

(2001) 01 KAR CK 0041
In the Karnataka High Court
Case No : M.F.A. No. 3213 of 1998

Duvent Fans (P) Ltd.

APPELLANT

Vs

E.S.I. Corporation

RESPONDENT

Date of Decision : 23-01-2001

Acts Referred:

Employees State Insurance Act, 1948 — Section 1 (5), 2 (9)

Citation : (2001) 90 FLR 939 : (2001) 2 LLJ 581

Hon'ble Judges : Manjula Chellur, J

Bench : Single Bench

Advocate : K. Kasturi, for the Appellant; V. Narasimha Holla, for the Respondent

Judgement

Manjula Chellur, J.—This appeal is directed against the orders of E.I. Court in Application No. 41/1987 before the Employees Insurance Court at Bangalore.

2. The facts that led to the filing of this appeal in brief are as under:

The appellant herein is a private limited Company engaged in designing, installation of air pollution control, humidification and ventilation system. It has registered office at Bangalore with branches at different places outside Karnataka and independent units at Madras, Coimbatore, Bombay, Delhi and Calcutta. According to the appellant-applicant the branches mentioned supra are independent units having their employees. Office at Bangalore do not have control over these units. Therefore, the employees in these branches that too outside Karnataka cannot be considered as part of the Bangalore unit. The appellant got a notice from the respondent informing that it is coverable as per the Notification issued u/s 1(5) of the Employees State Insurance Act (hereinafter referred to as the "Act") that is the appropriate Government. The appropriate Government in this case is the State Government of Karnataka and Form No. 1 was submitted under protest by the appellant. According to it at Bangalore Office the employees are less than 20 who would fit into the definition of "employee" as defined u/s 2(9) of the Act. Therefore they are not liable to pay

contribution to bestow benefits on employees as provided under the Act. It is also a fact that the respondent-Corporation issued a demand notice on March 13, 1987 claiming Rs. 1 lakh and odd as contribution for the period between January 27, 1985 and September 30, 1986.

3. Personal hearing was given by the respondent to the appellant and after taking into consideration the material submitted by the appellant, the respondent once again held that the appellant was due for contribution of Rs. 1 lakh and odd for 79 employees employed all over the country in their branches including the Head Office at Bangalore for the period from January 27, 1985 to September 30, 1986. They also contended that the authorities at Bangalore had no control or jurisdiction to bring the establishments outside the State of Karnataka within the purview of the Notification of the appropriate Government i.e., the Government of Karnataka. In this regard, the respondent held that the Bangalore Office exercises control over other units and therefore, it is one entity. The appellant also took up the contention that the appellant is not a shop as defined under the Act and therefore, the very ESI Act is not applicable to them.

4. The respondent inter alia contended that on verification of the records of the appellant on August 13, 1986, August 20, 1986 and March 24, 1987 and during the inspection it revealed that the appellant is carrying on the business of designing and installation of industrial pollution control systems. They further contended that the demand, taking into consideration the number of 79 employees which includes the employees at different branches outside the State was also in accordance with the provisions of law and therefore, was just and proper.

5. However, the Corporation passed an Order determining the contribution at Rs. 1,01,644/-. Revenue recovery proceedings were also initiated. Aggrieved by the said order, the appellant approached the E.I. Court at Bangalore. Accordingly two issues were raised by the Trial Court. During the evidence, AW-1 one of the Directors of applicant was examined and marked Exhibits A1 to A22. The respondent-Corporation examined its Inspector as RW1 and got marked Exhibits R1 to R9. Based on the oral and documentary evidence, the trial Court held that it is an establishment as defined under the Act in view of the very admission of AW-1 that they have registered their Head Office as a shop.

6. It is not in dispute that ESI Corporation at Madras made a demand on the unit of applicant at Madras and the same was challenged before the E.I. Court by the said unit at Madras. Ultimately the E.I. Court at Madras held that the unit at Madras is not liable to pay any contribution. However, the fact remains that the said order of the E.I. Court at Madras is pending before the High Court of Madras.

7. It is submitted on the behalf of the learned counsel for the appellant that though the business of the Head Office and other units located at different places outside Karnataka carrying on one and the same business, they cannot be treated as one entity because they have different Directors at each unit who

have the overall control and supervision over the affairs of the respective units. Therefore in other words, the Head Office has no supervisory control over those units and hence the employees coming or falling within the purview of definition of Section 2(9) of the Act in those units are not part and parcel of the establishment at Bangalore.

8. The learned counsel for the respondent Corporation submitted his arguments that the very ESI Act is aimed to confer benefits on employees in case of sickness or sustaining injuries during the course of and out of the employment. Therefore, even if two views are possible the view that is beneficial to the employees has to be taken as it is a social legislation. He further submitted that the Branch Office cannot survive without the Head Office and therefore, the Branch or the unit outside Karnataka of the applicant is also an integral part of the Head Office. For this argument he relies on the material before the E.I. Court that the balance sheet prepared by the Head Office, that is the company includes income and expenditure from all the units of different branches including the Head Office.

9. The point that would arise for consideration is:

1. Whether employees in the Head Office at Bangalore and different units or branches at Delhi, Bombay, Calcutta and Coimbatore are one entity or separate entities?

2. What order?

10. So far as the contention of the appellant-applicant that the Act is not applicable to them is untenable in view of the admission of the Director on oath before the Court that they have registered their shop as establishment. Now we have to see whether it is an establishment as defined under the Act. To decide whether any unit or establishment comes under the purview of the Act, one has to look into the definition of "employee" as defined u/s 2(9) of the ESI Act.

11. Section 2(9) sub-sections (i), (ii) and (iii) are relevant which read as under:

"9. "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and -

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

iii) whose services are temporarily lent or let on hire to the principal employer by

the person with whom the person whose services are so lent or let on hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment, but does not include-

a) any member of the Indian naval, military or air forces; or

b) any persons so employed whose wages (excluding remuneration for overtime work) such wages as may be prescribed by Central Government a month;

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period".

12. At this stage it is not in dispute that whether the appellant is covered under the Act or not because the learned Counsel for the appellant submitted that if they have more than twenty employees at Bangalore office, definitely they are liable to pay contribution to the respondent-Corporation. The question is whether to attract liability to contribute the contribution under the Act, the employees engaged by the different branches or units of the appellant can be taken into consideration or not. It is on record that each unit situated outside Karnataka is controlled by the Managers of the respective units and each branch has separate accounts, from which account the salaries payable to the employees and the other persons like Manager or Directors is drawn. It is on record that each Director of the Company is in charge of one unit. This could be for convenience of the appellant establishment to have proper control and supervision. The Director has control over the Manager of that unit and also the other staff. He may also have control over finance of that unit. Ultimately, the Director is answerable to the Head Office i.e., the Company which has registered Office at Bangalore. Company cannot escape its liability in respect of the unit outside the Head Office saying that they have separate Bank account and a manager. The Director and the respective Branch Managers are expected to work under the directions of the Head Office. The profit and loss reflected on the balance-sheet of the Company includes profit and loss pertaining to all branches. So far as the administrative control also, it vests with the Head Office. The learned counsel for the appellant argued that the Head Office at Bangalore cannot survive without existence of the Branch or units outside Karnataka. It may be a fact that the Head Office can survive by closing down one of its Branches for hundred and one reasons. But we cannot hold vice-versa opinion that without the existence of Head Office, Branch will definitely survive. The Head Office is like a tree and the Branch Office is like a branch of the tree. The branch of a tree is the integral part of the tree. Likewise, the branch of the appellant is the integral part of the Head Office at Bangalore. The branch is nothing but a representative of the Head Office. For all

negative and positive points of the branch the Head Office would be responsible. Therefore, the branches or units of the appellant-company which are situated outside Karnataka cannot be considered as separate and independent entities.

13. The definition of "employee" u/s 2(9)(i) also includes any person employed for wages either in the precincts of the establishment or elsewhere. As long as there is integration between the main office and the Branch office, the Branch office cannot be separate entity. It is not in dispute that the business of the main office and the branches is different. They are carrying on one and the same business. Just because they have separate supervision by a Manager and separate accounts for convenient purpose in order to administer the day to day affairs of the branches, it cannot mean they are independent entities. In that view of the matter, the decision of the trial Court that Bangalore office is the main office having branches at different parts of the country for carrying on the same business would mean one unit, cannot be found fault with. The Corporation was justified in clubbing the employees in all the units due to functional integrality between them for the purpose of contribution in order to ensure the benefits provided to the employees under the ESI Act.

14. The above discussion finds support from the decision of the Apex Court reported in *Transport Corporation of India Vs. Employees' State Insurance Corpn. and Another*, which reads as under at p. 19 of LLJ:

"In this connection, we may also usefully refer to a decision of three Judges Bench of this Court in *Kirloskar Brothers Ltd. Vs. Employees' State Insurance Corpn.*, . The question before this Court in the aforesaid decision was as to whether the main office of a factory once governed by the Act would automatically result in covering its regional or branch offices which are situated in a different State even when its branch offices or regional offices were not carrying on any manufacturing process and could not be treated to be independent factories. It was contended before this Court that branch offices which are merely distributing or selling the goods manufactured by the factory situated in other State could not be covered by the sweep of the Act only because the parent factory was covered by the Act. Rejecting this contention, this Court in para 11 of the report held as under:

"The principal test to connect the workman and the employer under the Act to ensure health to the employee being covered under the Act has been held by this Court in *Hyderabad Asbestos Cement Products Ltd. Vs. Employees Insurance Court and Another*, ; i.e., the Employee is engaged in connection with the work of the factory. The test of predominant business activity are two remote connection are not relevant. The employee need not necessarily be the one integrally or predominantly connected with the entire business or trading activities. The true test is controlled by the principal employer over the employee. That test will alone be the relevant test. The connection between the factory and its predominant products sold or purchased in the establishment or regional offices are irrelevant and always leads (sic) to denial of welfare benefits to the

employees under the Act. When there is connection between the factory and the finished products which are sold or distributed in the regional offices or establishment and principal employer has control over the employee, the Act becomes applicable. The test laid down by the Orissa High Court, mainly, predominant business activity, i.e., sale or distribution of the goods manufactured in the factory at Dewas is not a correct test. It is true that this Court in the SLP arising from the Orissa High Court Judgment leave was declined holding it to be of peculiar facts."

Approving the views expressed by the Andhra Pradesh and the Karnataka High Court it was held in that case that though the appellant before this Court had its registered office at Pune for sale and distribution of its products from its three factories-one situated at Kirloskarvadi, second at Karad in the State of Maharashtra and the 3rd one at Dewas in the State of Madhya Pradesh, employees of sale or distribution office were also covered by the sweep of the Act being appendages and fully controlled by the parent factory. The aforesaid decision squarely gets attracted on the facts of the present case. It is pertinent to note that it was held in the aforesaid case that though the Branch offices being sales and distribution offices of the appellant factory were themselves not factories they were also covered by the sweep of the Act as the principal office, being the factory, was held covered. Almost identical is the situation in the present case. The ratio of this decision holding that Act would apply to a factory in one State and, therefore, will automatically apply to its sales offices in other States even though they themselves are not factories, will equally apply to the cases of establishment covered by the Act as per Notification issued by the appropriate Government as delegate of Central Legislature and which Notification would automatically cover branches of such establishments functioning outside the State but as integral part of the same establishment. Once the registered office or the principal Office of the appellant is covered by the Act, all its Branches in any part of the country would be covered by the Act, if such branches are under the supervision and ultimate control of the principal office at Secunderabad, as factually found hereinabove."

15. Though the E.I. Court had reached the opinion that Head Office and units are one entity, it had failed to consider the question of quantum of contribution to be paid. The contention of the Corporation before the E.I. Court was that they have taken the wages of each employee as 880/- between the period January 27, 1985 to September 30, 1986. However, the trial Court failed to say whether the demand of Rs. 1 lakh and odd by the respondent-Corporation towards the contribution for the abovesaid period was, right or wrong. In other words, it had not determined the actual quantum of contribution to be paid and how it should be worked out having regard to the fact that main office is at Bangalore and its units are at different places outside Karnataka. The mode of payment of contribution can be worked out as provided under the Act and the Regulations. In view of the above discussion and the determination of reasoning, only so far as the quantum of contribution the matter deserves to be remanded to the E.I.

Court concerned, as the same has to be worked out on the basis of the factuals. So far as the coverage under Act by clubbing the employees at main offices and the Branch office the E.I. Court need not touch the same issue.

16. The appeal is accordingly dispose of.