(1994) 07 BOM CK 0090

In the Bombay High Court

Case No : First Appeal No. 709 of 1986

Regional Director, ESI Corporation, Bombay — APPELLANT

Vs

Automax Engineering Co., Bombay — RESPONDENT

Date of Decision : 25-07-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(13), 2(9), 82

Citation : (1994) 07 BOM CK 0090

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

Bench : Single Bench

Judgement

D.R. Dhanuka, J.—The Employees'' State Insurance Corporation has preferred this appeal against order dated 28th April 1986, passed by the Employees'' Insurance Court, Bombay in Application (E. S. I.) Nos. 56 & 57 of 1975, preferred by Automax Engineering Company and Messrs. Bharat Surgical and Scientific Works respectively. Both the above referred applications were disposed of by and under Order dated 28th April 1986. The appellant has filed appeal No. 709 of 1986, against Automax Engineering Company. The appellant filed separate appeal being First Appeal No. 708 of 1986, against Messrs. Bharat Surgical and Scientific Works. The appellant was unable to serve the notice of the appeal On Messrs. Bharat Surgical and Scientific Works. The said appeal no. 708 of 1986 has, therefore, been dismissed by this Court for want of prosecution.

2. By the impugned order the trial Court held that the two units i.e. the unit owned by Messrs. Automax Engineering Company on one hand and the unit owned by Messrs. Bharat Surgical and Scientific Works on the other hand were separate units and there was no functional integrality between the said two units. It is common ground that neither of the said units taken by themselves employed more than 19 employees at the relevant time. The trial Court held that the two units could not be clubbed together. The trial Court held that the applicant factory Automax Engineering Company was not covered by and under the provisions of the Employees'' State insurance Act, 1948. The trial Court held

that the applicant factory of Messrs. Bharat Surgical and Scientific Works was also not covered by and under the provisions of Employees'' State Insurance Act.

3. One Mr. Rameshbhai G. Kensara, was sole proprietor of M/s. Bharat Surgical and Scientific Works. Automax Engineering Company was a partnership firm at the material time. There were five partners in the said firm i.e. (1) Chandrakant Ramanlal Kansara (2) Shrinivas D. Rao (3) Bipinchandra G. Kansara (4) Prataprai L. Kansara and (5) Bansi G. Kansara.

4. The Corporation made the impugned demand on the Respondent herein on two separate counts. The respondent contended that the factories of M/s. Automax Engineering Company and M/s. Bharat Surgical and Scientific Works were liable to be considered as one establishment by reason of functional integrality between the two factories. It is common ground that M/s. Bharat Surgical & Scientific Works were the contractors for M/s. Automax Engineering Company for execution of certain work and M/s. Automax Engineering Company used to get the entire work executed through M/s. Bharat Surgical and Scientific Works. From this point of view it was contended by the Corporation that M/s. Bharat Surgical & Scientific Works were the "immediate employers" of the employees concerned engaged in the work of execution of contracts received by M/s. Automax Engineering Company from M/s. Automax Engineering Company from M/s. Premier Automobiles and Mahindra & Mahindra. From this point of view the respondent had also contended before the trial Court that the employees engaged by M/s. Bharat Surgical and Scientific Works are liable to be counted for the purpose of considering the total strength of employees of M/s. Automax Engineering Company. It was the case of the appellant before the trial Court that if the employees of the two factories were so counted it shall become obvious that M/s. Automax Engineering Company was covered by the provisions of the Act and M/s. Automax Engineering Company was thus liable to make statutory contribution to the Corporation as contemplated under the Act.

5. The learned trial Judge framed two separate issues having regard to two separate pleas raised on behalf of the respondents. At the hearing of the applications Nos. 56 and 57, Issue Nos. 1 and 2 were framed by the trial Court read as under :-

(1) Does opposite party prove that there was functional integrality and environmental unity between M/s. Automax Engineering Company and M/s. Bharat Surgical and Scientific works?

(2) Does opposite party prove that M/s. Bharat Surgical and Scientific Works was the immediate employer as per the definition of that term given in the Employees'' State Insurance Act?

6. It is unfortunate that the learned trial Judge mixed up the two issues while discussing the subject matter of the two applications. In para 3 of his evidence Chandrakant Ramanlal Kansara stated that the employees in the two units were not interchangeable. The said witness further stated that both the concern had

separate factory licence and maintained separate books of accounts. The said witness further stated that there was no common entrance for both the units. It was not disputed that both the concerns were situate in the same premises and made no use of the power. Both the concerns were separately assessed for sales-tax and Income Tax. It was not disputed that the respondent herein used to make adhoc payments to M/s. Bharat Surgical and Scientific Works. Both the factories were closed by 6th May 1973. There was a strike in factories of both the concerns on the same day. With all this the trial Court held that there was no functional integrality between the two concerns. If the trial Court would have properly considered issue no. 2, perhaps I would not have interfered with the impugned decision of the trial Court. Issue no. 2 is an independent issue. It was not disputed by the witnesses examined at the trial Court that M/s. Bharat Surgical and Scientific Works used to do the job work under the contract entrusted by M/s. Automax Engineering Company and M/s. Automax Engineering Works used to get the necessary job work done by M/s. Bharat Surgical and Scientific Works on exclusive basis. On this aspect Mr. H. V. Mehta, learned counsel for the appellant has rightly relied upon the principles of law laid down by the Hon''ble Supreme Court in the case of B. M. Lakshmanmurthy v. The Employees'' State Insurance Corporation, Bangalore (1974) LIC 536. In this case it was held by Goswami J. Speaking for the Apex Court "Once it was held that the contractors were immediate employers within meaning of section 2(13) of the Act, workers employed by them were liable to be considered as "employees'' within meaning of the expression "employees" within meaning of the expression "employees" as defined in section 2(9)(ii) of the Act. " This aspect appears to have been mixed by the trial Court. The discussion pertaining to the two issues is mixed up and is somewhat confusing.

7. In the result the appeal is allowed. The question which arises for consideration of the court now is as to whether the order of remand should be restricted to issue no. 2. I am not inclined to restrict the order of remand to issue no. 2. It is much better that the trial Court applies its mind afresh to all the issues having regard to the ratio of the judgment of the Hon''ble Supreme Court referred to hereinabove, and having regard to the observations made by this Court in this appeal. Proceedings relating to applications (E. S. I.) Nos. 56 and 57 of 1975 are remanded to the trial Court. The trial Court need not give an opportunity to the parties to lead fresh evidence. The trial Court shall give a reasonable opportunity to all the parties concerned to make their arguments afresh in light of the observations made by this Court hereinabove. The trial Court shall record fresh findings on all the issues in light of the submissions which may be made by the parties concerned. The trial Court should also give opportunity to M/s. Bharat Surgical and Scientific Works to make their submission. In view of the above, the order passed by the trial Court dated 28th April 1986, in both the above referred applications is set aside, and the proceedings are remanded to trial Court as indicated above.

8. Having regard to the facts and circumstances of the case there shall be no

order as to costs.

8A. The Registrar do forward the writ to the trial Court expeditiously.

9. Issue of certified copy is expedited.

