
(1994) 07 BOM CK 0086
In the Bombay High Court
Case No : First Appeal No. 54 of 1980

Narsayya Sayanna Kunden

APPELLANT

Vs

Joint Regional Director, Esic, Pune

RESPONDENT

Date of Decision : 13-07-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(4), 1(5), 2(9), 82(2)

Citation : (1995) 70 FLR 5 : (1999) 3 LLJ 440

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Judgement

D.R. Dhanuka, J

1. This is an appeal against order dated 21st July 1991, passed by Employee's State Insurance Court, Pune in Application (ESI/LCP) No. 6 of 1978. By the said application, the appellant herein had prayed for a declaration that the factories of the appellants referred to in the application were not covered by and under the Employee's State Insurance Act 1948, and the appellant was, therefore, not liable to pay a sum of Rs. 11,394/- to the Respondent Corporation. By the impugned order under appeal the Employees' Insurance Court dismissed the said application. Being aggrieved by the said Order, the appellants had preferred this appeal u/s 82(2) of the Employee's State Insurance Act, 1948. Section 82(2) of the said Act provides that "an appeal shall lie to the High Court from an order of the Employee's Insurance Court, if it involves a substantial question of law". The relevant facts having bearing on subject matter of this appeal are briefly summarised hereinafter.

2. The appellants are partnership firm consisting of the following 7 persons as partners :-

(1) Vithal Narsayya Kunden

(2) Shankar Narsayya Kunden

- (3) Subhash Narsayya Kunden
- (4) Laxman Narsayya Kunden
- (5) Prakash Narsayya Kunden
- (6) Chandrabhaga bai w/o Hanumant Narsayya Kunden.
- (7) Narayan Narsayya Kunden.

The partners of the said firm except Chandrabhaga bai are all brothers. Chandrabhaga was admitted in the said firm as a partner in view of the fact that her husband was also a partner in the firm a one stage. The appellants' firm used to run three factories at the material time as indicated below :-

- (i) Factory situated in House No. 1150 Bhavani Peth at which 15 handlooms were operated;
- (ii) Factory situated at 113/114 Bhavani Peth, where also 15 handlooms were operated;
- (iii) Factory situate at 33/40 Gultekri Industrial Estate where about 25/30 handlooms were operated at all material time.

It is the case of the appellant that one of the three factories was closed by the appellants in or about the month of May 1977. It is the case of the appellants that the other two factories were also closed sometime in the year 1978-79 respectively. It is possible that those handloom factories were operated without aid of power though there is no clear evidence on this aspect of the case.

3. Section 1(4) of the said Act provides that the Act shall apply in the first instance to all factories other than seasonal factories. Section 1(5) of the Act empowers the appropriate Government to extend the operation of the Act to other establishments or class of establishments, industrial, commercial, agricultural or otherwise. By Notification No. ESI-1874/1047/S dated 7th November, 1974, the said Act was extended also to premises where manufacturing process was being carried on without the aid of power. The said Notification was admittedly applicable to the area i.e., Pune city where the said factories are situate.

4. This appeal involves consideration of two questions raised on behalf of the appellants. The said two questions are as under :-

- (1) Whether the weaves working on the handlooms situate at the said factories are liable to be considered as employees within meaning of Section 2(9) of the said Act?
- (2) Whether the three factories of the appellants were liable to be considered as "one" for purposes of the Act?

After appreciating the oral and documentary evidence on record the Court

reached the conclusion that the weavers concerned were liable to be treated as employees of the establishments particularly in view of the fact that instructions for weaving of particular kind of cloth were given by or on behalf of the owners of the factory to the weavers. The question raised before the trial Court was as to whether the said weavers could be considered as independent contractors working on piece rate basis. In my opinion, the finding of fact recorded by the Employee's Insurance Court is not assailable in this appeal in view of the restricted scope and ambit of the appeal as contemplated u/s 82(2) of the Act. The question as to whether the weavers concerned could be considered as employees of the appellants or not is basically a question of fact. Even if the said question is liable to be considered as a mixed question of fact and law, the question raised cannot be characterized as a substantial question of law within meaning of Section 82(2) of the Act.

5. The learned counsel for the appellants has relied on judgment of this Court in the case of *Narottamdas Bhau v. The Regional Director, E. S. I. Corporation*, reported in 1979 M. L. J. 641 , and has submitted that the units were looking at different places and there was no material on record to establish nexus between the three units so as to enable the trial Court to reach the conclusion that the said three factories could be considered as one factory for purposes of the Act. There can be no dispute about the proposition of law laid down by Vaidya, J. in the above referred case. I have carefully gone through the evidence of Vithal Narottamdas Kunden (Exhibit - 22) and the other material on record for purpose of scrutinising this contention urged on behalf of the appellants. It is established beyond doubt that there was and is financial and functional integrality between the three units and the test laid down by the Hon'ble Supreme Court in the case of *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, is satisfied in this case. All the three factories belong to one firm, and are managed as if the same are one unit.

6. The learned trial Judge has referred to several factors in para 8 of his judgment under appeal in support of his conclusion that the nexus between the three factories was clearly established and it mattered not that the three units were situate in different places and that said units had separate factory licence. Since the correct test has been applied by the Employee's Insurance Court to the problem under consideration, it shall have to be held that this aspect of the controversy also does not involve any substantial question of law. Even otherwise, on merits, I am of the opinion that the trial Court has taken the correct view in the matter.

7. In the result, the appeal fails. The appeal is dismissed with costs.

8. The Court is informed by the learned counsel on both sides that at the interlocutory stage the appellants had deposited the amount in question with the trial Court and the respondent Corporation has withdrawn the amount on furnishing of bank guarantee. The bank guarantee stands cancelled in view of the appeal having been dismissed as indicated above.

9. The Register, High Court, Appellate Side is directed to return the record of the proceeding to the trial Court, expeditiously and latest within one month from today.

10. Issues of certified copy is expedited.