

(2002) 02 CAL CK 0043
In the Calcutta High Court
Case No : C.O. No. 8862 (W) of 1994

Bal Chandra Agarwal and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(5), 2(12)

Citation : (2002) 2 CALLT 27 : (2002) 94 FLR 1204 : (2002) 3 LLJ 127

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : Pradip Kumar Ghosh, R.L. Mitra and Subroto Manna, for the Appellant; Subol Mottra, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Chattopadhyay, J.—The Petitioners have challenged the decision of the Employees' State Insurance Corporation regarding coverage of the establishment of the petitioners under Employees' State Insurance Act, 1948 in the present writ petition.

2. The Petitioner No. 1 as metallurgical engineer having specialized knowledge of metallurgical testing established a firm under the name and style of Petitioner No. 2 for the purpose of carrying on professional work in relating to metallurgical testing of sample of finished goods received from various organisations. It has been stated by the petitioners that the nature of work carried on by the petitioners is purely of testing, inspection, research and consultancy. The said firm of the petitioners is registered under the West Bengal Shops and Establishment Act, 1963 as a "commercial establishment" and the nature of the business shown is of testing of metals and minerals.

3. The Deputy Director of Employees' State Insurance Corporation informed the petitioner firm by a written communication that the said establishment of the petitioners would be treated as a "factory" u/s 2(12) of Employees' State

Insurance Act, 1948. The petitioner firm, however, raised objection against the aforesaid decision of the Deputy Regional Director on the ground that the petitioner firm is registered under the West Bengal Shops and Establishment Act, 1963 as a "commercial establishment" and the same cannot be treated as a "factory".

4. It was further contended on behalf of the petitioners that the petitioners do not have any manufacturing facility whatsoever and the petitioner firm only inspect and test samples received from outside agencies. Considering the objection raised by the petitioner firm, the Assistant Regional Director, Employees' State Insurance Corporation informed the petitioners that instead of "factory" the establishment of the petitioner No. 2 would be treated as "shop" and a Code No. was allowed to the petitioner firm cancelling the earlier Code No. issued by the Employees' State Insurance Corporation authorities.

5. The petitioners again raised objection against the aforesaid decision of the ESI authorities treating the petitioner firm as "shop" as according to the petitioners the nature of work carried on by the petitioners is purely of testing, inspection, research and consultancy and by no means the nature of work carried on by the petitioners can be said to be of a "shop". It was further contended by the petitioners that similar type of laboratories such as National Test House, Central Food Laboratories are not covered under the ESI Act as "shop". It has been specifically contended on behalf of the petitioners that when an establishment is registered as a "commercial establishment" under the West Bengal Shops and Establishment Act, 1963, such establishment cannot be treated as "shop" and as such according to the petitioners the said firm of the petitioners cannot be and should not be treated as a "shop" for the purpose of the ESI Act.

6. The learned Advocate appearing on behalf of the petitioners submitted that the term "shop" has not been defined under ESI Act but the same has been defined under the West Bengal Shops and Establishment Act in any event, the establishment of the petitioners has been registered as a "commercial establishment" and not as "shop" under the said West Bengal Shops and Establishment Act as the petitioner No. 1 as metallurgical engineer is carrying on the consultancy, technical and professional services through the petitioner firm and has been exclusively doing testing, inspection, research and consultancy services to the parties concerned. It has been therefore, contended on behalf of the petitioners that under any circumstances the establishment of the petitioners cannot be treated as a "shop" particularly when the petitioner firm has been registered with the West Bengal Shops and Establishment Act as a "Commercial Establishment". The term "Commercial Establishment" has been categorically defined u/s 2(2) of the West Bengal Shops and Establishment Act, 1963.

7. The learned Advocate appearing on behalf of the ESI authorities submitted that the establishment of the petitioners is a "shop" within the meaning of the Notification dated 20th January 1983 and in terms of Section 1(5) of the ESI Act, 1948. The learned counsel of ESI authorities further submitted that in an

establishment where 20 or more persons are employed for wages is a "shop" within the meaning of Section 1(5) of the ESI Act, 1948 read with the said Notification dated 20th January 1983. The learned counsel of the ESI authorities also submitted that the Division Bench of this Court in the case of Regional Director, Employees' State Insurance Corporation v. Peerless General finance and Investment Company Ltd. reported in 1996 (II) CHN 59 considered similar types of objection as have been raised by the petitioners in the present writ Petition and considering several decisions of the Supreme Court the Division Bench of this Court in the aforesaid case specifically held that the concept of sale need not be confined to the buying and selling of goods and commodities only but the same includes selling of services for a remuneration also.

8. Having heard the respective submissions of the respective parties and considering the materials on record, I am satisfied that the nature of business of the petitioner firm attracts the provision of Section 1(5) of ESI Act read with the Notification dated 20th January 1983 issued by the Government of West Bengal. It has never been disputed that the petitioner firm did not employ 20 or more persons.

9. The establishment of the petitioners cannot remain outside the purview of the provisions of the ESI Act on the ground that the said establishment is registered under the West Bengal Shops and Establishment Act as a "Commercial Establishment". The concerned establishment of the petitioners fulfilled the conditions as are necessary in order to treat the same as "shop" in terms of Section 1(5) of ESI Act read with Notification dated 20th January 1983 and thus, the petitioner firm very much comes within the coverage of the ESI Act as a "shop" even though the said firm is not engaged in buying and selling of commercial goods. The concerned establishment of the petitioners is engaged in rendering services to its customers by providing technical services and such selling of services by the petitioner firm to its customers brings the establishment within the purview of Section 1(5) of the ESI Act read with the Notification dated 20th January 1983.

10. The authorities of the ESI Corporation on scrutiny of the papers submitted by the petitioner firm and after examining the report of the inspector in respect of the concerned establishment of the petitioners came to the conclusion that the nature of business of the petitioners attracts Section 1(5) of the ESI Act read with the Notification dated 20th January 1983 issued by the Government of West Bengal and the establishment of the petitioners should be treated as a "shop", in this regard, I do not find any illegality and/or irregularity in the aforesaid decision of the respondent ESI authorities. The ESI authorities while coming to the aforesaid conclusion in respect of the establishment of the petitioners carefully considered all the papers submitted on behalf of the petitioners apart from the reports of the inspector concerned who visited the establishment of the petitioners.

11. Furthermore, in view of the aforesaid Notification dated 20th January 1983

issued by the Government of West Bengal, the establishment of the petitioners herein would come within the purview of Section 1(5) of the ESI Act for extension of ESI Scheme to "shops". The nature of activities of the establishment of the petitioner firm and the work carried out in the laboratories of the petitioners were taken into consideration by the appropriate authorities of the ESI Corporation and thereafter the said authorities treated the establishment of the petitioners as "shop" even though buying and selling of goods and commodities have not been undertaken by the petitioners.

12. Relying on the aforesaid decision of the Division Bench of this Hon'ble Court in the case of Regional Director, Employees' State Insurance Corporation (supra), I am of the view that the objections raised by the petitioners in the present writ petition against the aforesaid decision of the ESI authorities are devoid of merits and such objections of the petitioners are not sustainable in the eye of law. Accordingly, the writ petition falls and the same is dismissed.

There will be, however, no order as to costs.

Let xerox certified copy of this Judgment be made available to the respective parties, if applied for, on urgent basis.