



GUJARAT HIGH COURT
Hon'ble Mr. Hemant M. Prachchhak, J.
R/FA No. 4970/2007, Dt/- 13-6-2025

ESIC
v.
Minaxi Textiles Limited

EMPLOYEES' STATE INSURANCE ACT, 1948 – Section 2(12) – Defendant-respondent Company constructed new unit – During inspection by ESI inspector it was found that the company paid various labour expenses to the workers for construction of new Factory building, viz. Security Expenses, Soldering Expenses, Mending Expenses, Beam – Ginning expenses but no contribution was paid on the same – ESI Authority issued notice to recover the ESI Contributions, holding that Company did not produce convincing documentary evidence showing the they were not liable to pay the contribution for the omitted wages – ESI Authority initiated recovery proceedings – Company preferred appeal against the company before Employees Insurance Court – ESI Court passed order in favour of the Company by setting aside order of ESI Authority – Order of ESI Court, has been challenged in first appeal under section 82 of the Act by the ESI Authority – Held, manufacturing activities did not commence from the date from which the appellant-corporation has asked to pay contribution – **Unless and until there is commencement of any manufacturing work, they are not liable to pay any contribution under ESI Act** – Considering all the relevant expects and the oral as well as documentary evidence, there is no illegality or infirmity in the judgment of the ESI Court – Appeal stands dismissed. Paras 6 to 8

For Appellant: Mr. Sachin D. Vasavada, Advocate.

For Respondent: Mr. K.V. Gadhia, Advocate.

IMPORTANT POINTS

- Order passed by the ESI Court, which is well reasoned and has been passed after taking into consideration all evidence and relevant aspects, cannot be set aside.
- **Unless and until there is commencement of any manufacturing work, employer is not liable to pay ESI contributions.**
- **Construction activity carried out cannot be said to be the work in connection, with the work of establishment, when the principal employer has no control over it.**

JUDGEMENT

Hemant M. Prachchhak, J.–

1. Present appeal is filed by the appellant – Employees State Insurance Corporation against the judgment and order dated 07-08-2007 passed by the Employees State Insurance Court, Ahmedabad (hereinafter referred to as ‘the E.S.I. Court’) in E.S.I. Application No. 12 of 2000, whereby, the appellant corporation was restrained by permanent injunction from recovering the amount of Rs. 1,29,021/- from the respondent herein.

2. The short facts giving rise to present appeal are as under: —

2.1 The respondent Company herein is/was covered under the provisions of benevolent legislation since 1995. That, as per the provisions of ESI Act, the Act is applicable to specified area and accordingly Chhatral has been covered since 1995 and the respondent Company was, initially, started its business in the name and style of Minaxi Textiles, a partnership firm. That subsequently, the said Partnership Firm transformed into Company and late it came to be known as M/s. Minaxi Textiles

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Limited. That, previously the respondent Company was running only one unit at Plot No. 3534 and to extend their business, present respondent Company constructed another factory building as Unit No. 2 at Plot No. 3311, which was adjacent to the Unit 1 of the present respondent Company. That, the all expenses incurred were debited in the books of Unit No. 1.

2.2 It is the case of the appellant that, on carrying out the inspection of books of accounts, it was noticed by the appellant Corporation that the respondent Company had paid various labour expenses including the labour expenses to the workers for construction of new Factory building viz . Security Expenses. Soldering Expenses, Mending Expenses, Beam – Ginning expenses and spent Rs. 23,45,852/- towards Factory construction work but no contribution was paid on the same. That on noticing above default on part of the respondent Company, the appellant Corporation issued notice dated 02-06-1998 to recover the contribution on omitted wages to the tune of Rs. 24,479 for miscellaneous job and Rs. 1,29,021/- towards omitted wages paid to the workers for the construction of Factory Building, against which, the respondent Company paid Rs. 24,479/- and decided to contest qua Rs. 1,29,021/-. That, despite various opportunities given to represent the case, the respondent Company did not produce convincing documentary evidence showing the fact that they were not liable to pay the contribution for the omitted wages. As no recourse was left with the appellant, the appellant Corporation initiated recovery proceedings by issuing speaking order in form of C-19 dated 10-03-2000 to recover the contribution on omitted wages with interest to the tune of Rs. 1,59,402/-. Being aggrieved by the said order, the respondent Company straight way preferred an application under section 75 being EI Application No. 12/2000. That EI Court, without considering the facts of the present case and without appreciating the evidences, passed the impugned order dated 07-08-2007 allowing the application of the respondent Company.

3. Being aggrieved and dissatisfied with the aforesaid judgment and award passed by the learned Commissioner, the appellant Insurance Company has filed the present First Appeal under section 82 of the Employees State Insurance Act, 1948.

4. Heard learned advocate Mr. Sachin D. Vasavada, appearing for the appellant – E.S.I.C. and learned advocate Mr. Yogi Gadhia, appearing for the respondent.

5. Learned advocate Mr. Vasavada, for the appellant – Corporation, has submitted that the impugned judgment and order passed by the learned Commissioner is illegal, arbitrary, erroneous and unsustainable in law as well as on facts. He has submitted that the ESI Court ought to have observed that the cost of construction was debited in the profit and loss account of the old unit of the respondent Company and therefore, no need to look into the definition of 'Factory' qua Unit No. 2 and therefore, the ESI Court ought to have directed the respondent Company to pay the amount demanded by way of contribution on amount paid as wages to the workers for the construction of additional building as the additional building was considered as an extension of the old unit. He has further submitted that as per the records and account ledger, they had found that the construction work commenced from the year 1995 and thereafter, their liability started and for that they had issued the impugned notice against the respondent Company. He has further submitted that though sufficient opportunity was given to the respondent Company they had not produced any record or any evidence to show that the factory did not commence from the date on which they were liable to pay the contribution and therefore, under such circumstances, the appellant Corporation had exercised jurisdiction vested in it and issued From C-18 and thereafter, final order was passed. He has also submitted that there was no documentary evidence produced by the respondent Company before the authority and therefore, final order was passed by the authority, however, the ESI Court has not considered all these aspects and passed the impugned judgment and order which is erroneous, illegal and unjust and is required to be quashed and set aside and the present appeal is required to be allowed by directing the respondent Company to pay the contribution for the period from 1995 to 1996.

6. As against that, learned advocate Mr. Gadhia, appearing for the respondent Company, has submitted that it is evident from the record that manufacturing activities did not commence from the date from which the appellant Corporation has asked to pay the contribution under the provisions of ESI Act as the manufacturing activities commenced only in the year 1997 after they had obtained electric connection on 12-12-1996 and the registration was also done on 31-12-1996, which is specifically evident from the oral as well as documentary evidence produced by the respondent Company before the ESI Court and therefore, the ESI Court has rightly passed the impugned order after considering the submissions and after considering the material on record and thus, there is no any infirmity or any illegality committed by the ESI Court in passing the impugned judgment and order. Learned advocate Mr. Gadhia has emphasized upon the provisions of section 2(12) of the



Employees State Insurance Act, 1948, which is reproduced hereunder:

“Section 2(12): “factory” means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952) or a railway running shed.”

6.1 Learned advocate Mr. Gadhia has also referred and relied upon the decision of this Court rendered in case of *Regional Director, ESI Corporation v. Patel Printing Press*, (2003) 2 GLH 425, more particularly para 7, which reads as under:

Head Note: Employees State Insurance Act, 1948 – Sections 2(9), 2(22), 82 – Status of a contractor qua establishment is different from an employee working in the establishment – Construction activity cannot be said to be in connection with establishment.

“7. I have considered the definition of “employee” and “wages”, decisions of the Hon'ble Supreme Court and contention of the learned counsel for the parties. In this case the demand raised by the ESI Corporation pertains to building construction. In my view, the construction activity carried out cannot be said to be the work in connection, with the work of establishment and the same is not within the control of the respondent. In view of the same, the employee of the contractor cannot fall within the definition of “employee” as contemplated under the Act. Employees of the contractor are not engaged in connection with the work of the factory. The principal employer has no control over the employees of the contractor. The employees of the contractor have no connection with the sale and distribution of the finished goods of the factory and therefore, by no stretch of imagination they can be considered as employees of the principal employer. Therefore, ESI Corporation has no power and jurisdiction to demand the contribution from the respondent in this behalf. The learned counsel for the respondent has referred to section 39 of the Act which provides for contributions. He has submitted that section 40 of the Act provides for the principal employer to pay contributions in the first instance. He further submitted that sections 39 and 40 of the Act will not apply in this case. In view of the same, the demand raised by the ESI Corporation is illegal, bad and liable to be set aside. Therefore, the view taken by the EI Court for quashing and setting aside the demand of the ESI Corporation is legal and correct. Hence, I dismiss the appeal and confirm judgment and order of the EL Court. Record and proceedings to be sent back to the Trial Court concerned.”

6.2 Learned advocate Mr. Gadhia has submitted that in view of the above reported decision of this Court and in view of the provisions of the Act itself, unless and until there is commencement of any manufacturing work, they are not liable to pay any contribution under ESI Act and therefore, he has urged that the present appeal be dismissed and the impugned judgment and order be confirmed.

7. I have heard the learned advocates appearing for the respective parties and perused the material placed on record. I have also gone through the impugned judgment and order passed by the ESI Court. Considering the submissions advanced by both the sides, I am of the opinion that after considering all the relevant aspects and the oral as well as documentary evidence referred in para 5 of the impugned judgment and order and the issue framed in para 7, more particularly the discussions made in para 7.3 and 7.4, I am in complete agreement with the findings recorded by the ESI Court and there is no any infirmity or any illegality committed by the ESI Court in passing the impugned judgment and order and hence, the present appeal is required to be dismissed.

8. Resultantly, the present appeal is hereby dismissed. No order as to costs. It is open for the respondent Company to move appropriate application before the ESI Court for releasing its Bank Guarantee supplied before it, which shall be decided by the ESI Court in accordance with law.

9. Record and proceedings, if any, be sent back to the concerned Court forthwith.

Ref: LLR

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