

A NEW MANGALORE PORT LISTED WORKERS
MANAGING COMMITTEE NOW REPRESENTED BY NEW
C MANAGALORE PORT TRUST

v.

B THE REGIONAL DIRECTOR, ESI CORPORATION,
BANGALORE, KARNATAKA
(Civil Appeal No. 9931 of 2014)

OCTOBER 28, 2014

[T.S. THAKUR AND R. BANUMATHI, JJ.]

C *Employees State Insurance Act, 1948: ss.1(5), 75(g) –*
Major Port – Appellant-Committee established on 1.3.1983
with a purpose to deploy listed workers for loading and
D *unloading of the cargo in the Mangalore Port Premises – It*
continued till 15.3.1990 on which date the workers of the
Managing Committee were absorbed by NMPT – Applicability
of ESI Act to the appellant-Committee – Question whether
E *between 1983 and 15.3.1990 the rendering of services of*
loading and unloading by appellant-Management Committee
to NMPT was an integral part of NMPT and whether the State
Government is the “appropriate government” to issue the
notification – High Court did not examine the said question
in the light of evidence of Secretary and Deputy Secretary of
F *the appellant-Committee – Matter remitted to High Court to*
examine same.

Allowing the appeal and remitting the matter to the
High Court, the Court

G HELD: 1. By notification dated 4.5.1974, New
Mangalore Port was declared as a Major Port. NMPL
Workers Managing Committee was formed in the year
1983 and it continued till 15.3.1990 on which date the
workers of the Managing Committee were absorbed by
New Mangalore Port Trust (NMPT) and they became

NMPT Registered Cargo Handling Wing. After the workmen of the Committee were so absorbed, the appellant-Managing Committee was no longer in existence and NMPT was said to be pursuing this matter. In terms of Government of India notification dated 20.7.2009, the provisions of the ESI Act were made applicable to all port trusts including the NMPT, so that the casual and contract employees working in the NMPT have been brought under the said Act. The employees of the New Mangalore Port Trust inclusive of its Auto Garage, Workshop, Registered Cargo Handling Workers Wing were exempted from the applicability of the provisions of the ESI Act by Notification dated 3.9.2010 of the Government of India. [Para 8, 9, 10] [433-B-D-H]

2. The High Court did not examine the testimony of AW-1, Secretary of New Mangalore Port Listed Workers Committee and AW-2, Deputy Secretary of NMPT and their evidence that prior to 15.3.1990 the workers were under the administrative control of the NMPT. The questions viz.: (i) whether the workers of the Managing Committee were registered as Stevedores engaged in loading and unloading work of NMPT and whether they were under the administrative control of NMPT; (ii) whether the services rendered by the workers of the Managing Committee was an integral part of NMPT and if that be so, whether the "appropriate government" is the Central Government and (iii) whether the workers of the Managing Committee were extended medical facilities and other benefits on par with other employees of the NMPT and other relevant questions remain unanswered. The High Court did not consider these questions in the light of the evidence of AWs 1 and 2. That apart, High Court did not have the benefit of considering the notification issued by the Government of India dated 20.7.2009, extending the provisions of the ESI Act to NMPT and the exemption granted by the Government of India by its notification dated 3.9.2010. [para 13] [434-E-H; 435-A-B]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9931 of 2014.

From the Judgment & Order dated 05.10.2007 in Miscellaneous First Appeal No. 1379 of 2002 (ESI), of the High Court of Karnataka at Bangalore.

Rakesh K. Sharma, Sanjay Kunur, R.N. Keshwani, S.N. Bhat for the Appellant.

C Mahesh Srivastava, Vaibhav M. Srivastava, P.N. Puri, Murari Kumar, Yakesh Anand, Vijay Pratap Singh, Sanjeev Anand for the Respondent.

The Judgment of the Court was delivered by

D R. BANUMATHI, J. 1. Leave granted.

2. Whether or not New Mangalore Port Listed Workers Managing Committee is an integral part of New Mangalore Port Trust (NMPT) and whether State Government is the "appropriate government" to extend the applicability of provisions of Employees State Insurance Act, 1948 (ESI Act) to the New Mangalore Port Listed Workers Managing Committee are the points falling for consideration in this appeal.

F 3. Brief facts leading to the filing of this appeal are as follows:- Section 1(5) of the ESI Act enables the appropriate government to issue notification in respect of any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. In exercise of its power under Section 1(5) of the ESI Act, a notification dated 22.1.1986 was issued by the Government of Karnataka to extend the provisions of the ESI Act to certain areas, in and around the city of Mangalore. The said notification specified that the provisions of the Act *inter-alia* would apply to certain shops and establishments. Appellant-New Mangalore Port Listed Workers

Managing Committee, Panambur (for short "Workers Managing Committee") was established on 1.3.1983. The object of the said Committee was to deploy listed workers for loading and unloading of the import/export of cargo in the Mangalore Port Premises. In accordance with the above notification, ESI Corporation by its letter dated 5.5.1987, directed the appellant to submit Form No.1 saying that the provisions of the ESI Act stood attracted against the appellant. The Committee raised objections, claiming that the appellant is engaged in the loading and unloading operations in the premises of NMPT and that the appellants and their workmen were neither a "shop" nor an "establishment" so as to attract the provisions of the ESI Act. Rejecting the said objections, ESI Corporation issued Show Cause Notice dated 14.8.1987 to the Workers Managing Committee calling upon them to make the contribution. The Appellant approached the ESI Court under Section 75(g) of the ESI Act claiming that the provisions of the ESI Act were not applicable to them as they were governed by the provisions of Major Port Trust Act, 1963 and that the Central Government is the appropriate government with respect to the appellant-Committee. The petition filed by the appellant was dismissed by the ESI Court by the order dated 16.4.1993. Aggrieved by the said order, the appellant filed appeal before the High Court of Karnataka in and by which, the High Court remanded the matter back to the ESI Court, with a direction to frame preliminary issue regarding the applicability of State Government's notification to the Committee.

4. ESI Court by order dated 31.12.2001, held that the notification of the State Government was not applicable to the Committee as the "appropriate government" to extend the provisions of the ESI Act to the said Committee is the Central Government. Aggrieved by the said order, respondent-Corporation preferred appeal before the High Court of Karnataka. The High Court set aside the findings of the ESI Court and held that the Managing Committee is covered within the purview of the notification issued by the State Government.

A Aggrieved by the said order, the appellant has filed this appeal by way of special leave.

B 5. Taking us through the evidence of AWs 1 and 2, learned
C counsel for the appellant contended that the workmen of the
D Committee were required to function under the supervision and
E control of the NMPT and since the NMPT was a Major Port
F governed by the Major Port Trust Act 1963, the "appropriate
G government" is the Central Government and the notification
H extending the provisions of ESI Act were not applicable to the
I appellant. It was submitted that since the Central Government
J had not issued any notification with regard to the premises of
K NMPT, the action of the State Government was uncalled for. It
L was also argued by the appellant that the social security
M measures and other benefits as provided to the workers of the
N Managing Committee at par with NMPT employees, were better
O than the ones envisaged under ESI Act and therefore, the
P demand of ESI Corporation is not sustainable and the High
Q Court erred in saying that the appellant is covered under the
R notification.

S 6. Per contra, learned counsel for the respondents
T contended that at the time of issuance of the notification in
U 1986, Workers Managing Committee was an independent
V entity merely rendering services of loading and unloading to the
W NMPT and the said Committee was not an integral part of
X NMPT and the State Government had legitimately exercised its
Y jurisdiction in extending the provisions of the ESI Act to the
Z Workers Managing Committee. It was further contended that
AA only in the year 1990 workmen were absorbed by NMPT and
AB prior to that, appellant was not a part of NMPT governed by
AC Major Port Trust. It was urged that ESI Act is a welfare
AD legislation whose object is to extend the welfare coverage to a
AE vast segment of the employees and the notification has to be
AF meaningfully interpreted in the light of the objects of the welfare
AG legislation.

AH 7. We have considered the submissions of the learned

counsel for the appearing parties and perused the materials on record. A

8. In terms of Indian Ports Act 1908, "Major Port" means any port which the Central Government may by notification in the official gazette declare, or may under any law for the time being in force, have declared to be a Major Port. By notification dated 4.5.1974, New Mangalore Port was declared as a Major Port. By notification dated 27.3.1980, the provisions of Major Port Trusts Act 1963 were made applicable to the Major Port of New Mangalore from 1.4.1980 and New Mangalore Port is thus a Major Port. B
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9. NMPL Workers Managing Committee was formed in the year 1983 and it continued till 15.3.1990 on which date the workers of the Managing Committee were absorbed by NMPT and they became NMPT Registered Cargo Handling Wing. This NMPT Cargo Handling Wing is attached to the Traffic Wing of NMPT. After the workmen of the Committee were so absorbed as workers of NMPT Cargo Handling Wing, the appellant- Managing Committee is no longer in existence and New Mangalore Port Trust is now said to be pursuing this matter. D
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10. It is seen from the affidavit sworn in by the Secretary of NMPT before this Court that in terms of Government of India notification dated 20.7.2009, the provisions of the ESI Act were made applicable to all port trusts including the New Mangalore Port Trust, so that the casual and contract employees working in the NMPT have been brought under the said Act. The employees of the New Mangalore Port Trust inclusive of its Auto Garage, Workshop, Registered Cargo Handling Workers Wing have been exempted from the applicability of the provisions of the ESI Act vide Notification dated 3.9.2010 of the Government of India. It is stated that NMPT had filed an application for extending the exemption for a further period from 30.9.2010. F
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11. The point to be considered is between 1983 till H

A 15.3.1990 whether the rendering of services of loading and unloading by appellant-Management Committee to NMPT was an integral part of NMPT and whether the State Government is the “appropriate government” to issue the notification.

B 12. Mr. S.N. Bhat, learned counsel appearing for the appellant submitted that prior to 15.3.1990 workers were employed as registered Stevedores for carrying on loading and unloading work and they were considered in a single pool on a single roll and they were allowed to enter the dock only on the passes issued by the CISF at port. Learned counsel further
C submitted that AW1-Secretary of New Mangalore Port Listed Workers Committee and AW2 had clearly spoken that even prior to 15.3.1990, the workers were under the administrative control of NMPT and about the various medical facilities extended to the workers of the Committee and also the
D insurance policies (LIC) and other benefits made available to the workers by NMPT and that they were provided with various medical facilities and other benefits and the evidence of AWs 1 and 2 was not at all considered by the High Court.

E 13. By a perusal of the judgment of the High Court, it appears that the High Court has not examined the testimony of AW-1, Secretary of New Mangalore Port Listed Workers Committee and AW-2, Deputy Secretary of NMPT and their evidence that prior to 15.3.1990 the workers were under the
F administrative control of the NMPT. The questions viz.: (i) whether the workers of the Managing Committee were registered as Stevedores engaged in loading and unloading work of NMPT and whether they were under the administrative control of NMPT; (ii) whether the services rendered by the
G workers of the Managing Committee was an integral part of NMPT and if that be so, whether the “appropriate government” is the Central Government and (iii) whether the workers of the Managing Committee were extended medical facilities and other benefits on par with other employees of the NMPT and other relevant questions remain unanswered. In our view, the
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High Court has not considered the above questions in the light of the evidence of AWs 1 and 2. That apart, High Court did not have the benefit of considering the notification issued by the Government of India dated 20.7.2009, extending the provisions of the ESI Act to NMPT and the exemption granted by the Government of India by its notification dated 3.9.2010. Instead of this Court itself examining the above questions, in our view, the matter be remitted back to the High Court to examine the same. A
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14. In the result, the appeal is allowed and the impugned judgment dated 5.10.2007 passed by the High Court in Miscellaneous First Appeal No.1379/2002 (ESI) is set aside and the matter is remitted back to the High Court for consideration of the matter afresh in the light of the above discussion and in accordance with law. The High Court shall afford sufficient opportunity to both parties to file additional affidavits/counter affidavits and additional documents if any, and proceed with the matter in accordance with law as expeditiously as possible. C
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Devika Gujral

Appeal allowed & matter remitted back to High Court.