

(2008) 07 SC CK 0145

In the Supreme Court Of India

Case No : Civil Appeal No's. 1914 and 1915 of 2002 and Civil Appeal No. 4492 of 2008 (Arising out of SLP (C) No. 17173 of 2008)

Sumangali

APPELLANT

Vs

Regional Director, E.S.I. Corporation

RESPONDENT

Date of Decision : 17-07-2008

Acts Referred:

Citation : (2008) 118 FLR 828 : (2008) 4 JCR 3 : (2008) 8 JT 468 : (2008) 3 LLJ 861 : (2009) 2 LW 203 : (2008) 9 SCC 106 : (2008) 2 SCC(L&S) 826

Hon'ble Judges : P. Sathasivam, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Romy Chacko, for the Appellant; C.S. Rajan Anupam Mishra and V.J. Francis, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—Leave granted in SLP (C) No. 17173 of 2008.

2. Challenge in these appeals is to the judgment of a Division Bench of the Kerala High Court dealing with three Misc. First Appeal Nos. MFA No. 884/95, MFA No. 886 of 1995 and 964 of 1995. By the impugned judgment all the three Misc. First Appeals were dismissed. The applicants in I.A. Nos.21, 44 and 69 before the Employees' Insurance Court, Alleppey (in short the 'E.I. Court') were the appellant before the High Court. Before the E.I. Court the order of the Regional Director of the Employees State Insurance Corporation (in short the 'Corporation') Trichur clubbing the applicant with other establishments for the purpose of coverage under the Employees State Insurance Scheme (in short the 'ESI Scheme') framed under the Employees State Insurance Act, 1948 (in short the 'Act') were challenged. All the applications were dismissed by the E.I. Court by common order dated 30.3.1995. Aggrieved by the said order applicants filed the Misc. First Appeal before the High Court.

3. The Corporation clubbed Jos Textiles and Jos Cut Piece Centre, two proprietary

concerns of two brothers both functioning in the same building at Broadway, Ernakulam, for the purpose of ESI coverage and issued notice as there were 20 or more employees at a time when the inspection was conducted. Notice was issued clubbing the above establishments. The order was challenged, as noted above, before the E.I. Court.

4. The Corporation also clubbed M/s. Rose Fabrics, Jos Brothers Silk and Sarees and M/s. Jos Associates and issued notice claiming coverage. All these three establishments were functioning in Jos Annex Building, Ernakulam. M/s. Jos Associates was functioning on the 5th floor of the same building whereas the other two establishments were functioning in the same premises. The inspection conducted in November 1990 revealed that there were 12 employees working in M/s. Rose Fabrics, 13 employees in Jos Brothers Silk and Sarees and 9 employees in M/s. Jos Associates. The above order clubbing the three establishments were challenged by M/s. Rose Fabrics in I.C.44/91 before the E.I. Court, Alleppey.

5. The applicant in I.C.69/91 was M/s. Sumangali. It was clubbed with four other establishments viz. M/s. Jos Silk and Sarees, M/s. Gents Fabrics, M/s. Jacobs and M/s. Jos Brothers Trades and Investments. The clubbing of the above establishments was on the basis of an inspection conducted on 14.11.90. The inspection revealed that there were more than 30 employees in the month of April, 1990. The notice of clubbing of the establishments was challenged by M/s. Sumangali in I.C.69/91. All the above three applications were heard and dismissed by the common judgment passed by the E.I. Court, Alleppey.

6. Jos Textiles and Jos Cut Piece Centre, two proprietary concerns were owned by two brothers, namely K.A. Sebastian and K.A. Joshy. Jos Textiles was engaged in the business of textile goods and was carrying on the business in a rented building. Jos Cut Piece Centre was functioning in a portion of the first floor of the same building and Jos Textiles was functioning in the remaining portion of the same floor as well as in the second floor of the same building. There was temporary wooden partition separating the above two establishments. The Inspector of the ESI Corporation conducted inspection on 6.1.1988 and 11.1.1988 and reported that the total employment strength in both the units together was 20 (12+8) in April 1984 and from June 1985 onwards. Again the Inspector inspected on 9.8.1990. The building was taken on rent by Sri K.J. Abraham, the father of Sri K.A. Sebastian and Sri K.A. Joshy. The father permitted his son Sri K.A. Sebastian and his daughter Dorothy Edeth Louiz initially to run the business and Sri K.A. Joshy obtained a transfer of the business from his father. The father Sri K.J. Abraham was paying the rent to the landlord and Sri Sebastian was paying the entire rent to his father though he was collecting a portion of the rent from his brother who was running the cut piece centre. The establishments were having separate registration under the Shops and Commercial Establishments Act, Kerala Sales-tax Act and the income tax Act. On inspection it was found that there were 20 (12+8) employees and both

these units had a common entrance, a common staircase and no separate office was seen working for Jos Cut Piece Centre. The electric connection was common for both the units and electricity charges were paid by Jos Textiles and Jos Textiles alone had telephone connection. There was no sufficient space for opening cloth bails or bundles and stitching the same in Jos Cut Piece Centre whereas all such works were done in M/s. Jos Textiles. The General Ledger showed financial dealings- between the two units. On a consideration of all the above circumstances viz. the unity of management, geographical unity, functional integrality, financial unity and the general unity in purpose between the two units, the ESI Corporation decided to club both the units for coverage under the ESI Scheme.

7. M/s. Ros Fabrics was a partnership firm of two partners - Joseph Francis and his mother Rosakutty Francis. The wife of the above Joseph Francis was the sole proprietor of M/s. Jos Brothers Silks and Sarees. M/s. Jos Associates was a proprietary concern of the above Joseph Francis. Thus two establishments were owned separately by the husband and wife and the other owned by the mother as well as the son as a partnership firm. The Inspector of the ESI Corporation conducted inspections on 6.11.90 and 13.11.90 and prepared the reports. M/s. Jos Brothers Silks and Sarees and M/s. Ros Fabrics were functioning in the same premises in the ground floor and M/s. Jos Associates was functioning in the 5th floor of the same building. The Inspector of the ESI Corporation found the employees of M/s. Jos Associates working in M/s. Jos Fabrics and there was only one office for all the three units. According to the ESI Corporation the activities of these three units were interlinked and one was directly promoting the business of the others and all the three units were supplementary and complementary to each other.

8. Aggrieved by the above judgment, the applicants in I.C.21/91, I.C.44/91 and I.C.69/91 filed MFA 964/95, MFA 886/95 and MFA 884/95 respectively. As the question involved in all the three appeals was common, all the three appeals were heard jointly and were disposed of this common judgment.

9. The main stand before the High Court was that M/s Sumangali is a partnership firm registered under various statutes. There were three partners who were related to each other. 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. On the other hand the Corporation referred to several factors to establish functional integrality and general unity of purpose. High Court found that Corporation's view was correct and accordingly as noted above dismissed the appeals.

10. In support of the appeal learned Counsel for the appellants submitted that the ownership of the composition of various concerns is as follows:

Name of the shop Owners/Partners No. of Floor employees No.

1.M/s. Sumangali 1. M/s. K.J. Abraham 12 Ground (Partnership) 2. M/s.Dothy

Honry Floor (Saree and cut w/o K.A. Henry pieces) 3. M/s. Betsy Sabu w/o K.A. Sebastian

2. M/s. Gents 1. Sri K.A. Henry 10 Ground Fabrics s/o K.J. Abraham Floor (Partnership) 2 Mrs. Marykutty (Shirtings and Abraham Suitings) w/o K.J. Abraham 3. Mrs. Jessintha Edward, w/o K.A. Edward

3. M/s. Jose Silk & 1. Sri K.A. Edward 5 - Sarees Proprietary 2. s/o K.J. Abraham (Wedding Sarees)

4. M/s. Jacobs Sri K.A. Jacob, 2 3rd Floor (Proprietary) s/o K.J. Abraham

5. M/s. Jose 1. Sri K.J. Abraham 2 4th Floor brothers Trades 2. Sri K.A. Edward & Investments s/o Sri K.J. (Partnership) Abraham (Purchase of all) 3. Sri K.A. Henry s/o Sri K.J. Abraham 4. Shri K.A. Sebastian, s/o Sri K.J. Abraham 5. Sri K.A. Jacob, s/o Sri K.J. Abraham 5. Shri K.A. Josey, s/o Sri K.J. Abraham

6. M/s. Rose 1. Joseph Francis 12 Fabrics 2. Rosakutty Francis (Partnership) (mother of Joseph Francis)

7. M/s. Jose 13 Brothers Silk & w/o Joseph Francis Sarees (Proprietorship)

8. M/s. Jose 9 Associates Joseph Francis (Proprietorship) TOTAL 34

11. According to him there was no functional integrality.

12. Learned Counsel for the Corporation on the other hand submitted that because of the findings recorded by the ESI Court and the High Court the impugned judgment do not suffer from any infirmity to warrant interference. According to him the names of the Unit and numbers of the employees and numbers of the applicants before the ESI Court are to the following effect:

No. of Application Name of the Unit No. of Employees

I.C. 21 of 1991 1. Jos Textiles 11 2 Jos Cutpiece 10 Centre 21 10

I.C. 44 of 1991 1. Rose Fabrics 12 2. Jose Brothers Silk & Sarees 13 3. Jose Associates 09 34

I.C. 69 of 1991 1. Sumangali 12 2. Jose Silk & 05 Sarees 3. Gents fabrics 10 4. Jacobs 02 5. Jose Brothers Traders & Investments 31

13. In the counter affidavit before this Court the Corporation gave the following reasons which were indicated in details before the EI Court and High Court for clubbing were:

(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.

14. The High Court noted that the ESI Corporation was justified in clubbing Jose Cut Piece Centre with Jos Textiles, Jose Brothers Silks and Sarees and M/s. Jos Associates with M/s. Rose Fabrics and M/s. Jos Silks and Sarees, M/s. Gents Fabrics, M/s. Jacobs and M/s. Jos Brothers Trades and Investments with M/s. Sumangali and treating Jos Textiles, M/s. Rose Fabrics and M/s. Sumangali as "single 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. Even if each unit was an establishment having separate registration under the Sales Tax Act, 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.

15. So far as the factual aspects are concerned the High Court noted as follows:

On verification of the records it was further found that there were 34 employees working in the three units as on 2.4.1990. M/s. Ros Fabrics and M/s. Jos brothers Silks and sarees were functioning in the ground floor of M/s. Jos Annexe. Building and they were having a common signboard and a common entrance. The activities of all the three units were administered by Sri. K. Joseph Francis. The billing counter, cash counter and delivery counter were common for all the three units. M/s. Jos Brothers Silks and Sarees was an exclusive showroom for sarees whereas M/s. Ros Fabrics was dealing with items other than sarees. M/s. Jos Associates was dealing with the sale of furnishing clothes. According to the ESI Corporation all the three units were different sections of a composite textile shop and the customers were at liberty to purchase whatever they wanted from the three units and they need to make payment at the common cash counter. It was further found that there was only one electric connection and the electricity charges were paid by M/s. Ros Fabrics. The standby generator was also common to all the units. According to the ESI Corporation there was unity in ownership, geographical unity, unity in administration, functional unity, financial unity and inter-chargeability of employees in all the three units and hence the ESI Corporation decided to club all the three units for the purpose of ESI coverage under the ESI Scheme.

16. 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 or general unity may be the important test; and in still another case the important test may be the unity of employment.

17. 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.

18. In the instant case factual findings as recorded by the ESI Court and 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 could be treated as one establishment.

19. In the given case role of the Corporation is to read between the lines to find out the true intent. The concurrent conclusions are essentially factual and are legitimate inferences. That being so, there is no merit in these appeals, which deserve dismissal which we direct. No costs.