(1994) 07 BOM CK 0127

In the Bombay High Court

Case No : F.A. No. 352 of 1980

Sakal Papers (P) Ltd. APPELLANT

Vs

Employees'' State Insurance Corporation and another RESPONDENT

Date of Decision : 18-07-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(22), 2(9)

Citation : (1995) 1 BomCR 91 : (1994) 96 BOMLR 98 : (1997) 3 LLJ 759 : (1995) 2 MhLj 69

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

Bench : Single Bench

Advocate : Ms. Meena H. Doshi, for the Appellant; M.R. Jayakar., instructed by M/s. M.V. Jayakar and Co., for the Respondent

Judgement

1. Sakal Papers Private Limited, Pune has preferred this appeal against order dated October 30, 1979 passed by the Employees'' State Insurance Cout, Pune in Application (ESI) No. 21 of 1978. This appeal raises consideration of the questions as to whether the Directors of the Appellant Company liable to be considered as employees of the Appellant Company within the meaning of Section 2(9) of Employees'' State Insurance Act, 1948 and as to whether the amount of remuneration paid to them is liable to be considered as ''wages'' within the meaning of the expression ''wages'' as defined in Section 2(22) of the Act. The appellant publishes a newspaper by name ''Daily Sakal'' from Pune. Several professionals and other eminent persons from different walks of life are appointed on Board of Directors of the Company herein so as to benefit from their expert advice if an occasion so arises.

2. At the material time, Ms. Shantabai Parulekar, Mr. Jaswantlal Mathubhai and Col. V. V. Joshi and Ms. Banubai Koyajee were the Directors of appellant company. On December 14, 1974, it was resolved by the Board of Directors named therein be paid remuneration, apart from the sitting fees, as set out therein for the period commencing from January 1, 1974 :

(1) Shri Jaswantlal Mathubhai Rs. 700/- per month.

(2) Ms. Shantabai Parulekar Rs. 500/- per month.

(3) Ms. Banubai Koyajee Rs. 2000/- per month.

By another resolution passed by Board of Directors of the Company, it was resolved that Col. V. V. Joshi, a Director of the Appellant, be paid remuneration at the rate of Rs. 1000/- per month. The said Directors do not look after day to day management of the Appellant Company.

3. The respondent Corporation took the view that the above referred Directors were ''employees'' of the company within the meaning of Section 2(9) of the Employees'' State Insurance Act, 1948 and the above referred remuneration amounted to ''wages'' within the meaning of the said expression as defined u/s 2(22) of the Act. It was the contention of the appellant at all times that the above referred persons were the Directors of the appellant company and not the employees of the company. It was also the contention of the appellant that the amount of remuneration paid by the appellant to the Directors was not liable to be considered as ''wages'' within the meaning of Section 2(22) of the Act and the appellant was not liable to pay the amount of contributions as claimed by the respondent by its notice dated June 9, 1978.

4. Disputes and differences arose between the parties. An application was made by the appellant before the Employees'' State Insurance Court, Pune impugning the demand for contribution made by the Corporation being Application (ESI) No. 21 of 1978. The trial Court held that Ms. Parulekar, Mr. Jaswantlal Mathubhai and Col. V. V. Joshi were liable to be treated as ''employees'' of Sakal Papers Private Limited within the meaning of the expression "employee" as defined in Section 2(9) of the Act. The trial Court held that the amounts paid to the Directors as remuneration under-Resolutions exhibit 17-A and 17-B were liable to be considered as ages" within meaning of the expression "wages" as defined in Section 2(22) of the Act. The trial Court dismissed the application made by the appellant.

4A. It is not disputed that the press of the Appellants is covered under the Act. It is not disputed that the Directors do not look after the press. Govind Gangadhar Sathe gave evidence on behalf of the appellants at the trial of the application herein. Shri Jaswantlal Mathubhai is the Chairman and Director of the Company and is a practising solicitor. Shri Jaswantlal advises the Company on subjects like taxation, E.S.I. Act, Provident Funds Act. Smt. Shantabai Parulekar was 82 years old at the material time. The said witness stated in his deposition that the Directors concerned attended office of the company only at the time of meetings and do not do any work pertaining to Sakal Paper.

5. It was submitted on behalf of the appellant before the trial Court that the Directors of the company could not be treated as employees merely because they were paid small amount of remuneration in addition to sitting fee for

rendering advice to the company when the occasion for seeking advice arises. It was in term submitted by the learned, Advocate for the appellant before the trial Court that these Directors were not required to visit or attend the office of the company except in the capacity of Directors. It is not disputable that these Directors were not under the control or superintendence of the company. With all this, the trial Court held tha the Directors concerned were liable to be considered as employees of the appellants for purposes of the Act and the small enumeration paid to them as aforesaid amounted to ''wages''. In my opinion, the conclusions arrived at by the trial Court suffer from legal infirmity and contrary to law declared by the Supreme Court and the ratio of cases decided by the Supreme Court and High Courts as indicated below.

6. I shall first refer to the authorities cited by the learned Counsel for the Appellant. In Regional Director, Employees'' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, , the Supreme Court held that a partner belonged to the class of employers and could not rank as an employee merely because he also worked for wages for the partnership. The Court held that the term employee was the correlative of employers. In this case, the Apex Court observed that in common parlance the status of a partner qua the firm was different from employees working under the same and his status was not changed into that of an employer merely because he was paid some remuneration for any special attention which he may devote in relation to affairs of the firm. In this case, the Supreme Court held that the contention on the basis of Employees'' State Insurance Act being beneficial, a partner should also count as an employee was sustainable. In my opinion, the principle of this case is directly applicable to the situation in this case. In the Employees ''State Insurance Corporation, through its Regional Director, Nagpur v. Apex Engineering Pvt. Ltd. through its Managing Director Shri V. M. Dhanwati, Nagpur, 1990 ML.J. 501 the Division Bench of our High Court held that Managing Director of the respondent company was not an ''employee'' within meaning of definition of the said expression in Section 2(9) of the Act. The Court held that the ''Managing Director'' belonged to the class of the ''principal employer'' and not to the class of employees. The Court held that a person who was an ''Employer within the meaning of the Act could not at the same time be treated as ''employee''. The Court applied the ratio of the judgment of the Supreme Court in the case concerning partner of a firm to the case of Director of a limited company. The Court applied the principle of judgment of the Supreme Court in the case of Regional Director, ESI Corporation, Trichur v. Ramanuja Match Industries, (supra). This decision also assists the appellants. In Employees ''State Insurance Corporation v. M/s. Ashok Plastics (O) Ltd., 1988 LIC 793, the Division Bench of High Court of Calcutta surveyed the existing case law on the subject and held that the Directors of the Company could not be treated as ''employee'' under the Act merely because they were paid some remuneration for devoting special attention to the affairs of the company. I respectfully agree with the ratio of decision of the High Court of Calcutta in the above referred case. If the ratio of

all the above referred cases is applied to the proved facts of this case, it shall become obvious that the view taken by the trial Court is totally erroneous in law and is contrary to judgments of the Supreme Court, this Court and the High Court of Calcutta.

7. The learned Counsel for the respondent cited the judgment of the Supreme Court in the case of Ram Pershad Vs. The Commissioner of Income Tax, New Delhi, . In this case, the question before the Supreme Court was as to whether remuneration received by the Managing Director of the Company was taxable as salary or business income under Indian Income Tax Act, 1922. With respect, this case has no relevance for purpose of deciding this appeal.

8. In view of the principles of law laid down in the cases cited by learned Counsel for the Appellant, I hold that the trial Court was totally in error in taking the view which it took while passing the impugned order.

9. The learned Counsel for the respondent submitted that having regard to the text of the Resolutions Exhibit 17-A and 17-B passed on December 14, 1974 and June 2, 1976, this Court should uphold the finding of the trial Court that the Directors concerned were "employees" of the appellant company in view of the company having resolved to pay "remuneration" to the Directors apart from "sitting fees". It is not possible to accept this submission of the learned Counsel for the respondent. Merely because the Directors of the Appellant Company were paid some remuneration for the advice which they may render while performing their functions as Directors of the company, it cannot be held that the Directors concerned are liable to be treated as "employees" within the meaning of Section 2(9) of the Act.

10. In my opinion, the trial Court has committed a substantial error of law while taking the view that the Directors concerned were liable to be treated as employees and the remuneration paid by the company to the Directors was liable to be considered as wages. The view taken by the trial Court militates against the ratio of the judgment of the Supreme Court, Division Bench of our High Court and the judgment of High Court of Calcutta referred to hereinabove.

11. In the result, the appeal is allowed. The order passed by the trial Court is set aside. Application made by the appellants to the trial Court being Application (ESI) No. 21 of 1978 is allowed.

12. Having regard to the facts and circumstances of the case, there shall be no order as to costs.

13. The Bank guarantee furnished by the appellant stands discharged with immediate effect.