

(2006) 11 KAR CK 0032

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4829 of 2001

Employees State Insurance Corporation

APPELLANT

Vs

Manipal Sowbhagya Nidhi Ltd.

RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Companies Act, 1956 — Section 620 A

Employees State Insurance Act, 1948 — Section 1 (4), 1 (5), 75

Citation : (2007) 136 CompCas 744 : (2007) 114 FLR 519 : (2007) 3 KarLJ 198 : (2007) 1 KCCR 55 : (2007) 3 LLJ 142

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : M.P. Geetha Devi, for the Appellant; Chaitanya Hegde, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—The question that is involved in this appeal is whether "Manipal Sowbhagya Nidhi Ltd.", a public limited company under the provisions of the Companies Act, 1956, is a "shop" coming within the purview of Section 1(4) of the Employees State Insurance Act, 1948 (the Act for short), or under any notification issued u/s 1(5) of the Act, including the Government notification dated 9.1.1987.

2. The E.S.I. Court answered the said question in the negative giving rise to this appeal by the E.S.I. Corporation.

3. I have heard the learned Counsel for the parties.

4. The learned Counsel for the appellant-Corporation submitted that the respondent-company comes within the expression "shop" and, as such, the provisions of the Act become applicable by virtue of Section 1(5) of the Act. It is contended that the E.S.I. Court failed to properly appreciate the law bearing on the point with regard to the meaning of the word "shop" as well as with regard

to the scope of the Act. It is her submission that although the respondent-company is established with the sole object of encouraging and affording all the facilities and cultivating the habit of thrift and to render financial assistance to its members, yet, the activities carried on by the respondent brings it within the fold of an establishment carrying on commercial activities and the respondent-company, though has confined its objects to its members alone, yet, the fact that the services are rendered to the members of the respondent itself is sufficient to bring it within the coverage of the Act having regard to the meaning assigned to the word "shop" by the pronouncement of the Apex Court in a number of decisions. It was also contended that, although the members cannot be bracketed within the expression "customers", yet, the nature of the activities carried on by the respondent does bring it within the ambit of the word "Shop" and, therefore, the E.S.I. Court was in error in allowing the application filed u/s 75 of the Act by the respondent and declaring the respondent as not a "shop".

5. In support of her submissions, the learned Counsel for the appellant placed reliance on the decisions reported in *Hindu Jea Band, Jaipur Vs. Regional Director, Employees' State Insurance Corporation, Jaipur*, and *M/s. Cochin Shipping co. Vs. E.S.I. Corporation*, .

6. On the other hand, the learned Counsel for the respondent-company, by referring to Section 620A of the Companies Act, submitted that the expression "Nidhi" or "Mutual Benefit Society" means a company, which is notified in the official gazette and declared to be a Nidhi or Mutual Benefit Society and referring to the above section of the Companies Act, it was submitted that the respondent-company deals only with their members and, therefore, the business is restricted to receiving the deposits from and lending money to the members and its main source of income or profit is the difference between the interest paid to and earned from the members. The idea behind the establishment of such Nidhi, it was contended, is to enable the members to save money and to invest their savings and to inculcate the idea of thrift and compulsory savings in the minds of the poor and middle class people and, as such, they are not co-operative societies, but run on the same principle and their number is appreciable.

7. It was further contended that the respondent-company is meant exclusively for the members alone and it has got no dealings with the general public and, as such, its operation does not extend beyond the sphere of the members and, therefore, the applicability of the Act and muchless the respondent-company coming within the expression "shop" will not arise.

8. The learned Counsel for the respondent also drew my attention to the Memorandum and Article of Association of the company in question and, referring to the main objects to be pursued by the company, submitted that the object is to encourage the members to cultivate the habit of thrift and, as such, no banking business as defined in the Banking Regulation Act is carried on by the respondent-company. It was further submitted that no service as such is rendered to the members of the respondent and it is not permissible to widen

the meaning of the term "shop" to include the respondent-company within it. The main emphasis of the argument of the learned Counsel for the respondent is that no service of any kind is rendered to the general public and it is only the members who take part in the activities of the company. The learned Counsel, in this regard, drew a distinction between the nature of the activities carried on by the respondent-company and the activities that are carried on by a club. He placed reliance on a decision of this Court reported in *Bangalore Club Vs. Senior Labour Inspector, VIII Circle, Bangalore*, , to contend that it is only a club which deals with the non-members that is brought within the purview of the Karnataka Shops & Commercial Establishments Act, 1961. The learned Counsel also placed reliance on another decision of this Court reported in ILR 2002 Kar 4563, to submit that the decision rendered in *Bangalore Club Vs. Regional Director, ESIC*, has not been overruled in the subsequent decision in the case of *Bangalore Turf Club v. Regional Director, E.S.I. Corporation* ILR 2002 Kar 4563.

9. Having regard to the contentions put forward and after carefully going through the entire material on record and also the order of the E.S.I. Court, the only point for consideration is whether the respondent-company comes within the expression "shop" so as to attract the provisions of the E.S.I. Act.

10. Before I answer this question, certain facts, which are not in dispute, will have to be adverted to at this juncture. The respondent-company has been engaged in the act of rendering financial assistance to its members and it also receives long and short term deposits and in particular, recurring, fixed and other deposits from the members. It is also not in dispute that, in respect, of the loans advanced to its members, interest is also collected by the company. There are number of branches of the company in the State of Karnataka and to put it more precisely, as many as 40 branches are functioning all over the State. It is also an admitted fact, as has been observed by the E.S.I. Court, that A.W.2 examined before the E.S.I. Court has categorically admitted that the applicant's activity is not a trading or commercial activity and in any of the branches of the applicant-company, more than 20 employees are not employed at any time. This evidence of A.W.2, therefore, gives an indication that the respondent has employed, if not more than 20, at least 20 employees, in order to carry out its activities. With the above undisputed facts, I now turn to the crucial question involved in this appeal.

11. The meaning of the expression "shop" came up before the Supreme Court for interpretation in three cases. In the case of *Hindu Jea Band, Jaipur Vs. Regional Director, Employees' State Insurance Corporation, Jaipur*, , it has been held that the place of business of a firm carrying on the business of playing music on occasion, such as marriages and other social functions, which made available on payment of the stipulated price, the services of the members of the group of musicians employed by it on wages is a shop to which the Act is applicable by virtue of the notification. It was also held in the said case that it is not that a place where goods are sold is only a shop, but the place where services are sold on retail basis is also a shop.

12. In the case of M/s. International Ore and Fertilizers (India) Pvt. Ltd. Vs. Employees' State Insurance Corporation, , the Apex Court has held that it is not actually necessary that the delivery of goods to the purchaser should take place at the premises in which the business of buying or selling is carried on to constitute the said premises into a "shop". Negotiation of the terms of sale, carrying on of the survey of the goods imported, arranging for the delivery of the goods sold, collection of the price of the goods sold, etc, are all trading activities and the premises where the business was carried on by the company was undoubtedly a shop as the activities that, were carried on there related only to the sale of goods, which were imported into India. In the very same decision, it was also observed that while construing a welfare legislation like the Act and the notification thereunder, a liberal construction should be placed on their provisions so that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified.

13. The next decision in which the expression "shop" came up for interpretation is in the case of M/s. Cochin Shipping co. Vs. E.S.I. Corporation, . In the said case, the Hon^{ble} Supreme Court has observed thus:

Under Section 1(4), in the first instance, the Act is made applicable to all factories. The Act envisages the extension of benefit to the employees in other establishments or class of establishments, industrial, commercial, agricultural or otherwise. The extension of benefit is to be done by means of a notification by the appropriate Government. Thus the benefits conferred by the Act cover a large area of employees than what the Factories Act and the akin legislations intended. The conclusion is inescapable that it is a welfare legislation. The endeavour of the Court should be to place a liberal construction so as to promote its objects to which a reference has been made.

14. In the very same decision, the court also made the following observations with regard to the expression "shop":

Merely because other establishments which are akin to shop are enumerated, the Court is not obliged to give a narrow meaning to the word "shop" nor does it in any way dilute the meaning of "shop". What is to be noted is that the object is to envelope as many establishments as possible without leaving any room for doubt. That is precisely what the notification intends to do. It, therefore, cannot be said that as other kinds of establishment which can easily fall within the definition of "shop" have been enumerated a specific enumeration of the business activity in question so as to include it in the term "shop" is to be insisted upon.

15. In the case of P.K. Mohammad Pvt. Ltd., Cochin Vs. ESI Corpn., , dealing with the expression "shop", the Apex Court has observed that the E.S.I. Act, 1948 is a welfare legislation and the endeavour of the court should be to place a liberal construction so as to promote the objects of the Act and referring to a stevedore, it observed that a stevedore is rendering services to cater to the needs of

exporters and importers and others who want to carry the goods further and, therefore, establishment of such persons is a shop carrying on a systematic economic or commercial activity and merely because shop has been enumerated along with other similar establishments, no further specific enumeration is necessary to cover the applicant therein.

16. As far as the argument of the learned Counsel for the respondent that the respondent-company is confined to its own members and not to the general public and, therefore, it cannot be brought within the fold of the expression "shop" is concerned, the learned Counsel for the appellant-Corporation contended that a co-operative society has been held to be a "shop" for the purpose of the Act and, therefore, when a co-operative society, which is meant for its own members, could be held to be a "shop", the same analogy will also hold good even in respect of the respondent-company herein, which serves only its members. I find sufficient force in the said submission made by the learned Counsel for the appellant and the said contention put forward is also fortified by a decision of the High Court of Madras in the case of Madras Government Servants Co-operative Society Ltd., Madras Vs. Employees' State Insurance Corporation, Madras, . In the said case, a Division Bench of the High Court of Madras, referring to the expression "shop" has observed thus:

The definition of "shop" has now undergone a great change. In the present legal sense, it is not necessary that there should be building or land for conducting a shop. If there is a systematic economic or commercial activity, that will be sufficient to bring that place within the purview of the Act.

Therefore, in the light of the aforesaid observation, the court went on to hold that the co-operative society in question was doing systematic commercial or economic activity and it is one of its occupations and, therefore, the said society comes within the purview of the E.S.I. Act.

17. In a recent decision in the case of Tata Projects Limited v. Employees State Insurance Corporation reported in 2006 LAB.I.C. 244, it has been held by the Andhra Pradesh High Court that professional firm of consultancy service having branches and giving advice on various engineering products is a shop as per the notification and will be liable to the contribution from the notified date or from the establishment of the shop.

18. In the light of the principles of law laid down by the Apex Court and having regard to the object behind the enactment of the Act and the meaning assigned to the word "shop", I am of the considered opinion that in the instant case, as the respondent is carrying on the activities of rendering service to its members in the form of giving loans and accepting deposits and more importantly, the said service being rendered for a price, which price is the interest that is levied on the loans taken by the members, all in all, the activities carried on by the respondent-company brings it within the fold of an establishment carrying on a systematic commercial or financial activities. The very fact that as many as 40 branches are

spread over the entire State of Karnataka and the respondent carries on its activities through good number of employees, which is not less than 20, all the necessary ingredients are satisfied in the instant case so as to attract the provisions of the Act. Since the respondent-company comes within the expression "Shop" as per the Government notification dated 9.1.1987 and in view of Section 1(5) of the Act, the application of the provisions of the Act to the respondent-company cannot be prevented.

19. In the light of the foregoing reasons, the E.S.I. Court was totally in error in not noticing the established principles of law as laid down by the Apex Court in the above mentioned decisions and the E.S.I. Court lost sight of the entire issue by looking at the whole case from a very narrow angle of the respondent-company being confined to its own members. What the E.S.I. Court, did not take notice was of the fact that the respondent-company, though was confined to its own members, yet, it was rendering services to its members in a systematic manner, resembling a commercial activity and, therefore, merely because it is the members who benefit from the services rendered by the respondent, it cannot be said that the members are not the customers and that the general public is not in any way involved in the activity of the respondent-company. In this connection, I find enough merit in the submission made by the appellant's counsel that though a customer may not be a member of the respondent-company, yet, the members of the company are, in fact, customers in the sense that the respondent-company renders service to them.

20. To sum up, the respondent-company is a "shop" and, therefore, the provisions of the Act are squarely applicable to it. Consequently, the impugned order of the E.S.I. Court will have to be set aside, which I do by allowing this appeal.