

MANU/MH/0305/1996

Equivalent Citation: [1996(74)FLR2249]

IN THE HIGH COURT OF BOMBAY

Writ Petition No. 917 of 1996

Decided On: 26.07.1996

Appellants: **Rainbow Industries**
Vs.

Respondent: **State Government of Maharashtra & ors.**

Hon'ble Judges/Coram:

F.I. Rebello and V.P. Tipnis, JJ.

Case Note:

Labour and Industrial - jurisdiction - Sections 45A, 74, 75, 76, 77, 78, 78 (2), 79, 81 and 82 of Employees' State Insurance Act, 1986 - appeal against order by member of Industrial Court - said member not appointed as Judge of Employees Insurance Court through any notification as required by Section 74 - said member came to adjudicate on matter due to transfer made by another member - member never heard matter - hearing is an important aspect of judicial process -held, impugned Order set aside on ground that member decided matter without hearing the parties.

JUDGMENT

V.P. Tipnis, J.

1. The petitioner is a partnership firm engaged in the manufacture of L.T. Switch Gears and is carrying on its activities as a small scale industry in a gala situated in Shree Ram Co-op. Society at Goregaon, Mumbai. It is the assertion of the petitioner that the firm is covered under the provisions of the Employees State Insurance Act, 1948 effective from 1-7-1986. It is the further assertion of the petitioner than till 1st July, 1986 the firm had always engaged less than 10 employees for the purpose of carrying on its manufacturing activities and after it was covered validly as from 1st July, 1986, the firm has made contribution under the Act and the scheme framed thereunder and is also allotted code number under the Act.

2. It appears that Inspectress of the E.S.I. Corporation visited the premises on 14-10-1983 and made certain report. The Regional Director of ESI Corporation held that the company was covered under the provisions of the Act from 14-10-1983 by his order dated 28-12-1983. It is alleged that the said order was passed without hearing the petitioner. Being aggrieved by the order, the petitioner demanded personal hearing from the Deputy Director. In the meantime the coverage of the petitioner was preponed from 1-7-1979 and consequent demand for contribution effective from 1st July, 1979 to 31st March, 1984 was made by letter dated 3-6-1985. The petitioner was heard by the Deputy Director of the respondent Corporation and an order under Section 45-A of the Employees State Insurance Act, was passed.

3. Being aggrieved by the said order the petitioner-firm filed an application before the Employees' Insurance Court, Mumbai. The said application was numbered as Application (ESI) No. 96 of 1986. The aforesaid matter was placed before the Learned Judge, Employees Insurance Court, who was also President of the Industrial Court, Mumbai. The Corporation filed its written statement and opposed the application. The parties also filed some documents. The applicant adduced oral evidence before the Employees Insurance Court at Mumbai. The witnesses were examined between 8-8-1991 till 11-11-1993. At the relevant time Shri S.M. Limaye, President Industrial Court, was the member of one of the Employees Insurance Courts having jurisdiction over Municipal Corporation of Greater Bombay except N.S. and T. Wards. The said Shri Limaye recorded evidence, heard the respective counsel on different dates and ultimately the matter was adjourned for orders from time to time. While the matter was pending for judgment and order, Shri Limaye passed an order transferring all matters pending before him to respondent No. 4 Shri S.L. Mehendale, who was member of the Industrial Court. It is contended by the petitioner that Shri Mehendale without hearing the parties afresh, proceeded to pass order disposing of the application on 18-3-1996. It is contended by the petitioner that the order was passed by Shri Mehendale in his chamber. The aforesaid order of Shri Mehendale passed on 18-3-1996 is being impugned in this petition.

4. Shri Naidu, learned counsel for the petitioner has challenged the order on the ground that Shri Mehendale although he was a member of the Industrial Court, had no jurisdiction in the matter in as much as Shri Mehendale was never lawfully appointed as a Judge of the Employees Insurance Court. As such the order passed by Shri Mehendale is totally without jurisdiction. Shri Naidu contended that the so-called administrative order passed by Shri Limaye who was the President of the Industrial Court and also a Judge of the Employees Insurance Court is also without legal authority in as much as Shri Limaye could not have appointed Shri Mehendale as a Judge of Employees Insurance Court. The second contention of Shri Naidu is that in any event the order passed by Shri Mehendale is illegal, in as much as Shri Mehendale never heard the matter and proceedings before the Employees Insurance Court are judicial proceedings, it is unthinkable that a Judge who has not heard the matter or argument can decide the matter.

5. Affidavit has been filed by one Kashinath Gajendra Sathe, Registrar of the Industrial Court on behalf of respondent No. 1 State as also on behalf of Shri Limaye, President Industrial Court and Judge of one of the Employees Insurance Court at Mumbai. It is stated in the affidavit that Shri Limaye by order dated 16-12-1995 transferred all the matters pending before him in his capacity as Member of the First Industrial Court (ESI) Court to the 4th respondent in order to avoid inconvenience to the parties and to meet the increasing administration work. It is admitted in the affidavit that no notification was issued in the name of particular Judge appointing him as a Judge of (ESI) Court since 10-6-1992. It is further stated in the affidavit that in view of the present petition State has issued a notification after considering all the implications, and now the Government has appointed the Court presided over by the respondent No. 4 Shri Mehendale as Employees Insurance Court (additional) Mumbai. A copy of the aforesaid notification is also annexed to the said affidavit.

6. We have heard Shri Belose, learned Assistant Government Pleader, Shri Jaykar, learned counsel for the ESI Corporation, as also Shri Naidu for the petitioner.

7. That it is Shri Limaye who heard the matter; that even whatever arguments were made, written and oral, were made before Shri Limaye, in this case is not disputed. It

is also not disputed that Shri Mehendale never heard any arguments in the matter and decided the matter only on the basis of the record of the proceedings. In our view these fact before us, go to the root of the matter, and the order is required to be quashed on the aforesaid ground, i.e., that the Judge who decided the matter never heard the matter, not even arguments.

8. It requires to be stated that under Section 74 of the Employees State Insurance Act, 1948, the State Government is empowered to constitute an Employees Insurance Court by notification that the Court shall consist of such number of Judges as the State Government may think fit. Section 75 enumerates the matters to be decided by the Employees Insurance Court. Apart from specific matters under Clause (g) of Section 75(I), the Court is also empowered to decide any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under the Act. It is clear that the Employees Insurance Court under the Act is a Court for all purpose and is having wide powers. The Court is also required to decide such questions or disputes in accordance with the provisions of the Act as provided under Section 75. Sub-section (3) of Section 75 clearly bars the jurisdiction of the Civil Court to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under the Act is to be decided by medical board, or by a medical appeal tribunal or by the Employees Insurance Court. Provisions of Sections 76, 77, 78 and 79 of the Act, deals in detail with the institution of proceedings, commencement of proceedings, powers of Employees Insurance Court, appearance by legal practitioners etc. Under the provisions of Section 78 the Employees Insurance Court shall have all the powers of a Civil Court for the purpose of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such Court shall deemed to be a Civil Court within the meaning of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Sub-section (2) of Section 78 is important which states that the Employees Insurance Court shall follow such procedure as may be prescribed by rules made by the State Government. Under Section 81 the Employees Insurance Court may submit any question of law for the decision of the High Court and if it does so shall decide the question pending before it in accordance with decision. Under Section 82, save as expressly provided in the Act, no appeal shall lie from an order of an Employees Insurance of Court. Under sub-section (2) of Section 82 an appeal shall lie to the High Court from an order of an Employees Insurance Court if it involves a substantial question of law. We have adverted to all these provisions of the Act which in our opinion clearly show that very wide powers and subject to an appeal provided under Section 82, almost a finality so far as the facts are concerned, is given to the decision of the Employees Insurance Court.

9. The State Government has made Rules called Bombay Employees Insurance Courts Rules, 1959. These Rules in detail prescribed the procedure to be followed by the Employees Insurance Court. Section 78(2) of the Act provide that the Employees Insurance Court shall follow such procedure as may be prescribed by the Rules, by the Government. If we go through the Rules in Chapter II the Rules provide in detail for filing an application, production of document, place of suing, limitation, issuance of summons, service of summons, filing of written statements, consequence of failure to present written statement, framing of issues, appearance of parties and consequence of non-appearance, summoning of witnesses adjournments of hearing, right to begin proceedings, method of recording of evidence, recalling of a witness,

inspection by Court, pronouncement of order, signing of order, compromise of suit and finality of order. On every such item the Rules made detailed provisions which the Employees Insurance Court must follow in view of the provisions of Section 78(2) of the Employees State Insurance Act.

10. Under Rule 29 of the said Rules the applicant has a right to begin unless the opposite party admits the facts alleged by the applicant. Rule 30 provided that on the date fixed for hearing of the application or any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. Sub-rule (2) of rule 30 provides that the other party shall then State his case and produce his evidence if any and may then address the Court generally on the whole case. Sub-rule (3) of Rule 30 is very important which states that the party beginning may then reply generally on the whole case. In our opinion this rule clearly shows that the Employees Insurance Court has to hear the parties and submissions made by the parties. Rule 34 provides that the Court, after the application has been heard, shall pronounce its final order in open Court, either at once or on some future day, of which due notice shall be given to the parties. In our opinion this rule leaves no manner of doubt that the Employees Insurance Court has to hear the parties and also their submissions and declare judgment in open Court. Apart from the requirements of Rules and provisions of law, we cannot countenance that one Judge records evidence and hears the arguments and some other Judge, without hearing the matter afresh, decides and gives judgment, on the basis of the record and the written submissions. In the facts of the case before us admittedly Shri Mehendale never heard the parties. Hearing parties, in our opinion is an extremely important aspect of the judicial process, and we cannot possibly conceive of a case of a Judge deciding the matter without hearing the parties. The order impugned has to be, therefore set aside on the ground that Shri Mehendale decided the matter without hearing the parties.

11. The impugned order has also to be set aside on the ground that Shri Mehendale at the relevant time was not at all presiding over properly constituted Employees Insurance Court. As stated earlier under Section 74 it is only the State Government, which by notification in the Official Gazette, can constitute an Employees Insurance Court for some local area a may be specified in the notification. Admittedly no such notification was issued appointing Shri Mehendale as a Judge of the Employees Insurance Court. Though routinely members of the Industrial Court were being appointed as Judges of the Employees Insurance Court, that does not mean each and every Judge of the Industrial Court would automatically become a Judge of the Employees Insurance Court. Shri Limaye in passing the order might have some good intention. However, in law Shri Limaye has no jurisdiction to appoint anyone and invest him with the jurisdiction of the Employees Insurance Court. This position, in fact, is almost undisputed by all the parties before us and in fact the State has mended the situation by properly appointing Shri Mehendale as a Judge of the Employees Insurance Court. On this ground also therefore the petition must succeed.

12. We are making it clear that we are not expressing any opinion whatsoever on merits of the matter.

13. The petition accordingly succeeds. The order dated 18th March, 1996 passed by the 4 respondent - Shri Mehendale, in Application (ESI) No. 96 of 1986 is hereby quashed and set aside and the matter is remanded back to the Employees Insurance Court, Mumbai for deciding afresh. We are told that as of now there are two Courts. Shri G.S. Baj is a member of one of the Employees Insurance Court and Shri

Mehendale is member of the other. Under the circumstances without in any manner reflecting on the justness or fairness of the order passed by Shri Mehendale, we direct that the matter may be heard by the other Member i.e., Shri Baj.

14. Rule made absolute in the aforesaid terms. There shall be no order as to costs. Certified copy expedited.

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