(2011) 11 DEL CK 0015

In the Delhi High Court

Case No : FAO 132 of 2009

ESIC APPELLANT

Vs

M/s Computal System and Services RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:
Employees State Insurance Act, 1948 — Section 1(5), 75, 82

Citation : (2012) 134 FLR 960 : (2012) 3 LLJ 382

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : K.P. Mavi, for the Appellant; O.P. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir

1. By this appeal filed u/s 82 of the Employees State Insurance Act, 1948, the appellant seeks to set aside the order dated 22.11.2008, whereby in the learned court held the ESI Act not applicable to the respondent organization.

2. The brief sequence of events that has led to the filing of the present appeal is that the appellant held the Employees State Insurance Act to be applicable to the respondent organization. That the respondent organization claims itself to be an educational institution and hence exempted from the coverage by the said Act and hence filed a suit u/s 75 of the ESIC Act wherein vide judgment and decree dated 6.3.1997 the said Act was held to be inapplicable to the respondent organization. The said order was challenged by the appellant wherein this court vide order dated 6.2.2008 remanded the matter back for fresh adjudication. Thereafter vide order dated 22.11.2008, the learned court held that the said Act is not applicable to the respondent organization as it is not a shop but an educational institution. Feeling aggrieved with the same, the appellant has now preferred the present appeal.

3. Mr. K.P. Mavi, learned counsel representing the appellant submits that the

respondent has been running commercial establishment as the respondent hires teachers from the market and then sends them to different schools against consideration. The contention of learned counsel for the appellant is that the respondent is not carrying on any educational activity from its premises and, in fact, is engaged in commercial activities and providing services of teachers to other establishments and, therefore, the respondent is a shop under sub-section(5) of Section 1 of the Employees State Insurance Act, 1948. Learned counsel also submits that the respondent in fact is registered under the Delhi Shops and Establishments Act, 1954 and that fact again would show that the respondent has been carrying on activity which can be easily termed as an activity for running commercial establishment or a shop. Learned counsel for the petitioner also submits that the judgment in the case of Hindu Jea Band, Jaipur Vs. Regional Director, Employees'' State Insurance Corporation, Jaipur, was misconstrued and misinterpreted by the learned Trial Court. Learned counsel also places reliance on the judgment of the Hon''ble Supreme Court in the case of AIR 1994 1154 (SC) wherein the Hon''ble Apex Court has also placed reliance on the said Hindu Jea Band case (supra).

4. Opposing the present petition, Mr. O.P. Saxena, learned counsel representing the respondent submits that the respondent is engaged in the educational activity as after giving training to the teachers they are sent to render services to various public schools on hire basis. Counsel thus states that the activity of the respondent cannot be treated either in the nature of the shop and, therefore, the provisions of Employees State Insurance Act, 1948 cannot be made applicable to the respondent. Counsel further submits that the order passed by the ESI Court is a reasoned order and the same does not warrant any interference of this Court.

5. I have heard learned counsel for the parties at considerable length and gone through the records.

6. The case of the appellant is that the ESI Act is applicable to the respondent organization as it is a shop doing commercial activity as it hires teachers and sends them to various schools for giving computer education. The case of the respondent on the other hand it is an educational institution imparting computer training to students at its centre at Mayapuri and also sends its teachers to various schools for imparting computer education. The onus was on the appellant to prove that the respondent organization was a shop and covered under the ESI Act. During the course of arguments, a copy of the survey report dated 11.7.89 was produced before the Court. In part B column 2(b) of the said report, which relates to nature of work, the remark states "providing teachers to public schools for teaching computer science", but the entire report nowhere reveals that what information was collected or available with the inspector to form an opinion that the respondent can be considered as a shop by virtue of which the ESI Act would be applicable to the respondent organization. A look at the deposition of the witnesses of the appellant also does not disclose the reason for forming such an opinion. RW1, RW 2 and RW have nowhere disclosed any material on record to

show that the respondent organization is a shop and not an educational institution. The respondent organization''s witnesses by virtue of their deposition and cross examination have been able to prove that the respondent organization is imparting computer education to students in their own centre and also by giving the services of the teachers to other school and educational institutions. The respondent also placed on record certain agreements executed by the respondent with the schools to prove that the respondent was rendering services of teachers training to schools and under certain clauses the respondent was not charging anything from the schools for delivering them the computers and necessary equipment and books.In the absence of any evidence produced on record, it is difficult to believe that the respondent is engaged in the any activity of any nature which can be said to come within the ambit of a shop to which the ESI Act would be applicable.

7. The word shop is nowhere defined in the Act but by virtue of judicial pronouncements there are factors which can be helped to determine whether the organization or establishment in question is a shop or not. The judgment in AIR 1994 1154 (SC) relied upon by the appellant also reiterates some factors which can be taken into consideration to find whether the establishment is a shop or not and there is no dispute with this settled legal position. But in the light of the fact that the appellant has not been able to bring any material on record, oral or documentary to show that the nature of activity carried on by the respondent organization is a shop, the said judgment would not come to its rescue.

8. Hence, after having carefully perused the impugned order and evidence adduced by both the parties, this Court does not find any illegality or perversity in the impugned order. There is no merit in the present petition and the same is hereby dismissed.