
(2006) 10 KAR CK 0058
In the Karnataka High Court
Case No : M.F.A. No. 4455 of 2002

Modi Xerox Ltd. P.R.

APPELLANT

Vs

The Regional Director ESI Corporation

RESPONDENT

Date of Decision : 21-10-2006

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (22), 75, 82 (2)

Citation : (2007) 112 FLR 553

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : J. Kanikaraj, for the Appellant; M.P. Geetha Devi, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—Heard the learned Counsel for the parties.

2. This appeal u/s 82(2) of the ESI Act. is directed against the order passed by the ESI Court on the application filed u/s 75 of the ESI Act by the appellant herein. The ESI Court refused to accept the prayer of the appellant that it is not liable to pay the contribution in respect of the employees whose wages exceeded coverable limit for the period from October 1993 to March 1997. The ESI Court refused to accept the said contention put forward and directed the appellant herein to pay contribution of Rs. 69,623/- with interest

3. Learned Counsel for the appellant submitted that certain allowance paid by it to its employees like the house rent allowance, education allowances, field allowance, conveyance allowance, uniform allowance, professional literature allowance, reimbursement allowance and medical reimbursement allowance which formed part of the terms of employment and as such, the appointment orders produced by the appellant indicating these allowances forming part and parcel of the contractual terms were not taken note of by the ESI Court, and on the contrary leaving these allowances out of the consideration of definition of wages, the ESI Court proceeded to direct the appellant to pay contribution of the

aforesaid sum. It is the submission of the appellant's counsel that as there was an observation by this Court in its earlier order in M.P.A. No. 4750/2000 to the effect that various allowances referred to above did not form part, of the wages, the ESI Court proceeded on the same foot in and passed the impugned order.

4. It is further submitted that having regard to the definition of wages u/s 2(22) of the Act. and also in view of letter of appointment which is produced as per Ex.A-9 series, the ESI Court ought to have considered various allowances mentioned as part of contract and if that were to be done, most of the employees would go out of the coverage under the ESI Act. Therefore, the impugned order is liable to be set aside on this ground alone.

5. Having thus heard the submission made as above and in view of various allowances forming part, of the contractual terms between the parties, it is obvious that all those allowances made payable in cash form part of terms of the contract, and in my view, the ESI court ought to have taken note of the definition of "wages" and also the contractual terms applicable to the employees of the appellant herein having regard to the letter of appointment produced as per Ex. A-9 series and taking all these into account, the ESI Court should have proceeded to consider the applicability of the Act to these employees.

6. Learned counsel for the appellant also referred to the decision of the Apex court in the case of Harihar Polyfibres v. ESI Corporation (1965) FJR 199 and submitted that various allowances which are part of the contract between the employer" and employee will have to be considered as part of wages and in my view the ESI Court, ought to have taken note of the aforesaid decision of the Apex Court, before arriving at its conclusion as to whether various allowances paid to the employees of the appellant do form part of wages or not.

7. In the result, the matter requires remand once again to meet the ends of justice and as such, I pass the following order:

The appeal is allowed and the impugned order is set aside and the matter is remanded to the ESI Court for fresh consideration and in the light of definition of wages as per Section 2(22) and the aforesaid decision of the Apex Court, the ESI Court shall re-examine the matter and pass its order as to the liability of the appellant to pay the contribution or not for the relevant period. Since the matter is being remanded at this length of time, the ESI Court shall dispose of the matter at the earliest, but not later than six months from the date of this order.