

(2002) 07 GAU CK 0019

Gauhati High Court

Case No: MA (F) No. 168 of 1996

Employees State Insurance
Corporation

APPELLANT

Vs

Surendra Sharma

RESPONDENT

Date of Decision: July 22, 2002

Acts Referred:

- Employees State Insurance Act, 1948 - Section 75, 85

Citation: (2003) 96 FLR 535 : (2003) 1 GLT 611 : (2003) 1 LLJ 1045

Hon'ble Judges: J.N. Sharma, J

Bench: Single Bench

Advocate: B.R. Dey, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

J.N. Sarma, J.

The substantial question of law in this case is that whether the Employees' Insurance Court has the power to review its own judgment, The order impugned in this appeal is an order passed by the Employees' Court on review of its earlier judgment in ESI Case No, 2/93. That was dismissed by the learned Judge on 26.2.96. Thereafter, a misc petition was filed by MC No. 2/96 to review its earlier judgment and that was taken up for disposal by the learned Judge. The learned Judge by judgment dated 3.6.1996 in para 10 held as follows:

"For the foregoing reasons, I hold that the instant petition deserves to be allowed in view of the discovery of new and important matters as aforesaid and in view of the apparent error in the previous ESI Case No. 2/93. Consequently, the said ESI Case No. 2/93 stands allowed and the levies of contribution upon the petitioner by the corporation for the various segregated periods, viz., 4/92 to 10/92, 6.12.1990 to 6.12.1992, 22.5.1991, 1.2.1992 and 5.3.1992 as detailed therein stand quashed by virtue of exercise of adjudicative powers of this Insurance Court u/s 75 of the ESI

Act, 1948. The Stay granted earlier in respect of the proceedings of the two criminal cases against the petitioner (Nos. 247 C/92 and 871 u/s 85(e)&(g) of the ESI Act, 1948, pending in the court of the Addl. Chief Judicial Magistrate of Kamrup Guwahati, vide order dated 10.10.1994 in ESI Case No. 2/93 is made absolute, The Bakijai proceedings before the Collector of Dibrugarh district against the petitioner also stand quashed."

2. I have heard Mr. B.R. Dey, learned counsel for appellant. None appear for respondent/in spite of service of notice and in spite of showing representation by a counsel.

3. It should be borne in mind that the power of review is not an inherent power. It must be conferred by the law either specifically or by necessary implication. The review is practically hearing a case afresh by the same Judge who has decided it earlier. Such power cannot be exercised unless the statute gives that power to the court. If any authority is required for this proposition, one may have a look at [Kewal Chand Mimani \(d\) by Lrs. Vs. S.K. Sen and Others](#), wherein the Supreme Court pointed out that review of a judgment cannot be had on the basis of liberty. The power to review is not inherent power and it must be conferred by law and reliance also was placed in the earlier judgment of the apex court in [Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji](#), wherein the Supreme Court in para 4 pointed out the same thing. In the Employees' State Insurance Act, 1948 no power has been given to review the judgment earlier passed by the Employees' Insurance Court. Further the application of CPC is limited to the things/matters mentioned in the section. All the procedures of the CPC cannot be bodily Imported by the Employees' Insurance court as it is a special statute and a court under the Act must be governed by the provision of that statute.

4. In view of that matter, this appeal is allowed. The order impugned shall stand quashed.