of this Court in Employees' State Insurance Corporation v. Bhakra Beas Management Board and Fertilizers and Chemicals Travancore Ltd. v. Regional Director, Employees' State Insurance Corporation would come into play.

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32. *The above judgments suggest that for non-joinder of necessary parties, the proceeding at the instance of the respondent would not be legally maintainable. Such a plea was specifically raised by the appellants before the High Court but this was rejected with the observation that the issue ought to have been raised before the trial court. In this context, it is necessary to keep in mind that the Supreme Court judgment i.e. Employees' State Insurance Corporation (supra) was rendered on 17.9.2009 whereas the judgment in favour of the appellants was rendered by the EI Court much earlier on 21.6.2006. Therefore, for the appellants, it would have been impossible to rely on the ratio in the subsequent judgment of the Supreme Court to argue on the non-maintainability of the respondent's proceeding, for non-impleadment of the concerned employees.*

33. *In any case, non-joinder of a necessary party goes to the root of the matter and could also be fatal to a legal proceeding. For this we can usefully read the opinion of this court in Khetrabasi Biswal v. Ajaya Kumar Baral where it was held as follows:—*

> *"**6.** The procedural law as well as the substantive law both mandates that in the absence of a necessary party, the order passed is a nullity and does not have a binding effect."*

7. Keeping in view the above, this Court is of the opinion that the present matter needs to be remanded back to the learned SCJ to be decided afresh in light of the aforesaid decisions. The appeal is allowed and it is ordered accordingly.

8. Let the present matter be listed before the learned SCJ/Rent Controller (West), Tis Hazari Courts, Delhi on 05.09.2022.

9. With the above directions, the present appeal is disposed of, alongwith the pending applications.

10. A copy of this order be communicated to the learned SCJ/Rent Controller (West), Tis Hazari Courts, Delhi forthwith.

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 25, 2022
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