

(2012) 08 MP CK 0182
In the Madhya Pradesh High Court
Case No : M.A. No. 3777 of 2006

Employees State Insurance Corporation	APPELLANT
Vs	
Shiv Plasti Industries Ratlam	RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 45B, 75

Citation : (2012) 08 MP CK 0182

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : S.C. Agrawal, for the Appellant; S.C. Bhatt, for the Respondent

Judgement

Hon"ble Shri N.K. Mody, J.—Being aggrieved by the order dated 22/09/06 passed by ESI, Labour Court, Ratlam in Case No.02/ESI/96 whereby application filed by respondent u/s 75 of ESI Act was allowed, present appeal has been filed. Short facts of the case are that the respondent filed a petition u/s 75 of Employees Insurance Act, 1948 whereby it was prayed that the order dated 07/03/96 issued by appellant be quashed. In the petition it was alleged that the provisions of ESI Act are not applicable to the respondent as at the relevant time there were seven employees who were working with the respondent and three employees were in security services, for which payment is not being made by the respondent. In the application it was alleged that in the inspection which was conducted by the appellant on 09/05/96 also same position was found on spot. The application was opposed by the appellant. In reply it was alleged that in the year 1992 respondent informed that seven employees are working and in 1993 it was informed that three persons are working as security guard and since 10 employees are working with the respondent, therefore, respondent was liable to deposit the requisite amount of its contribution u/s 75(2)(B) of ESI Act. It was prayed that the application filed by the respondent be dismissed. After framing of issues and recording of evidence learned Court below allowed the application filed by respondent, against which present appeal has been filed.

2. Learned counsel for the appellant argued at length and submits that the impugned order passed by the learned Court below is illegal, incorrect and deserves to be set aside. It is submitted that since undisputedly 10 employees were working with the respondent, therefore, learned Court below was not justified in allowing the application filed by respondent. It is submitted that the appeal filed by the appellant be allowed and impugned order passed by learned Court below be set aside.

3. Learned counsel for respondent submits that no illegality has been committed by the learned Court below in passing the impugned order. It is submitted the appeal filed by the appellant be dismissed.

4. In the matter of Employees State Insurance Corporation Vs. Bhakra Beas Management Board, 2010 (2) SCCD 1133 (SC) Hon''ble Apex Court has held that whenever any petition is filed by an employer u/s 75 of ESI Act, the employer has not only to implead the E.S.I.C. but has also to implead atleast some of the workers concerned (in a representative capacity if there are 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 E.S.I Corporation will not be in any way affected if the demand notice sent by it u/s 45A/45B is quashed. Following the decision of the Hon''ble Apex Court this Court has also passed the order on 20/07/11 in MA.No.1178/07 (Reported in 2012(1) MPLJ 614).

5. Since the respondent has not impleaded the representative of employee as party, therefore, the appeal filed by the appellant is allowed and the impugned order is set aside and the case is remanded to the learned Court below with a direction to the respondent to implead the representative of employee as party. After impleading the representative of employee the learned Court below shall redecide the application afresh. With the aforesaid observations, appeal stands disposed of.