

(2005) 01 PAT CK 0014
In the Patna High Court
Case No : CWJC No. 4505 of 2004

R.K. Tekriwal and Another	Vs	APPELLANT
Employees State Insurance Corporation and Others		RESPONDENT

Date of Decision : 05-01-2005

Acts Referred:

Citation : (2005) 1 PLJR 544

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Ashok Kumar Sinha, for the Appellant; Arun Shrivastava, for the Respondent

Judgement

R.S. Garg, J.—Heard learned counsel for the parties. The petitioners being aggrieved by the order dated 7.8.2003 (Annexure 1) so also the demand notices, issued under Annexures 2, 2/A, 3 and 3/A are before this Court with a submission that the persons who are engaged for loading and unloading in fact are not the employees of the petitioners and as such for such persons, the Employees State Insurance Corporation cannot make any demand. It is also submitted that no proper opportunity has been given to the petitioners and no inquiry has been made into the allegations made by the Employees State Insurance Corporation and the defence raised by the petitioners. It is further submitted that to challenge the correctness, validity and propriety of the order and the demand raised by the Corporation, the petitioners have already filed a petition before the E.S.I. Court but in absence of the Presiding Officer, they are finding it difficult to resist the demand made by the Corporation.

2. The respondents have submitted that the persons engaged for loading and unloading, in accordance with the judgment of the Supreme Court, do fall within the definition of the employees and as such the Act is applicable to them. They submit that the order passed by them and the demand raised are in accordance with law.

3. Countering the same, it is submitted by the learned counsel for the petitioners that the petitioners are not challenging the applicability of the Act and its provisions but they challenged the fact that these persons who are found on the spot are not their employees. It is submitted that unless a complete and detailed inquiry is made into the relationship of the employer and employee between the petitioners concern and the said persons, neither an order can be issued against their interest nor any demand could be made.

4. Taking into consideration that there is a serious dispute about the facts and this court would not be in a position to decide the question without recording evidence on the point, I do not think that it would be proper on the part of this Court to interfere in the matter.

5. As the matter is pending before the ESI Court, it would be apt and proper that the matter is heard and decided by the said Court after giving due opportunity of hearing to the parties. However, it is directed that the petitioners may deposit the demanded amount with the ESI Corporation. The said deposit shall be subject to final order passed by the ESI Court. If the ESI court holds that these persons who are shown to be the employees of the petitioners are in fact not employees of the petitioners then the ESI Corporation shall refund the entire amount back to the petitioners and in case it is held that there is relationship of employer and employee between the petitioners and such persons, then that would be the end of the matter for the ESI Court, however, subject to the appellate rights of the petitioners. The deposit shall be made within a period of three months. This writ petition is accordingly disposed of.