

(2000) 11 BOM CK 0016
In the Bombay High Court
Case No : A.S.F.A. No. 544 of 1986

Deputy Regional Director, E.S.I. Corporation and Another	APPELLANT
Vs	
General Secretary, S.T. Workers Federation (INTUC) and Another	RESPONDENT

Date of Decision : 22-11-2000

Acts Referred:

Employees State Insurance Act, 1948 — Section 91

Citation : (2001) 88 FLR 933 : (2001) 1 LLJ 874

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : H.V. Mehta, for the Appellant; Vikrant Pai, for the Respondent

Final Decision : Partly Allowed

Judgement

R.M. Lodha, J.—The first appeal has been preferred by the Deputy Regional Director, E.S.I. Corporation and also Manager, E.S.I. Corporation against the judgment and order dated March 31, 1986 passed by Judge E. I. Court, Sangli to the extent the said Court directed the employees of S.T. Corporation that they would be liable for deduction from their wages by way of contribution to E.S.I. Authorities as per Rules from the date of the order onwards i.e. after April 1, 1986. In nutshell, the grievance of the appellants in this first appeal is that the E.I. Court ought to have directed the employees of S.T. Corporation that they would be liable for deduction from their wages by way of contribution to E.S.I. Authorities with effect from the date E.S.I. Act has been made applicable to S.T. Corporation and concerned category of employees. The Government of Maharashtra issued Notification No. ESI/1679/2670/PH-15 dated October 26, 1981 appointing November 1981 to be the day on which all the provisions of the E.S.I. Act were made applicable to the classes of establishments mentioned in column 1 of Schedule to the earlier Notification dated October 3, 1981 in the areas specified in column 2 of the said Notification. In accordance with the Notification issued by the Government of Maharashtra, the S.T. Corporation stood

covered under E.S.I. Act with effect from November 8, 1981. By Notification dated January 5, 1982 the Government of Maharashtra granted exemption to certain categories of the employees such as those who were residing in non-implemented areas under the provisions of Section 91 of the Act. Pursuant to the said Notification, the S.T. Corporation sought exemption in respect of certain employees fulfilling those conditions. It may also be noted that by the amended Act of 1984, the employees getting salary of Rs. 1600/- or low were to be treated as employees under the E.S.I. Act with effect from January 27, 1985. However, E.I. Court though held that the action of S.T. Corporation in applying E.S.I. Act to its employees as per the Government Notifications was proper, in the light of the observations made in paragraph 14 of the interim order directed that the employees of S.T. Corporation would be liable to be covered under E.S.I. Act and would be liable for contribution from their wages with effect from April 1, 1986. In paragraph 14 of the order, the E.I. Court held thus:

"14. At the time of passing interim order, it is ordered that the deduction from wage of these workers be withheld with condition that these deductions shall be made from their wages in future, if the decision in this case is unfavourable to these workers. In this connection it has not been lead only in the context of previous interim order or (sic) of the condition of it. The question further to be considered is whether these workers were already covered by the E.S.I. Act (sic) and whether the E.S.I. Corporation authorities had granted any relief, medical service or other benefits and had given to these workers or employees at this point. There is no evidence led by the S.T. Corporation or E.S.I. Corporation for and on behalf of Applicants to show definitely whether any such services to the workers were made available by the E.S.I. Corporation. Thus, if E.S.I. Corporation authorities have not given any medical reliefs to these employees, it has no right to claim deduction from the wages of these employees till the time when they are made applicable to the employees by joining them or giving them to the E.S.I. Authorities and their medical centres. Hence, normally, it would not be proper to allow to the precondition to operate and to direct the recoveries for the service to the employees from their future salaries, if any. However, from the date of this order, these employees would be covered under the E.S.I. Corporation (sic) and they would be liable for deduction from the wages by way of contribution to the E.S.I. Act which would be operated from April 1, 1986 onwards."

2. The question that falls for determination in this first appeal is whether the E.I. Court was justified in holding that employees of S.T. Corporation would be liable for deduction from their wages by way of contribution to E.S.I. Authorities with effect from April 1, 1986.

3. As would be seen from the discussion made by E.S.I. Court in paragraph 14 that the said Court was influenced by the fact that at the time of passing of Interim Order, it was ordered that deduction from wages of the concerned employee would be withheld with a condition that these deductions would be

made from their wages in future if the decision was against the employees. This approach of the E.I. Court is wholly fallacious. It may be noted that an undertaking was given on behalf of the Union that if ultimately the opponents succeed in the case, the applicant-union was ready and willing to pay the subscription with retrospective effect- The said undertaking given by the applicant union on February 21, 1985 reads thus:

The applicant do hereby undertakes that if ultimately the opponents succeed in this case, the applicant is ready and willing to pay the subscription with retrospective effect. It is also prayed that the stay may please be continued until final disposal of the case."

4. Besides that any interim order cannot upturn the legal position to the effect that an obligation to pay contribution commences from the date of the application of E.S.I. Act to such factory or establishment. To reiterate, what the Supreme Court said in *Employees' State Insurance Corporation v. Harrison Malayalam Pvt. Ltd.*, 83 F.J.R. 572, that the E.S.I. Act envisages automatic obligation to pay the contribution once a factory or establishment is covered by the E.S.I. Act and the obligation to pay the contribution commences from the date of the application of the E.S.I. Act to such factory or establishment. The obligation ceases only when the E.S.I. Act ceases to apply to the factory or establishment. The legal position, therefore, is that once a factory or establishment is covered by the E.S.I. Act, the obligation to pay the contribution commences from the date of the application of the Act to such factory or establishment and the obligation ceases only when the E.S.I. Act ceases to apply to the factory or establishment. In view of this legal position, the obligation upon the concerned employees of S.T. Corporation to pay the contribution to E.S.I. authorities commence on the day E.S.I. Act was made applicable to S.T. Corporation and this obligation could not have been done away with by an interim order which was only tentative in nature. Another reason given by the E.I. Court in paragraph 14 of the impugned order is that no evidence has been led by S.T. Corporation or E.S.I. Corporation to show whether any benefits were extended and made available to the workers during this period. This approach of E.I. Court is again fallacious since there is no relation between the contribution made and the benefits availed of by the workers. In *Employees' State Insurance Corporation v. Harrison Malayalam Pvt. Ltd.* (supra), the Apex Court observed that the contribution paid entitled the workman insured to the benefit under the E.S.I. Act. However, the employee does not get back any part of the contribution if during the benefit period, he does not qualify for any of the benefits. The Apex Court also said that there is no relation between the contribution made and the benefit availed of. In this view of the matter, the concerned E.I. Court, Sangli was not at all justified in directing that the employees of S.T. Corporation would be liable for contribution from their wages to E.S.I. Authorities with effect from April 1, 1986 and to that extent the impugned judgment and order needs modification.

5. First appeal is partly allowed. The direction given by the E.I. Court that employees of S.T. Corporation would be liable for contribution from their wages to E.S.I. Authorities with effect from April 1, 1986 modified by directing that employees of S.T. Corporation would be liable for contribution from their wages to E.S.I. Authorities as per the Notifications and the rules from the date the E.S.I. Act has been made applicable. No costs.