

(2000) 06 KL CK 0004
In the High Court Of Kerala
Case No : M.F.A. No. 255 of 2000

Madona Textiles

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(17), 38, 40

Citation : (2000) 86 FLR 690 : (2000) 3 ILR (Ker) 219 : (2000) 2 LLJ 1422

Hon'ble Judges : M.R.H. Nair, J;K.K. Usha, J

Bench : Division Bench

Advocate : M.J. Thomas, for the Appellant;

Final Decision : Dismissed

Judgement

M.R. Hariharan Nair, J.—The challenge is with regard to the finding of the Employees" State Insurance Court, Idukki, that "Madona Traders" and "Madona Tex Sarees" are parts/sections of Madona Textiles, who was the applicant in Insurance Case No. 57/94 and that all the three, clubbed together, stand covered under the provisions of the Employees" State Insurance Act. The stand taken before the said Court by the appellant herein was that Madona Textiles though covered from April 1, 1993, is an independent unit and that it has nothing to do with two other firms viz., Madona Traders and Madona Tex Sarees, The liability for coverage from February 1, 1991 was also disputed. It was contended that the partners of the said two firms are different from those of the appellant firms and that they have also different registrations under various Statutes like Municipalities Act, Income Tax Act, Sales Tax Act and Shops and Commercial Establishments Act. Their bank accounts are different and there is no functional integrality. The said contentions did not find favour with the Insurance Court.

2. The learned counsel for the appellant submitted that the findings of the Insurance Court are erroneous and that the said Court had failed to approach the issue from the proper perspective.

3. Before we approach the factual matrix, it is necessary to refer to the legal position with regard to the basic question, namely, whether the employees under other institutions covered by separate registrations under different enactments can be taken as forming part of the employees of the appellant-institution on the principles of integrality.

4. Section 38 of the ESI Act, 1948 provides that all employees in factories or establishments to which the Act applies shall be insured. Section 40 casts the liability to pay the contribution for such insurance on the principal employer whether the employees are directly employed by them or through an immediate employer. u/s 2 principal employer in the case of establishments, is the person responsible for the supervision and control of the establishment. The word, "establishment" is, however, not defined in the Act. Going by dictionary meaning it refers to a place of commercial activity. Though with reference to the provisions of the Industrial Disputes Act the Supreme Court had occasion to consider the question as to what would constitute one establishment in the ordinary industrial or business sense in *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, this Court itself went into the question of unity of establishments in *Employees' Provident Funds and Miscellaneous Provisions Act, 1952 in Eddy Current Controls (India) Ltd. Vs. R. Provident Fund Commission and Another*, . The tests to be applied in such cases could be one of the geographical proximity; unity of ownership, management and control; unity of employment and conditions of service; functional integrality; general unity of purpose; common management and the like. The purpose is to find out the true relationship between the parts, branches, units etc. If in spite of the apparent veil, they constitute one integrated whole, it can be said that the establishments in question are actually one. The relationship between the units will have to be carefully appraised to find out the reality bearing in mind the object of the Statute. Unity of ownership, management and control and unity of employment, will be important tests in this regard. Functional integrality and general unity are also certainly important. Some connection between the activities in the different institutions by itself may not be sufficient to justify an inference one way or the other; but the employer's own conduct in mixing up or not mixing up the capital, staff and management may often provide a certain answer. What is to be looked into is whether there is a real thread of unity.

5. After a lengthy analysis of the factual matrix including the evidence of the E.S.I. Inspector and his report marked as Ext. B1, the E.S.I. Court, in a well considered judgment, has found that the following facts are established:

(i) The appellant started functioning on August 28, 1986 and the number of persons allegedly engaged by the firm on daily wages during season did not tally with the number of employees mentioned in the muster roll and wages register.

(ii) According to the details in the cash book and general ledger, 20 employees had been employed in February, 1991 and 27 employees in March, 1991.

(iii) Though it cannot be said that the partners of the firm Madona Textiles are the same as of Madona Traders and Madona Tex Sarees, the partners of all the three firms are close relatives and the difference is merely only in the permutations and combinations.

(iv) While the partners of Madona Textiles are M.M. Chacko, M.D. Dilip, M.P. Sadasivan, M.D. Dhanesh and M.D. Joseph of whom M.M. Chacko and M.D. Dilip are the Managing Partners, the wife of M.M. Chacko by name Marykutty Chacko is the Managing Partner of Madona Tex Sarees.

(v) The partners of Madona Tex Sarees are M.K. Damodaran, who is the father of M.D. Dilip aforementioned, Ciniya Jacob, D/o M.M. Chacko, aforementioned, and Hindu, W/o. M.D. Dhanesh aforementioned.

(vi) The partners of Madona Tex Sarees are Smt. Marykutty Chacko, W/o Sri M.M. Chacko, aforementioned, Smt. Anandavally, mother of Sri M.D. Dilip aforementioned, and Smt. Mony Sadasivan, W/o Sri M.P. Sadasivan aforementioned.

(vii) The building in which Madona Textiles is housed was originally leased to it for a rent of Rs. 11,500/- per month; but the other two firms are also working in the same premises. From October 1, 1991 onwards Madona Textiles has been dealing only with ready made goods and wholesale business. This business is in the 2nd and 3rd floors of the building and from that day onwards the ground and the first floor have been occupied by Madona Traders and Madona Tex Sarees respectively.

(viii) After the new firms have started functioning in the ground and first floor of the building from October 1, 1991 onwards, there is change of business for Madona Textiles. While Madona Traders started dealing with general goods, Madona Tex Sarees has been dealing with Silks, Sarees and matching blouses only. In other words, there arose distribution of the previous business of the appellant between the other two firms also.

(ix) From the said date onwards there is apportionment of rent of the building between the three firms. Madona Textiles and Madona Traders thereafter paid Rs. 4,000/- each per month and Madona Tex Sarees started paying rent at the rate of Rs. 3,500/- per month. All the same, no separate rent receipts have been passed in favour of the latter firms.

(x) There is only one power connection for the three units viz. with consumer No. 122 of Thodupuzha Electrical Section.

(xi) There is only a common entrance for access to all the three firms.

(xii) There is only a common staircase and a common lift facility for access to the, business places of the three firms.

(xiii) There is only one cashier and cash counter for all the three firms.

(xiv) There is no separate building numbers for the premises occupied by the three firms. There is also separate licence under the Shops and Commercial Establishments Act for each of the three firms.

(xv) Goods were transferred from Madona Textiles frequently to the other two units.

(xvi) The workers of Madona Tex Sarees and Madona Traders were previously employed in Madona Textiles as daily wage workers.

(xvii) Godown facility is available only for Madona Textiles and there are no separate godowns for the other two firms.

6. Notwithstanding the persuasive arguments of the learned counsel for the appellant, we are not prepared to interfere with the findings of fact aforementioned. These findings, undoubtedly, show that there is geographical unity, functional integrality and unity of management to a major extent. We, therefore, agree with the findings of the Employees' State Insurance Court, Idukki (Industrial Tribunal, Idukki) that the employees in the three firms can be tacked together for the purpose of assessing the employment strength for purposes of coverage under the E.S.I. Act

7. The appeal, in the circumstances, is found to be devoid of merit and it is dismissed.