

(2011) 12 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 50 and 53 of 1993

Bhakra Beas Management Board, Chandigarh and another	APPELLANT
Vs	
Employees' State Insurance Corporation	RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees State Insurance Act, 1948 — Section 2(12)
Factories Act, 1948 — Section 2
Punjab Reorganisation Act, 1966 — Section 79, 80(6)

Citation : (2012) 133 FLR 70 : (2012) 3 LLJ 109

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Advocate : N.S. Bawa, for the Appellant; Tribhawan Dahiya, for the Respondent

Judgement

Mehinder Singh Sullar, J.—As identical questions of law and facts are involved, therefore, I propose to dispose of the instant writ petitions, by virtue of this common order to avoid the repetition. However, the facts, which need a necessary mention for the limited purpose of deciding the sole controversy involved in the writ petitions, have been extracted from (1) CWP No. 50 of 1993 titled as "Bhakra Beas Management Board. Chandigarh and another v. Employees State Insurance Corporation" for ready reference in this regard. The conspectus of the facts, culminating in the commencement, relevant for disposal of the present writ petitions and emanating from the record, is that petitioner Bhakra Beas Management Board, Chandigarh (for brevity "the BBMB") is a statutory body, constituted u/s 79 read with section 80 (6) of the Punjab Re-organization Act, 1966 (hereinafter to be referred as "the Reorganization Act") for the administration, maintenance and operation of works enumerated therein, which includes the sub-stations, transmission lines, regulation of supply of water and power from Bhakra Nangal and Beas to the States of Haryana, Punjab and Rajasthan.

2. The BBMB claimed that the Employees State Insurance Corporation-

respondent (for short "the respondent-Corporation") has been illegally asserting that the employees of Grid Sub-Station are covered under the provisions of the Employees' State Insurance Act, 1948 (hereinafter to be referred as "the ESI Act"). Sequel, its Regional Director issued the impugned letters dated 30.11.1988 (Annexure P1) and 14.12.1988 (Annexure P2), directing the BBMB to deposit the impugned amount of Rs. 94,138-80 P, relating to the period from September, 1986 to June, 1988, failing which, the contribution together with interest will be recovered as arrears of land revenue. According to the BBMB that the Regional Director of respondent-Corporation has requested the Collector, Faridabad, by way of impugned letter dated 27.2.1992 (Annexure P3) for recovering the indicated amount under the provisions of the Punjab Land Revenue Act. Likewise, the respondent-Corporation has threatened to launch prosecution, by means of impugned letter dated 15.10.1992 (Annexure P5).

3. Aggrieved by the letters/orders (Annexures P1 to P3 & P5), the petitioner-BBMB preferred the instant writ petitions, challenging the indicated letters/orders, invoking the provisions of Articles 226/227 of the Constitution of India.

4. Levelling a variety of allegations and narrating the sequence of events, in all, the petitioner-BBMB pleaded that in view of letter dated 12.11.1984 (Annexure P4) of the Chief Inspector of Factories, Haryana to the effect that the provisions of Factories Act would not apply to the grid sub-station, as per judgment of Hon'ble Supreme Court in case The Workmen of the Calcutta Electric Supply Corporation Ltd. Vs. The Calcutta Electric Supply Corporation Ltd., the impugned action of respondent-Corporation is arbitrary. Since the provisions of ESI Act are not applicable, so, the demand raised by the respondent-Corporation, through the medium of impugned letters -is illegal, nullity and without jurisdiction. On the basis of aforesaid allegations, the petitioner BBMB filed the present writ petitions in the manner depicted hereinbefore.

5. The respondent-Corporation refuted the claim of BBMB and filed the reply, inter-alia pleading that as all the sub-stations, maintenance of existing lines of generation, transmission and transforming electricity and other incidental matters are covered under the provisions of the ESI Act, therefore, the BBMB is liable to make payment of the indicated amount. It will not be out of place to mention here that the respondent-Corporation has stoutly denied all other allegations contained in the writ petitions and prayed for their dismissal.

6. After hearing the learned Counsel for the parties, going through the record with their valuable help and after deep consideration of the entire matter, to my mind, since the impugned demand notices cannot legally be sustained, so, the instant writ petitions deserve to be partly accepted in this context.

7. As is clear that ESI Act is applicable to all factories other than seasonal factories. Section 2(12) defines "factory" means any premises including the precincts thereof 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, but it does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed.

8. What cannot possibly be disputed here is that the BBMB is a statutory body, constituted u/s 79 read with section 80 (6) of the Reorganization Act for the administration, maintenance and operation of works enumerated therein, which includes the sub-stations, transmission lines, regulation of supply of water and energy from Bhakra Nangal and Beas to the States of Haryana, Punjab and Rajasthan. Whether the respective employees of different States working with the BBMB or the employees of the BBMB employed for maintenance of sub-stations or wire/lines can legally be termed to be working in the factories or not, is the moot point to be decided by this Court ? This question is no more *res integra* and is well settled. An identical question arose before the Hon'ble Apex Court in *Workmen of Delhi Electric Supply Undertaking's case* (supra). Having interpreted the provisions of Electricity (Supply) Act and the Industrial Disputes Act, it was ruled (para 18) as under:-

18. Section 2(12) referred to in the above quotation is of the Employees State Insurance Act. It is clear from this decision that the factory must occupy a fixed site or premises. The evidence on record clearly shows that several sub-stations and zonal stations are left unattended. This will not be the case if a manufacturing process takes place in those premises. A perusal of the nature of the work that the concerned workmen have to do even as enumerated in their statement of claim before the Tribunal clearly shows that they have no part in any manufacturing process. Their functions appear to be to maintain the existing lines of generation, transmission and transformation of power in their respective areas, to attend the installation and other incidental matters when a new connection has been given to a consumer. They have to attend to daily complaints from the consumers, keep regular reports and attend to the defects in the consumers' premises. They have to go out for field work and they have to sit in office for maintenance and preparation of the relevant records. It cannot be said that any manufacturing process either takes place in the sub-stations or in the zonal stations and they do not satisfy the definition of "factory" u/s 2(m) of the Factories Act. If these places are not factories. Clause (a) of Regulation No. 17 will not apply to the concerned workmen who are employed therein.

9. Not only that, further relying upon the aforesaid judgment, the Delhi High Court in case *Bhakra Beas Management Board Vs. Employees State Insurance Corporation and Another*, has held that since no manufacturing process either takes place in the sub-stations or in the zonal stations and they do not satisfy the definition of "factory", so, the sub-stations maintained by the BBMB will not fall within the ambit of factory and the provisions of ESI Act are not applicable to its employees.

10. As indicated hereinabove, the respondent-Corporation has included all such employees of sub-stations & maintenance of supply lines and directed the BBMB

to deposit the entire amount, which, to my mind, is not legally tenable. The respondent-Corporation is required to determine the components of generation of power in a particular premises, whereas the provisions of ESI Act can be made applicable and components of those employees, who are working in sub-stations and for maintenance of supply lines, where such provisions are not applicable. To me, the respondent-Corporation has, in a very routine & casual manner, without determining the real controversy, directed the BBMB to deposit the indicated amount in respect of all its employees. Moreover, the impugned letters are non-speaking and lack application of mind. The statutory authorities under the ESI Act are legally and independently required to record valid reasons. It is now well settled principle of law that every action of such authority must be informed by reasons. The order must be fair, clear, reasonable and in the interest of justice and fair play. Every order must be confined and structured by rational and relevant material on record because the question of applicability of the provisions of the ESI Act is involved in the lis.

11. Therefore, to my mind, the impugned letters/orders (Annexures P1 to F3 & P5), which have been passed at the back of BBMB, cannot legally be sustained and justice would be sub-served, if the case is remanded back to the competent authority of respondent-Corporation for its fresh decision, by passing a speaking order. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of subsequent hearing of the matter, the instant writ petitions are accepted. Consequently, the impugned letters/ orders (Annexures P1 to P3 and P5) are hereby set aside. The case is remitted back to the indicated competent authority to decide the matter afresh after affording opportunity to the BBMB to determine the applicability of provisions of ESI Act on the respective components of its employees, in view of aforesaid observations and by passing a speaking order in accordance with law.