



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.649 OF 2002**

Bharat Box and Bobbin Industries
Through its working Partner,
Shri Ranjit Singh C. Hunjan,
36, New Timber Market, Bhavani Peth,
Pune- 411 042.

.... **Appellant**
(Original Applicant)

versus

The Employees State Insurance Corporation,
Panchdeep Bhavan, Bibbewadi,
Pune – 411 037.

.... Respondents

Mr. Aumkar Joshi, Advocate for the Appellant.
Ms. Anita Bafna, Advocate for the Respondent.

CORAM : ARUN R. PEDNEKER, J.

DATE : 22nd JULY, 2024.

Judgment :

1. By the present appeal, the appellant is challenging the judgment and dated 8th June 1999 whereby the ESI Court dismissed the application filed by the appellant under Section 75 of the Employees' State Insurance Act, 1948 (for short "the ESI Act") challenging the order dated 17th April 1990 passed by the Employees' State Insurance Corporation, Pune (for short "the ESIC") under Section 45-A of the ESI Act. By the impugned order under Section 45-A, the Corporation determined the ESI contributions of the appellant establishment amounting to Rs.23,886/- and the interests thereon to the tune of Rs.4.440/- for the period between November 1977 and December 1985.

2. The facts leading to the filing of the first appeal are briefly summarized as under :

The appellant-establishment carried on the business of the manufacturing of packing boxes, plywood reels, strip drum etcetera. The establishment engaged more than ten employees on wages in the month of February 1986 and thereafter complied with the provisions of ESI Act by paying the contributions. It is the case of the appellant-establishment that they never engaged ten or more persons prior to February 1986 and, as such, their establishment was not liable to be covered under the ESI Act prior to February 1986. In pursuance of inspection carried out by ESI authorities and subsequent exchange of correspondence in regard to the clarification of the factual position, the Corporation determined the contributions for the period between November 1977 and December 1985. A notice was issued to the appellant establishment on 8th August 1988 which was responded to by the appellant. By order dated 17th April 1990 under Section 45-A, the ESI authorities held that the appellant-establishment were employing more than ten employees during the notice period and directed coverage of the appellant-establishment for the notice period. The appeal filed by the appellant under Section 75 of the ESI Act is also dismissed by the ESI Court holding that the appellant-establishment employed more than 10 workers for the notice period. Hence, this appeal.

3. Undisputedly, the whole issue in the matter revolves around two employees viz. Mr. V. P. Sampat and Mr. M. V. Joshi, whether they were the employees of the appellant-establishment during the notice period. In the event this Court holds Mr. V. P. Sampat and Mr. M. V. Joshi as employees of the appellant-establishment, the number of employees in the establishment would be beyond ten and the establishment would be covered by the ESI Act. However, if this Court holds that the above two are not the employees of the establishment during the notice period, then, the establishment would not be covered under the ESI Act.

4. The ESI Court under Section 75 of the ESI Act, on the basis of evidence available before it, held that the aforesaid two persons were the employees of the establishment during the notice period. The ESI Court held that although their names did not reflect in the wage register but were reflected in cash book entries and the same was for the reason of avoiding ESI compliances, as such, the Corporation was entitled to consider them to be the employees of the establishment and accordingly upheld the order under Section 45-A passed by the ESIC covering the appellant-establishment under the ESI Act in the notice period.

5. Challenging the order passed by the ESI Court, the appellant contends that the aforesaid two persons - Mr. V. P. Sampat and Mr. M. V. Joshi, were professionals engaged for maintenance of the accounts and for statutory compliances of the establishment on part time basis and they did not in any way contribute to the affairs of the working of the

establishment. The learned counsel for the appellant submits that the finding rendered by the ESI Court is perverse and as such the Question of Law which arises for the consideration of this Court is as under :

“Whether the findings rendered by the ESI Court as regards Mr. V. P. Sampat and Mr. M. V. Joshi being the employees of the appellant-establishment, are perverse as it is based on assumption and inferences without any supportive evidence?”

6. To consider the above Question of Law raised by the learned counsel for the appellant as regards whether the finding rendered by the ESI Court is perverse, the evidence of the ESIC Inspector and Mr. Mahdeo W. Joshi is relevant. The evidence of Mr. Joshi indicates that he used to visit to the appellant/applicant company once a month for the compliance of the provisions of Shops and Establishments Act and that he was never an employee of the appellant/applicant company. He also deposed about other employee Mr. V. P. Sampat who was dead by then that he also rendered accounts services to the establishment. In his cross-examination, he has stated that he would render his services regularly month by month and he used to sign the vouchers every month and that he would get service charges @ Rs.100/- per month and that he used to give his services to the shops situated in the timber market and to all other establishments also.

7. The evidence of the inspector Mr. Vishnu Prabhu Kadam is also relevant. He has stated that from the muster-cum-wage register from 1977 to January 1986 and on scrutiny of the record, he found that one Mr. Vithal Sampat and Mr. Joshi were not shown in muster-cum-wage register though a cash book entry revealed the payments were made to them and as such, he had treated Shri Sampat and Shri Joshi as the employees of the Establishment. He has also stated that he does not remember if Mr. Joshi was found working in the premises of the appellant establishment during his visit. He has stated that he has prepared the list of names of persons found employed in the establishment along with their details and services and in that list, names of Mr. Joshi and Mr. Sampat are not reflected. So also the evidence of the inspector – Mr. Shamsunder Deoraj Juneja indicates he had revisited the establishment, he has stated that entries of these two persons viz. Mr. Joshi and Mr. Sampat were mentioned in the cash books. However, even he does not say that during his visit the said persons were found in the premises. The inference that Mr. Joshi and Mr. Sampat are employees is drawn on the basis of cash book entries about the payments made to them.

The ESI Court based on evidence as stated above that cash book entries are made in the name of Mr. Joshi and Mr. Sampat and although the names of Mr. Joshi and Mr. Sampat are not reflected in the wage register drew an inference that the same would be deliberate i.e. the names of the above two persons are not mentioned in the wage register

just to avoid the ESI coverage. However, there is no material before the Court to draw such an inference. An inference of this nature cannot be drawn on assumption. Neither the evidence of Mr. Joshi or the Inspector supports such an inference more particularly that on inspection, the inspectors had not found the above two persons working in the establishment and their evidence is also to the contrary. The inference drawn by the ESI Court that the names are reflected in the cash book entry and not in the wage register just to avoid a ESI coverage is perverse and the finding rendered that Mr. Joshi and Mr. Sampat were employees of the establishment during the notice period is a perverse finding of the fact and cannot be sustained in law.

8. In view of the same, this Court holds that in the notice period, the establishment did not employ ten or more employees to be covered within the ESI Act. The establishment did have ten employees after the notice period, for which they are covered and were paying ESI contribution. The Question of Law is thus answered in favor of the appellant and against the ESIC.

9. The appeal is accordingly allowed. The impugned order dated 17th April 1990 passed by the ESIC under Section 45-A of the ESI Act is quashed and set-aside.

(ARUN R. PEDNEKER, J.)