

(2014) 01 BOM CK 0215
In the Bombay High Court
Case No : Appeal Under E.S.I. No. 12 of 2006

M/s. Gujarat Sweet Mart

APPELLANT

Vs

Regional Director, Employees State Insurance

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 75, 82, 82(2)
Factories Act, 1948 — Section 2(k)

Citation : (2014) 2 ABR 378 : (2014) 4 ALLMR 565 : (2014) 3 BomCR 703 :
(2014) 141 FLR 420 : (2014) 1 LLJ 520 : (2014) 2 MhLj 838

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : V.A. Palekar, Advocate for the Appellant; A.A. Agni, Advocate for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—Heard learned Counsel appearing on behalf of both the parties. This common judgment shall dispose of both the above appeals since they involve common questions of law and facts though the period of default is different.

2. By appeal No. 12/2006, the appellant has challenged the judgment and order dated 17.02.2006 passed by the Presiding Officer, Employees State Insurance Court, Panaji (ESI Court, for short) in Employees Insurance Case No. 37/2000 whereas vide appeal No. 13/2006, the appellant has challenged the judgment and order dated 17.02.2006 passed by ESI Court in Employees Insurance Case No. 6/2000.

3. On 01.03.1989 and on 06.03.1989, the ESI Inspector, Shri R.D. Satpute, visited the appellant-establishment and prepared the visit note. Show cause notice was issued to the appellant. By order dated 11.10.1989, passed by the Regional Director, Employees State Insurance Corporation, u/s 45A of the ESI Act, the appellant was required to pay contribution of Rs. 26,030/- for the period

from April, 1988 to August, 1989 together with interest of Rs. 1301.50 up to 30.09.1989, followed by notice dated 21.11.1989 claiming contribution of Rs. 14,526.20 for the period from April, 1987 to March, 1988. Again, on 21.2.1996 and 27.2.1996, the Insurance Inspector, Shri Joy Paul visited the appellant-establishment and prepared visit note. Show cause notice was issued. By order dated 22.04.1997 passed by the said Regional Director, u/s 45A of the Act, the appellant was required to pay contribution of Rs. 22,751/- for the period from October, 1990 to March, 1995 plus interest of Rs. 20,476/- up to 31.12.1996.

4. The appellant filed applications u/s 75 of the ESI Act for declaration that it is not covered under the provisions of ESI Act and not liable to pay the said contributions as claimed. The said applications came to be registered respectively as Employees Insurance Case Nos. 06/2000 and 37/2000.

5. Case of the appellant, in short, as can be gathered from combined reading of both the applications, is as follows:-- the appellant-establishment was a partnership concern engaged in selling sweets and providing lodging and conducting restaurant business. In the year 1978 since the number of employees exceeded 20, the provisions of ESI Act were extended to the appellant-establishment and the appellant complied with the provisions of ESI Act till March, 1987. Till March 1987, the appellant along with Gujarat Boarding House and Gujarat Lodge was one establishment and since total number of the employees employed therein were more than 20, it was covered under the provisions of ESI Act. On and from 01.04.1987, as per the understanding amongst the family members, the businesses were separated by forming three partnership firms namely: M/s. Gujarat Sweet Mart i.e. the appellant; M/s. Gujarat Lodge and M/s. Gujarat Boarding. Gujarat Sweet Mart was engaged in the business of selling sweets; Gujarat Boarding was engaged in business of restaurant and Gujarat Lodge was engaged in business of providing accommodation/rooms. On formation of the separate partnership firms, strength of the employees in the appellant-establishment reduced to five and it became ineligible for coverage under the ESI Act due to which it stopped complying with the provisions of the ESI Act. Since the year 1996, all the three establishments are covered independently under the provision of ESI Act, under code Nos. 32-0223-111; 32-1582-11 and 32-1581-111.

6. The respondent, in both the cases, denied that the provisions of ESI Act were not applicable to the appellant-establishment at the relevant time. The respondent stated that the subsequent bifurcation is artificial only to avoid the liability of the ESI Act. It was alleged that show cause notices were duly issued to the appellant and even opportunity of personal hearing was given which the appellant did not avail. According to the respondent the appellant-establishment has been rightly considered as "one establishment" by clubbing the three units and covered under the provisions of ESI Act.

7. The ESI Court framed issues as per rival contentions of the parties, in both the cases. The appellant examined Shri Damodar Zaveri as AW 1 in both the

cases whereas respondent No. 1 examined Shri Satish Bandekar, the Insurance Inspector as RW 1 in E.I.C. No. 6/2000 and Shri Joy Paul, the Insurance Inspector as RW 1 in E.I.C. No. 37/2000.

8. Learned Presiding Officer of ESI Court found that the evidence on record indicates that prior to 1.4.1987 there was only one unit in the name and style as Gujarat Sweet mart which was covered under the ESI Act w.e.f. 2.7.1987 (sic 2.7.1977). The ESI Court found that all the three partnership firms under the name: M/s. Gujarat Sweet Mail, M/s. Gujarat Boarding House and M/s. Gujarat Lodge started operating within the same premises since 1.4.1987. The ESI Court further found that the appellant-establishment is owned by three partners namely Damodar Babulal, Mr. Navneet Babulal and Mr. Kirti Babulal whereas M/s. Gujrat Boarding House is owned by their spouses namely Smt. Meenakshi Damodar, Smt. Nalini Navneet and Smt. Manisha Kirti and Gujarat Lodge is owned by M. Babulal Mansukhbhai, Smt. Ramanben Babulal and Mr. Narendra Babulal, who are parents and brother. The ESI Court further observed that it is not the case of the appellant that there were differences between the partners of the establishment and their spouses. The ESI Court held that the contentions of the appellant that the establishment was divided into three separate establishments cannot be believed. According to ESI Court, the establishments are situated in the same premises and considering the nature of the business of the respective establishments it cannot be said that there is no functional integrality or functional interdependence. The ESI Court held that it cannot be said that there is no unity of ownership or unity of finance. The ESI Court observed that the establishments have been showed as separate entities only for the purpose of avoiding the liability of the ESI contribution. It has been observed that the ESI Act is beneficial legislation and the employees cannot be deprived of the benefit under the provisions of the ESI Act under the bifurcation. Contention of the appellant that it is not liable to be covered under the provisions of ESI Act has been rejected. Consequently, the applications filed by the appellant u/s 75 of the ESI Act came to be dismissed.

9. Mr. Palekar, learned counsel appearing on behalf of the appellant, submitted that prior to April 1987 there was only one establishment which had more than 20 employees and therefore it was covered under the ESI Act. He submitted that from April 1987 there was a split and three establishments were formed as per the understanding amongst the family members due to which independently the employees were less than 10, in each establishment. He contended that even cumulatively the number of employees were less than 20. He submitted that wage register and attendance register were shown to the Insurance Inspector and he had confirmed that there were less than 10 employees. According to the learned counsel, since the appellant-establishment was not using power, 20 employees were required for coverage and since there were less than 10 employees, the appellant-establishment could not have been covered under the ESI Act, after 01.04.1987. According to the learned counsel, merely because the partners of the establishments are husband in one and wives in other and

parents in the third, it cannot be said that they are one and the same establishments. He submitted that the test is whether the closure of one establishment amounts to closure of other. He pointed out that M/s. Gujarat Boarding was providing Boarding and Catering whereas M/s. Gujarat Sweet Mart was selling sweets. According to him, if one closes, the other still exists due to which there was no functional integrality. He further submitted that neither the employees of one establishment were transferable to other establishments nor the funds. He further submitted that though there was deep freezer, the same was only meant for storage and mere existence of such freezer cannot give rise to an inference that power was used for manufacturing. He submitted that all the three establishments are registered separately under the Shops and Establishments Act, income tax Act and Sales Tax Act. According to him, therefore, in no circumstance, said establishments could have been clubbed together for coverage under the ESI Act. Therefore, according to learned Counsel, the impugned judgments and orders are perverse and liable to be quashed and set aside.

10. Learned Counsel appearing on behalf of the appellant relied upon following Judgments:--

(i). The Deputy Regional Director, ESI Corporation and The Manager, ESI Corporation Vs. Hotel Vijay,

(ii). Vrindavan Hotels (P) Ltd. Vs. E.S.I. Corporation,

(iii). Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union and Its Workmen,

(iv). Mohd. Arif Vs. Employees State Insurance Corp.,

(v). Nandinee Travels Pvt. Ltd. Vs. Regional Provident Fund Commissioner,

11. On the other hand, Mrs. Agni, learned counsel appearing on behalf of the respondent No. 1, submitted that the present appeals are u/s 82 of the ESI Act and no appeal can lie unless it involves substantial question/s of law. She submitted that mere re-appreciation of the evidence is not contemplated in such appeal though perversity can be a ground. According to Mrs. Agni, in the present matter, there is artificial bifurcation for the purpose of avoiding coverage under ESI Act. Learned counsel pointed out that the appellant admitted at one stage that the establishments were one and such single establishment was covered under the ESI Act and they alleged that only since April, 1987, there was some understanding and they separated. Learned counsel submitted out that it was for the appellant to prove the separation and that after separation, the establishments are totally different and independent and not liable to be covered under the ESI Act. She pointed out that all the three establishments are of single family, one of them being of the brothers and second being of their wives and third being of their parents. She questioned as to what is the source of income of wives and parents to start separate business. Learned Counsel pointed out that

no partnership deeds were produced. She submitted that admittedly all the establishments operated from the same premises, but there was no evidence produced by the appellant showing that particular rooms from said premises were occupied by one establishment; other specific rooms were occupied by the second establishment, etc. She pointed out that not a single employee was examined by the appellant. According to her, there was no convincing evidence regarding disjointness amongst the three units. Learned counsel therefore submitted that what follows from the above is that ownership is one, employees are common, there is common finance and consequently there is functional integrality. She further submitted that functional integrality is only one of the tests. She pointed out that the order made u/s 45A of the ESI Act is conclusive and once the said order is made, it is for the party against whom the said order is made to go to the Court and prove the contrary. She submitted that merely because on the date of inspection there were less than 10 employees found working in the appellant-establishment, it cannot be said that the number of employees in all the three establishments together was less than 20. According to her, admittedly, cumulatively there were more than 20 employees. From the pleadings of the appellant, learned counsel pointed out that there is no averment that even after the separation of establishments, cumulative number of the employees of all the establishments was less than 20. She submitted that mere separate registration under the various Acts will not make establishments independent. She pointed out that till the date of inspection, the appellant never informed the respondent about the alleged bifurcation. She further pointed out from the evidence that while scrutinizing the balance sheet from April, 1990 to March, 1991, the Insurance Inspector had noticed that an amount of Rs. 70,590.25 was paid towards salaries of the employees but the salary wage record showed payment only of Rs. 30,262.50 in respect of 8 to 9 employees. Learned counsel therefore submitted that said amount of salary itself reveals that there were more than 20 employees in the establishments. According to the learned counsel, therefore, there is no perversity in the impugned judgments.

12. Learned Counsel appearing on behalf of the respondent No. 1 relied upon following judgments:--

- (i) The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen,
- (ii) Sumangali Vs. Regional Director, E.S.I. Corporation,
- (iii) Assistant Provident Fund Commissioner Vs. A.C.C. Nihan Castings Limited, .

13. I have gone through the record and proceedings of both the cases. I have considered the submissions advanced by the learned counsel for the parties as also the judgments cited by them.

14. Though the present appeals were admitted by order dated 4th October, 2006, however, no substantial questions of law as required by Section 82(2) of the ESI Act were framed. Therefore, it is necessary to formulate the substantive

questions of law involved in these appeals. The substantial questions which arise for determination are as follows:--

1. Whether in the absence of interconnection between the shops by way of common supervisory, managerial and financial control, clubbing is permissible merely on the basis of common ownership?
2. Whether the test of functional interdependence or functional integrality means that either of the establishments falls in the event of the closure of the other?
3. Whether the use of power for a deep freezer in an establishment like that of the appellant would qualify itself to be called a factory under the ESI Act?

15. Insofar as the question No. 3 as framed above is concerned, there is no dispute that in the appellant-establishment there exists a deep freezer. However, there is absolutely no evidence to establish that the said deep freezer was used for purpose of manufacturing anything. In the case of "Arif (Mohd.)" (supra), one of the questions was whether use of refrigerator with the aid of power in the establishment of the appellant amounts to manufacturing process rendering the establishment coverable under the ESI Act. It was found that the deep freezer in the hotel using the electric power was only meant for the purpose of storage. Applying the principles laid down by the Bombay High Court and Hon"ble Supreme Court in the cases referred to in the case supra, the Delhi High Court held that mere storage as such will not be part of the manufacturing process as defined u/s 2(k) of the Factories Act, 1948. Hence, it was held that merely because the hotel belonging to the appellant was using a refrigerator which was being used with the aid of electricity, it cannot be said that the hotel was engaged in manufacturing process so as to cover the said hotel under the provisions of the ESI Act. I have no hesitation to agree with the said proposition. Therefore, point No. 3 gets answered in favour of the appellant.

16. However, admittedly, where no power is used for manufacturing process in an establishment, if there are 20 or more employees, then the establishment is liable to be covered under the ESI Act.

17. In the case of "Hotel Vijay" (2007 (1) AIR Kar R 420) (supra), relied upon by the learned Counsel for the appellant, there were two establishments situated in the same building. One establishment was "Hotel Vijay" and the other was "Vijay Restaurant", both being run by the members of the same Hindu Undivided Family. Only if the establishments were treated as one unit, the coverage under the ESI Act was inevitable. It was found that there was no evidence on record to show that the employees of one unit were transferred to the other unit and vice versa. It had come in evidence of witnesses that both the establishments were registered separately and there was no functional or administrative integrality between the two. Even the ESI Inspector who had submitted the report after inspection was not in a position to say that both the establishments form one unit. The restaurant had separate entrance and so the Hotel. Only the thin line that gave semblance of the two establishments forming part of one and the same

unit was the partnership deed and the members being of the Hindu Undivided Family. Except the above, there was nothing to show that both the establishments were run by all the members together. It was found that "Vijay Restaurant" was a proprietorship concern run by one H.K. Ramesh, one of the members of the Hindu undivided family. The ESI Court had taken the view that the respondent hotel namely "Hotel Vijay" could not be covered under the ESI Act, because, there was no functional integrality between "Hotel Vijay" and "Vijay Restaurant". Relying upon the observations of the Supreme Court in the case of *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, , the Karnataka High Court upheld the said view. In the case of "Vijay Hotel" (supra), it was not the case that the two establishments were initially "one establishment" covered under the ESI Act. In the case before this Court, there is no evidence that the three establishments which exist in the same premises have different rooms, different entrances, etc. In the said case before me Karnataka High Court, there were various factors in favour of an inference that the two establishments did not form one integrated whole. There can be no dispute regarding the principles followed in the case supra. The facts and circumstances of the case supra are different than those in the case before this Court.

18. In the case of "Vrindavan Hotels (Private) Ltd." (supra), relied upon by the learned Counsel for the appellant, the appellant was a private limited company engaged in a family business of conducting hotel and there was a bar and restaurant business attached to the hotel by name "Dwaraka Hotel". The Employees' State Insurance Corporation had clubbed the employees of the bar and restaurant with those of the appellant for the purpose of coverage of the establishment under ESI Act. There was dispute about that coverage. The employer, however, could not succeed even before the Apex Court. Later on, the employer filed an application seeking decouverage from the Act from 1st October, 1989. However, the same was not accepted by the Corporation. It was thereafter the company was formed with the name "Vrindavan Hotels Limited". The restaurant facility available in the hotel was being run by a lessee, who had been employing his own workmen. In spite of that, the Employees' State Insurance Corporation clubbed the lodge as well as the restaurant together for the purpose of coverage and issued notice of assessment and recovery notice. It was in the above circumstances, the employer filed an application before ESI Court for declaration that the establishment became decoucovered from the purview of ESI Act with effect from 1st October, 1998. The lessee was the husband of one among the major share holders of the company. The Kerala High Court held that the restaurant run on lease basis had to be taken as a separate establishment and the employees therein cannot be clubbed to the employees in the lodging house as there was no functional integrality and there was no unity of ownership, management and the company did not have control in the business of restaurant which was run based on a lease by a different person and had to be managed by the lessee and the employees were to be controlled by the lessee. In the case

supra, the lease deed was produced and the facts as above were established due to the lease deed. The tests following which the conclusions were arrived at in the case supra, cannot be disputed. The facts and circumstances of the above case are also totally different from those of the case before this Court.

19. In the case of "Pratap Press" (supra), relied upon by the learned Counsel appearing on behalf of the appellant, on the evidence on record, the conclusion of the Industrial Tribunal that the businesses of a printing press and a newspaper run by one industrial unit could not be treated as one industrial unit but must be treated as two distinct and separate units for such purpose, was held justified. It was found that the functions of the press and the Vir Arjun paper cannot be considered to be so interdependent that one cannot exist without the other. Thus, in the case of "Pratap Press" (supra), there was evidence on record to say that the industry of publishing a paper may well exist without the same owner running a press for the printing of the paper. The Apex Court referred to its own observations in the case of The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, . It can be understood that the test that there should be such functional interdependence that one unit cannot exist conveniently and reasonably without the other, is one of the tests to find out the true relation between the parts, branches, units, etc. The other tests are whether there is unity of ownership, unity of management and control, unity of finance, unity of labour and unity of employment, etc.

20. In the case of "Nandinee Travels Pvt. Ltd." (supra), relying upon the judgment of the Apex Court in the case of The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, and "Pratap Press" (supra), a Division Bench of this Court held that the first and the foremost test to establish the functional integrality would be whether the second unit would survive in the absence of first unit or when the first unit is closed whether the second unit continues to do its business activity.

21. In the present case, there is no dispute that initially all the three establishments were "one establishment" which was duly covered under the provisions of ESI Act. There is also no dispute that if all the three establishments namely Gujarat Sweet Mart, Gujarat Boarding House and Gujarat Lodge are clubbed together then the number of employees working therein is more than 20 and therefore, the establishments cumulatively would be covered under the ESI Act. The document produced by the appellant namely the register of wages itself reveals that there were more than 20 employees in the three establishments clubbed together. Even otherwise, in the affidavit-in-evidence filed in both the cases, AW 1, the partner of the appellant has stated that business of the appellant was covered under the Act initially since the time the ESI Act was introduced in Goa because the number of employees employed by the appellant exceeded 20. In paragraph 23 of the affidavit-in-evidence, the said partner of the appellant (AW 1) has stated that the respondent clubbed the employees of the appellant M/s. Gujarat Sweet Mart with that of the Gujarat Boarding and Gujarat Lodge for

the purpose of coverage under the ESI Act. This means that by clubbing the employees of the three establishments the number of employees were more than 20. Then, the Insurance Inspector, during inspection, had noticed that the balance sheet showed that an amount of Rs. 70,590.25 was paid towards salaries of employees whereas the salary register showed only Rs. 30,327.50 which clearly indicated that the appellant had engaged additional employees whose names were not figuring in the salary register. Though the establishment was initially covered under the provisions of ESI Act, however, after 01.04.1987, when allegedly the new businesses came into existence, the appellant never informed the respondent that as from 01.04.1987, the businesses have been divided in three separate units and the number of employees in each unit does not exceed 10 and therefore they need not pay contribution and hence they should be decovered. In the present case, suddenly as from 01.04.1987, the appellant stopped paying contributions. Burden was on the appellant to establish the tests which would convincingly show that the three establishments, after 01.04.1987, were distinct and separate and the employees of all three cannot be cumulatively counted for the purpose of coverage. No doubt, the test that closure of one would not result in closure of the others is one of the tests. But, that is not the only test. Whatever may be the truth, neither in the applications filed u/s 75 of the ESI Act nor in the affidavit-in-evidence of AW 1, the appellant has stated that the position after 01.04.1987 was such that even upon the closure of one establishment, the other two could still exist.

22. Admittedly, till 1.4.1987 the three establishments namely: Gujarat Sweet Mart, Gujarat Boarding House and Gujarat Lodge were one establishment being the family unit. According to the appellant, as averred in the applications u/s 75 of the ESI Act, after 1.4.1987 the said three establishments were formed on account of some understanding amongst the family members. But in the affidavit-in-evidence AW 1 stated that there were personal differences amongst the family members and it became inevitable to separate the businesses. No partnership deed were produced. No evidence was produced to prove that the spouses and parents had sufficient funds to start independent businesses. In the absence of the evidence to prove as to what were the differences amongst the family members or what was the understanding amongst them which led to formation of three establishments and as to what was their financial strength and in the absence of partnership deeds being produced on record, the ESI Court has rightly observed that it cannot be said that there was no unity of ownership or unity of finance. The ESI Court has held that it is evident that these establishments have been shown as different entities only for the purpose of avoiding the liability of ESI. The above finding cannot be held to be perverse.

23. No doubt, AW 1, the partner of the appellant, stated in his affidavit-in-evidence that the appellant did not exercise any financial or managerial or supervisory control over business of the other two establishments and that the business of the appellant was independent having no link or relation whatsoever with M/s. Gujarat Boarding or M/s. Gujarat Lodging and that the employees were

not transferable. However, in the absence of documentary evidence like partnership deeds, etc. and for reasons stated in the impugned judgments, the ESI Court has rightly refused to believe that the establishment was divided into three separate and independent units. Admittedly, the partners of all the three establishments are members of the same family. M/s. Gujarat Sweet Mart was owned by three partners namely Damodar Babulal, Mr. Navneet Babulal and Mr. Kirti Babulal whereas M/s. Gujrat Boarding House was owned by three partners namely Smt. Meenakshi Damodar, Smt. Nalini Navneet and Smt. Manisha Kirti, who are spouses of the partners of the Gujarat Sweet Mart. The third establishment M/s. Gujarat Lodge is owned by M. Babulal Mansukhbhai, Smt. Ramanben Babulal and Mr. Narendra Babulal who are parents and brother of the partners of Gujarat Sweet Mart. Admittedly, all the three establishments are housed in the same premises. There is no evidence on record to show that some particular rooms of the building are allotted to one establishment and other specific rooms have been allotted to other establishments. There is no evidence that there is separate electricity connection for each of the establishments. Once it is found that the three units form part and parcel of the same establishment, merely because, the three establishments are separately registered under the Shops and Establishments Act, income tax Act and Sales Tax Act, that is not sufficient to hold that they are distinct and independent establishments.

24. In the case of Assistant Provident Fund Commissioner Vs. A.C.C. Nihan Castings Limited, , relied upon by the learned Counsel appearing on behalf of the respondent, relying upon various judgments of the Apex Court, the learned single Judge of Nagpur Bench of this Court has observed that keeping in mind the object, purpose and interpretation as above, the dominant tests in this case would be unity of ownership, unity of management and control, unity of labour and unity of employment, unity of finance, transferability of employees, maintaining of seniority list, promotions, etc.. The learned single Judge has observed that merely because the respondent company is separately incorporated under the Companies Act and having Separate Central Excise, Sales-Tax and income tax registration, that by itself is not enough. I am in respectful agreement with the above propositions.

25. Thus, unity of ownership, unity of management, supervision and control, unity of finance, unity of labour and unity of employment, interchangeability of employees, unity of location, general unity of purpose, and functional integrality, etc., are some of the tests which are to be considered for deciding whether the units form part of the same establishment or not. Similarly, whether on closure of one establishment, the other establishment also gets closed, is one of the tests for determining the said question. Any one test cannot be said to be absolute, in each case. It cannot be said that in each case the test whether on closure of one establishment, the other establishment also gets closed is the most important and dominant test. In one case some tests may be important whereas in the other case some other tests may be important and dominant.

26. In the case of Sumangali Vs. Regional Director, E.S.I. Corporation, , relied upon by the learned Counsel appearing on behalf of the respondent, on the basis of an inspection conducted by the ESI Inspector, the establishment Sumangali was clubbed with four other establishments viz. M/s. Jose Silk and Sarees, M/s. Gents Fabrics, M/s. Jacobs and M/s. Jos Brothers Trades and Investments and it was found that there were more than 30 employees in the month of April, 1990. It was contended that M/s. Sumangali was a partnership firm registered under various statutes and merely because the partners or proprietors were related to each other, that cannot be a ground for clubbing the employees for the purpose of coverage. It was urged that there was no functional integrality. The following reasons were given in the counter-affidavit filed by the Corporation, for clubbing the units:-

- (a) There was one common entrance between the two units;
- (b) There was one common staircase;
- (c) They had no separate office;
- (d) They had one rented building;
- (e) The rent was paid by the father of the two proprietors who were brothers and sons of the father who paid the rent;
- (f) There was a common electric connection/phone connection;
- (g) There was single general ledger for financial dealings of both the units.

The Kerala High Court held that the ESI Corporation was justified in clubbing the establishments for the purpose of coverage under the ESI Scheme as there was functional integrality, unity in management, financial unity, geographical proximity, unity in supervision and control and general unity of purpose. It was further held that even if each unit was an establishment having separate registration under the Sales Tax Act, the Shops and Establishments Act and the income tax Act, all the units were interdependent and were supplementary and complementary to each other for the sake of their textile business. The Apex Court upheld the concurrent conclusions of the ESI Court and the High Court. In paragraphs 20, 21 and 22 of the judgment in the case (supra), the Apex Court has observed thus:--

20. In The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, it was, inter alia, observed as follows:

The Act not having prescribed any specific tests for determining what is "one establishment", in considering the question whether a cement factory and the adjacent lime stone quarry supplying lime stone to it, are one establishment, one must fall back on such considerations as in the ordinary industrial or business sense determine the unity of an industrial establishment, having regard no doubt to the scheme and object of the Industrial Disputes Act and other relevant provisions of the Mines Act, 1952, or the Factories Act, 1948. It is perhaps

impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units etc. If in their true relation they constitute one integrated whole, the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes a disqualification therefore. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case the important test may be the unity of employment.

21. In *Rajasthan Prem Krishan Goods Transport Co. Vs. Regional Provident Fund Commissioner, New Delhi and Others*, it was observed as follows:

The finding recorded by the Regional Provident Fund Commissioner is that there is unity of purpose on each count inasmuch as the place of business is common, the management is common, the letterheads bear the same telephone numbers and 10 partners of the appellant are common out of the 13 partners of the third respondent. The trucks plied by the two entities are owned by the partners and are being hired through both the units. The respective employees engaged by the two entities when added together, bring the integrated entities within the grip of the Act; so is the finding. Now, this finding is essentially one of fact or on legitimate inferences drawn from facts. Nothing could be suggested on behalf of the appellant as to why could the Regional Provident Fund Commissioner not pierce the veil and read between the lines within the outwardliness of the two apparents. No legal bar could be pointed out by the learned counsel as to why the views of the Regional Provident Fund Commissioner, as affirmed by the Central Government, be overturned.

22. In the instant case factual findings as recorded by the ESI Court and of the High Court go to show that there was unity in management, supervision and control, geographical proximity, financial unity, general unity of purpose and functional integrality between the different units and for the sake of ESI coverage, the different units can be treated as "one establishment".

27. Considering the facts and circumstances of the case of *Sumangali Vs. Regional Director, E.S.I. Corporation*, and the principles laid down therein, I am of the view that the findings of the ESI Court in the present case are factual and legitimate inferences.

28. Therefore, the finding of the ESI Court, to the effect that the contentions of the appellant that the employees of the unit cannot be clubbed for the purpose of determining the coverage cannot be accepted, is not perverse and is based on the evidence on record and the settled principles of law. The substantive question Nos. 1 and 2 above get answered against the appellant. Both the appeals are therefore dismissed. No order as to costs.