

(1997) 07 MAD CK 0072

In the Madras High Court

Case No : C.M.A. No. 1075 of 1994

Mangalore Ganesh Beedi Works, (Partnership Firm) Mysore

APPELLANT

Vs

Regional Director, Employees' State Insurance Corporation,
Madras

RESPONDENT

Date of Decision : 01-07-1997

Acts Referred:

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

Citation : (1997) 2 MLJ 514

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Advocate : Meenakshisundaram, for the Appellant; G. Desappan, for the Respondent

Judgement

Govardhan, J.—This appeal is against the order passed by the E.S.I. Judge, Tirunelveli dated 29.6.1994 in E.S.I. O.P. No. 7 of 1989 filed u/s 75 of the Employees State Insurance Act (hereinafter called as the Act).

2. The appellant's case is briefly as follows : The petitioner is a partnership firm carrying on business in getting manufacturing and selling the beedies under the trade name "Mangalore Ganesh Beedi Works". The petitioner has a branch at Tachanallur. The said premises is not used either for manufacturing or purchasing beedies. It is not a shop or a factory. Power is not used there. Number of workers in that premises is less than 20. The premises is used only for the purpose of storing, collecting and distributing beedies for the purpose of packing under its trade mark. The petitioner has obtained a licence for the premises under the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, Beedi Workers' Welfare Cess Act, and Beedi Workers Welfare Fund Act. The respondent had issued a notice to the petitioner stating that the provisions of the E.S.I. Act has been extended to the establishment of the petitioner. In spite of his sending a suitable reply and making representation, the respondent has passed the impugned order on 27.4.1989. The said order is null and void and without

jurisdiction. Hence the petition for declaring the same as null and void.

3. The respondent in their objections has alleged as follows : The provisions of the Act were extended as per the notification in G.O.Ms. No. 360 dated 2.5.1978 to the petitioner's branch at Tachanallur. The notification is with effect from 14.5.1978. The Inspector has conducted an inspection and informed the coverage position to the petitioner by a communication dated 17.6.1985. The petitioner has not produced records for inspection. A show cause notice was issued. The petitioner has sent a reply and has also attended the personal hearing. After hearing the objection, an order u/s 45-A of the Act was passed. The contributions by the petitioner to the E.S.I. fund would not come up to double levy. The petition is therefore liable to be dismissed.

4. On the above pleadings, an enquiry was held by the learned E.S.I. Judge, Tirunelveli and he has given a finding that the E.S.I. Act which is anterior in time, is more beneficial and favourable to the employees and therefore the provisions of the said Act would prevail and dismissed the O.P. filed by the petitioner.

5. Aggrieved over the same, the applicant has come forward with this appeal.

6. The learned counsel appearing for the appellant would argue that the order passed by the E.S.I. Judge is not sustainable since the premises where the inspection was conducted by the inspector is a godown where there is no manufacturing process carried on by the applicant and where the employees are less than 20 and the notification relied by the respondent does not apply and cover this place which is only a godown. According to the learned counsel, the premises where the inspection was done by the Inspector, is neither a "shop" nor a "factory" nor an industrial premises, in order to bring it under the notification. It is also argued by the learned counsel appearing for the appellant that the provisions of the Beedi Workers Cess Act, Beedi Workers' Welfare Fund Act and Beedi and Cigar Workers (Conditions of Employment) Act have been extended to the petitioner's premises and therefore the Employees State Insurance Act which is the General Act even though is applicable, it cannot be stated that the notification has been extended to this place on account of the fact that there is no manufacturing process carried on. According to the learned counsel appearing for the appellant, the Shop Act does not apply to the premises and when the Shop Act is not applicable, the notification is immaterial and the notification cannot be said to be extended to the premises of the petitioner. The learned counsel appearing for the respondent would argue that this argument of the learned counsel appearing for the appellant is not a tenable one since the word "shop" is not defined in the Employees State Insurance Act and as per the Dictionary meaning "shop" is a place of business or place where one's ordinary occupation is carried on and in ordinary parlance a "shop" is a place where the activities connected with the buying and selling of goods are carried on and in the present case, the place where the inspection has been done by the inspector and which is described as a godown by the petitioner, the beedies are bundled and packed by the petitioner by employing employees and the fact of bundling

and packing is part and parcel of the business carried on by the petitioner, and it is in connection with the business of the petitioner, and therefore the place where the inspection has been done has also to be considered as a premises coming under the definition of the word "shop". According to the learned counsel appearing for the respondent Mr. Desappan, when once the premises where the petitioner is carrying on business comes under the definition of the word "shop", the notification issued automatically applies and it cannot be stated that the notification is not applicable to the premises in question. As regards the contention of the learned counsel appearing for the appellant that the employees working in the premises are less than 20, it is contended by the learned counsel appearing for the respondent that the inspection report marked as Ex. R-4 would show that there were more than 28 persons employed in the main place of business of the petitioner and the fact that there were less than 20 in the premises where the bundling and packing is carried on, and there are only less than 20 persons does not remove the above place from the definition of the word "shop" since the bundling and packing is also a work connected with the business of the petitioner. In support of his above argument, the learned counsel appearing for the respondent has relied upon the decision reported in *International Ore & Fertilizers (India) Pvt. Ltd. v. E.S.I. Corporation* 1988 I CLR 41 wherein the Supreme Court has held that to constitute a "shop" it is not necessary that delivery of goods to purchaser should take place at the premises and it is enough if trading and commercial activity relating to sale of goods takes place. The Supreme Court has held that Company having Office at Secunderabad where trading and Commercial activity relating to sale of imported fertilizer taking place, but no delivery of goods taking place at the premises is also a shop. Their Lordships of the Apex Court have observed that "the E.S.I. Act which is a welfare legislation and the notification issued thereunder should be construed liberally so as to achieve the purpose of the legislation rather than frustrate or stultify it". The Bombay High Court in the decision reported in *E.S.I. Corporation v. I.S.M. Co. Ltd. Bombay* (1995) 2 LLJ 514 has held that where head office of the respondent-company is duly covered establishment, as it was a shop employing more than 20 employees at the relevant time, all persons employed for wages connected with the distribution or sale of products concerning the establishment covered under the Act were thus specifically covered u/s 2(9) of the Act and warehouses were employed for wages on work connected with marketing of sewing machines, which was the main business of the company, they were covered under the provisions of Section 2(2) of the Act. The decisions of the Supreme Court relied by the learned counsel viz., *International Ore & Fertilizer (India) Pvt. Ltd. v. E.S.I. Corporation* 1988 I CLR 41, was also referred in this decision of the Bombay High Court. When we approach the case on hand, in the light of these two decisions, we have to necessarily hold that bundling and packing of beedies received by the petitioner in the premises in question employing about 8 persons being connected with the manufacturing and the sale of the beedies, the premises is to be treated as a "shop" and it has to be held that the notification is applicable to the premises in question in all fours. In

addition to that, the finding of the Tribunal that the Employees' State Insurance Act being a beneficial act empowers more benefits to the employees of the petitioner than the three enactments relied by the respondent, I am of opinion that there is no merit in this appeal and the appeal is to be dismissed.

7. In the result, the appeal is dismissed. No costs.