(1986) 02 BOM CK 0040

In the Bombay High Court

Case No : First Appeal No. 220 of 1977

Mehta Agencies APPELLANT

Vs

Employees State Insurance Corporation RESPONDENT

Date of Decision : 27-02-1986

Acts Referred:
Employees State Insurance Act, 1948 — Section 75

Citation : (1986) 3 BomCR 363

Hon'ble Judges : V.V. Vaze, J

Bench : Single Bench

Advocate : F.D. Demania and S.K. Talsania, for the Appellant; Rajan Jaykar, instructed by M.V. Jaykar and Co., for the Respondent

Final Decision : Allowed

Judgement

V.V. Vaze, J.—Smt. N.N. Gaikwad an Inspector of the Employees State Insurance Corporation in her routine tour visited factories in Unit Nos. 214 and 215, A to Z Industrial Estate, Lower Parel, Bombay. She found that two establishments were functioning ; one in Unit No. 214 and another in Unit No. 215. In the former, M/s. Cosmic International Exports were manufacturing spare-parts for automobiles while in the latter M/s. Mehta Agencies were engaged in packing goods. According to Smt. Gaikwad both these unit though housed separately were functionally one and she reported accordingly to the corporation who treated the units as one for the purposes of the Employees State Insurance Act. As the total number of workers in these two units exceeds 20, M/s. Mehta Agencies were asked to make employees contribution and Employers special contribution for the period from the last quarter of 1972 to the first two quarters of 1973. This demand having been confirmed by the Employees Insurance Court, M/s. Mehta Agencies appeal.

2. The short question thrown up by this appeal is whether the establishment of M/s Mehta Agencies are doing the work of "distribution for sale of the products of Cosmic International Exports, within the meaning of the inclusive part of the

definition of ''employee'' in sub-section (9) of section 2 of the Employees'' State Insurance Act, 1948.

3. M/s. Mehta Agencies put Pritpalsingh, one of the Managing Partners in the box, to say that Cosmic International Exports is a manufacturing concern which is run by a partnership which was formed on 24-9-1970 whereas M/s. Mehta Agencies is the business of a partnership which came to existence in January 1960. From January 1960, Mehta Agencies have been purchasing spare parts of automobiles and selling the same to various parties in India and aboard. Till 1972 Cosmic International Exports were engaged in manufacture of Photo frames and it was only in 1973 that Cosmic International diversified and started manufacture of motor spare parts. Pritpalsingh admits firstly that he supervises both the Units; secondly, Mehta Agencies make some advance payments as required by Cosmic International Exports and thirdly that two partners of M/s. Mehta Agencies are also the partners of Cosmic International Exports. The learned Judge of the Employees'' State Insurance Court found on these facts that the business of M/s. Mehta Agencies is to sell and export the goods of Cosmic International and these facts taken together prove the unity of interest.

4. Except saying that M/s. Mehta Agencies sell and export goods of Cosmic International, the learned trial Judge has not marshalled any other circumstance to come to the conclusion about the unity of both the units. However, Mr. Jaykar, learned Counsel for the respondents, while supporting the judgment, relies upon the decision in J.G. Vakharia v. Regional Provident Fund Commissioner, Bombay, 1957(1) L.L.J. 448, for the proposition that a Court must not countenance any subterfuge which would defeat the provisions of a social legislation and the Court must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing the legislation on the statute book. In Vakharia''s case a silk mill-Standard Silk Mill was run by a father and son partnership and on the death of the father, the son entered into partnership with his two major sons. The factory closed its business just before the advent of Employees'' Provident Funds Act. Subsequently, the very same old machinery is which were used by the partnership concern earlier were leased out to the members including minors of the family owning the factory. All the manufacturing processes which were being originally carried out by the single unit of Standard Silk Mills were now allotted to five different units in the names of the five sons who were doing weaving, threading, processing, finishing and dyeing preparation. The five sons executed rent notes in favour of Standard Silk Mills and separate licences were also issued to them under the Factories Act. The units were also separately assessed for tax purpose. Finding that though the various units run by the members of the family are distinct and independent units, the division is only a subterfuge, the Court held that instead of the parent partnership firm manufacturing the silk, the silk was manufactured by the very same processes in the very same machinery in the very same premises, by the separate units artificially set up. On the analogy of the Standard Silk Mills case, so the argument goes, here also all that the members of the Mehta family have

done is to affect a division of labour, the manufacturing part being done by Cosmic International Exports and the packing exporting part by M/s. Mehta Agencies, which should be treated as one unit.

5. As held by the Supreme Court in The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, , the tests whether the two units form part of the same establishment, are : common unity of ownership, management and control, unity of functional integrality, unity of employment etc. In Standard Silk Mill''s case the so called division of the manufacturing processes of the Silk Mills was too transparent to hide the read intention because the physical attributes of the establishment persisted. The machinery remained at its own place and the workmen continued to do their duties assigned to them earlier when the silk mills were under one partnership. Only a show was made of taking the machinery or lease. The methodology of manufacture and sale of silk continued.

6. In contrast, in the facts of the present case, one can easily see that for a good 12 years M/s. Mehta Agencies continued to sell and export automobiles parts after purchasing them from various manufacturing units in Bombay, Delhi and Ludhiana. It was only in 1973 that M/s. Mehta Agencies started purchasing from Cosmic International Exports decided to switch over from Photo frames manufacture to that of automobile spare-parts. It is not as if M/s. Mehta Agencies are purchasing the automobile spare-parts only from Cosmic International. They are doing so from other manufacturers also.

7. One can see what triggered the suspicion that there is unity of functional integrity between the two units. There is stray sentence in the cross-examination of Pritpalsingh in which he has stated that M/s. Mehta Agencies were doing the packing business of spare-parts purchased from Cosmic International Exports. This sentence has been made a peg by Counsel for respondent to hang an argument that all that M/s. Mehta Agencies does is to pack the material of Cosmic International. But reading the deposition as a whole, it appears that Pritpalsingh had in the beginning denied that M/s. Mehta Agencies does the packing business of Cosmic International but admitted that so far as the spare-parts which are purchased by M/s. Mehta Agencies from Cosmic International are concerned, the packing of those spare-parts purchased is done by M/s. Mehta Agencies, the further operation to be done like packing, exporting etc., would be only the concern of the purchasers viz., M/s. Mehta Agencies. None of the tests laid down in the Associated Cement Companies case apply here. There is no unity of owners because Cosmic International Exports is owned by a partnership of five partners three of whom are not common with M/s. Mehta Agencies. There is no unity of labour, because manufacturing of automobile spare-parts and packing and exporting go ill together. There is no unity of employment as the employees are not inter-changeable. However, Mr. Jaykar has pointed out that there is the functional integrity of the units because Pritpalsingh is the partner who managers the affairs of both the units. I am afraid. I am not persuaded to

hold that, that alone and by itself, will put a stamp of functional integrity on the units. M/s. Mehta Agencies had shown their bona fides by producing before the Employees State Insurance Court all the documents in their possession, such as the Shops and Establishments Act Certificate, muster roll, salary register, stock files, sales-tax register and labour book and cash books. Mrs. Gaikwad, the E.S.I.C. Inspector has admitted that she did not go through the account books. It would have been easy for the Inspectorate of the Corporation to wide through the account books and demonstrate from certain entries that a pattern showing unity of operations of these two establishments emerges or costs doubts on the claim made by M/s. Mehta Agencies that they are purchasing goods from Cosmic International Exports and selling them in India and abroad.

8. In this view of the matter, I find that the learned Judge of the Employees'' State Insurance Court was wrong in dismissing the application filed by M/s. Mehta Agencies u/s 75 of the Employees'' State Insurance Act.

9. In the result, therefore, while allowing the appeal, it is declared that the appellants M/s. Mehta Agencies are not covered by the Employees'' State Insurance Act, 1948 for the period beginning from the last quarter of 1972 till the end of the second quarter of 1973. The appeal is allowed with costs throughout.

