Supreme Court of India
Royal Western India Turf Club Ltd vs E.S.I. Corpn.& Ors on 29 February, 2016
Author: A Mishra
Bench: V. Gopala Gowda, Arun Mishra

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.49 OF 2006

Royal Western India Turf Club Ltd. … Appellant
Vs.
E.S.I. Corporation & Ors. … Respondents

[With C.A. No.1575/2006, C.A. No.3421/2012, and C.A. No.3422/2012].

J U D G M E N T

ARUN MISHRA, J.

1. The questions involved for decision in these appeals are whether casual workers are covered under definition of employee as defined in Section 2(9) of the Employees State Insurance Act, 1948 (hereinafter referred to as 'ESI Act') and pertaining to period for which Turf Club is liable to pay from 1978-79 or from 1987.

2. The main question involved in the present appeals whether the ESI Act is applicable to Royal Western India Turf Club Ltd. has been concluded by a 3-Judge Bench decision of this Court vide judgment dated 31.7.2014. It has been held that the Turf Club would fall within the meaning of the word 'shop' as mentioned in the notification issued under the ESI Act. Therefore, the provisions of ESI Act would extend to the appellant also. Thereafter the matters have been placed before a Division Bench to consider other questions on merit.

3. It was submitted on behalf of Royal Western India Turf Club Ltd. that temporary staff engaged on race-days for issue of tickets, would not be covered by the definition of the "employee" under Section 2(9) of the Employees State Insurance Act, 1948. It was also submitted that in view of the consent terms filed in Application No.16/1976 by the Turf Club before the ESI Court, Bombay, the casual labour engaged on race track were not to be covered under the ESI Act. It was further submitted that in view of Rule 2A of the Employees' State Insurance (Central) Rules, 1950, contribution is required to be made for a period as may be prescribed in the Regulations and in view of Regulations 29 and 31 of the Employees' State Insurance (General) Regulations, 1950, it would be difficult to calculate the contribution for the employees who work casually on the racing days. It was also submitted that the direction issued by the High Court not to recover the amount before 1987 does not call for any interference in the appeal filed by ESI Corporation, for which reliance has been placed on a decision of this Court in Employees State Insurance Corporation v. Hyderabad Race Club (2004) 6 SCC 191.

4. Whereas it was contended on behalf of the ESI Corporation that in view of the specific notification dated 18.9.1978 so far as Royal Western India Turf Club Ltd. is concerned in Maharashtra, position

was clear as to applicability of ESI Act. The consent terms which have been relied upon related to the earlier period in which other establishments of the Turf Club were covered. In the notification issued on 18.9.1978, the departments in question of the Turf Club were also covered. Even the consent term reflects that there was no doubt that the Turf Club was covered under provisions of the ESI Act w.e.f. 1968.

5. First we take up the question whether casual employees are covered within the purview of ESI Act. Section 2(9) defines "employee", the provision is extracted hereunder :

"2(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and —

(i) who is directly employed by the principal employer, on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), and includes such person engaged as apprentice whose training period is extended to any length of time but does not include — any member of [the Indian] naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;" The definition of "employee" is very wide. A person who is employed for wages in the factory or establishment on any work of, or incidental or preliminary to or connected with the work is covered. The definition brings various types of employees within its ken. The Act is a welfare legislation and is required to be interpreted so as to ensure extension of benefits to the employees and not to deprive them of the same which are available under the Act.

6. Section 39 deals with the contribution payable under the Act with respect to the employee in respect of each "wage period" shall ordinarily fall due on the last day of the wage period, and where an employee is employed for "part" of the wage period or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the Regulations. Section 39 is extracted hereunder :

"39. Contributions. — (1) The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

(2) The contribution shall be paid at such rates as may be prescribed by the Central Government:

Provided that the rates so prescribed shall not be more than the rates which were in force immediately before the commencement of the Employees' State Insurance (Amendment) Act, 1989.

(3) The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under this Act. (4) The contributions payable in respect of each [wage period] shall ordinarily fall due on the last day of the [wage period], and where an employee is employed for part of the [wage period], or is employed under two or more employers during the same [wage period], the contributions shall fall due on such days as may be specified in the regulations. (5)(a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the regulations till the date of its actual payment:

Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

(b) Any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under section 45C to section 45-I." It is apparent from section 39 that an employee who is employed for a part of the wage period is also covered for the purposes of contribution. The definition of the term "employee" in section 2(9) is also wide enough to cover casual employees who are employed for part of wage period. It is also provided in section 39(5) that in case contribution is not paid, it shall carry 12% interest per annum or such higher rate as may be specified in the Regulations till the date of actual payment and the amount is recoverable as arrears of land revenue.

7. Section 42 deals with the general provisions as to payment of contributions. It is provided in section 42 that no employee's contribution shall be payable by or on behalf of an employee whose average daily wages are below such wages as may be prescribed by the Central Government. Sub-section (2) of section 42 again provides that contribution of the employer as well as the employee shall be payable by the principal employer for the wage period in respect of the whole or part of which wages are payable to the employee and not otherwise. The provision does not prescribe that employee has to work for a particular period for availing benefit of the said provision.

8. Reliance has been placed on behalf of the Turf Club, on the definitions of wages and wage period. Sections 2(22) and 2(23) dealing with wages and wage period are as follows :

"2(22). "wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or layoff and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include —

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(d) any gratuity payable on discharge ;

(23) "wage period" in relation to an employee means the period in respect of which wages are ordinarily payable to him whether in terms of the contract of employment, express or implied or otherwise;" A bare reading of the aforesaid provisions makes it clear that it would cover the "casual employees" employed for a few days on a work of perennial nature and wages as defined in section 2(22) and wage period as defined in section 2(23) does not exclude the wages payable to casual workers. They cannot be deprived of the beneficial provisions of the Act.

9. Reliance was placed on behalf of the Turf Club on the provisions contained in Rule 2(2A) which defines contribution period means the period not exceeding six consecutive months as may be specified in the Rules. The same is extracted hereunder:

"2(2A) "Contribution period" means the period not exceeding six consecutive months, as may be specified in the regulations;" The aforesaid Rule provides period not exceeding six consecutive months as "contribution period" no minimum period has been prescribed. The Rule 2(2A) cannot be interpreted to mean that if an employee has worked for a lesser period he is not entitled for the coverage under the Act.

10. Similarly, reliance upon Regulations 26 to 31 of Regulations of 1950 is also of no avail as the Regulations make it clear that for the wage period, contribution has to be made by the employer as provided in Regulation 31 otherwise he is liable to make payment as provided in Regulation 31A and amount carry interest, which is recoverable as arrears of land revenue. It is also settled that interest cannot be waived. Regulation 36 also makes it clear that when an employee is employed by an employer for a part of the wage period, the contribution in respect of such wage period shall fall due on the last date of the employment in that wage period. The intendment of regulation is clear to cover work rendered in part of wage period.

11. This Court in Regional Director, Employees' State Insurance Corporation, Madras v. South India Flour Mills (P) Ltd. [AIR 1986 SC 1686] has overruled the decision of the Madras High Court in Employees' State Insurance Corporation v. Gnanambikai Mills Ltd. (1974) 2 Lab. Law Journal 530 (Mad.) in which the High Court laid down that though casual employee may come within the definition of the term "employee" under section 2(9) of the Act, yet they may not be entitled to sickness benefits in case their employment is less than the benefit period or contribution period and that it does not appear from the Act that casual employee should be brought within its purview. This Court while overruling decision of High Court held thus :

"8. Section 39 provides for contributions payable under the Act. Sub- section (4) of Section 39 provides as follows:

"The contributions payable in respect of each week shall ordinarily fall due on the last day of the week, and where an employee is employed for part of the week, or is employed under two or more employers during the same week, the contributions shall fall due on such days as may be specified in the regulations."

9. Sub-section (4) clearly indicates employment of a casual employee when it provides "and where an employee is employed for part of the week". When an employee is employed for part of a week, he cannot but be a casual employee. We may also refer to sub-section (3) of Section 42 relating to general provisions as to payment of contributions. Sub-section (3) reads as follows:

"Where wages are payable to an employee for a portion of the week, the employer shall be liable to pay both the employer's contribution and the employee's contribution for the week in full but shall be entitled to recover from the employee the employee's contribution."

10. Sub-section (3), inter alia, deals with employer's liability to pay both employer's contribution and the employee's contribution where wages are payable to an employee for a portion of the week. One of the circumstances when wages may be payable to an employee for a portion of the week is that an employee is employed for less than a week, that is to say, a casual employee. Thus Section 39(4) and Section 42(3) clearly envisage the case of casual employees. In other words, it is the intention of the Legislature that the casual employees should also be brought within the purview of the Act. It is true that a casual employee may not be entitled to sickness benefit as pointed out in the case of Gnanambikai Mills (1974 Lab.IC 798)(Mad) (supra). But, in our opinion, that cannot be a ground for the view that the intention of the Act is that casual employees should not be brought within the purview of the Act. Apart from sickness benefit there are other benefits under the Act including disablement benefit to which a casual employee will be entitled under Section 51 of the Act. Section 51 does not lay down any benefit period or contribution period. There may again be cases when casual employees are employed over the contribution period and, in such cases, they will be entitled to even the sickness benefit. In the circumstances, we hold that casual employees come within the purview of the Act. In Andhra Pradesh State Electricity Board v. Employees' State Insurance Corporation, Hyderabad, (1977) 1 LabLJ 54, Regional Director, ESIC, Bangalore v. Davangere Cotton Mills, (1977) 2 LabLJ 404, and Employees' State Insurance Corporation, Chandigarh. v. Oswal Woollen Mills Ltd., 1980 LabIC 1064, the Andhra Pradesh High Court,

Karnataka High Court and the Punjab and Haryana High Court have rightly taken the view that casual employees are employees within the meaning of the term "employee" as defined in Section 2(9) of the Act and, accordingly, come within the purview of the Act.

11. Indeed Dr. Chitaley, learned counsel appearing on behalf of the respondent company in Civil Appeal No. 819 (NL) of 1976, frankly concedes that it will be difficult for him to contend that casual workers are not covered by the definition of the term "employee" under Section 2(9) of the Act. He, however, submits that in the instant case the work in which the casual workers were employed by the respondent company, namely, Shri Shakthi Textiles Mills Pvt. Ltd., not being the work of the factory or incidental or preliminary to or connected with the work of the factory, such workers cannot be employees within the meaning of Section 2(9) of the Act. The contention of the learned counsel is that the work of the factory being "weaving", an employee within the meaning of Section 2(9) must be employed on any work incidental or preliminary to or connected with the work of weaving that is carried on in the mill or factory. Counsel submits that the work of construction of factory buildings cannot be said to be an activity or operation incidental to or connected with the work of the factory, which is weaving. Mr D.N. Gupta, learned counsel appearing on behalf of the respondent companies in the other cases adopts the contention of Dr. Chitaley and submits that the workers employed for the construction of the factory buildings do not come within the purview of the definition of "employee" under Section 2(9) of the Act." In view of the aforesaid decision it is apparent that the submission raised by Royal Turf Club that casual workers are not covered under the ambit of ESI Act is too tenuous for its acceptance.

12. Mr. Cama, learned senior counsel has pressed into service a decision of this Court in Employees' State Insurance Corpn. v. Premier Clay Products (1994) Supp. 3 SCC 567. In the said case the work itself was of a sporadic nature. The coolies were available for work to others and on the very day worked for several others who also engaged them for loading and unloading of goods. Thus it was held that coolies could not be said to be casual workmen under the ESI Act. The said decision has absolutely no application to the fact situation of the instant case where work is not sporadic in nature. The employees' work for the day of racing which is perennial activity of Royal Turf Club and in view of the provisions of the Act, Rules, Regulations and notification dated 18.9.1978, there is no doubt that such employees are covered and consequently are entitled for benefit of the Act.

13. Coming to the submission that the ESI Corporation should be held bound by the consent terms, the submission is factually incorrect, misconceived, legally untenable and otherwise also devoid of the substance. In Application (ESI) No.16/1976 filed by the Turf Club, the ESI Corporation agreed on the basis of Inspection Report dated 29.11.1975 and in Memorandum dated 14.4.1976 it was mentioned that employees of the Turf Club in the electrical and mechanical workshop, factory division, general department - motor-garage (factory division), security department, carpentry shop, personnel department and accounts department would be covered under the ESI Act with effect from 28.1.1968. It was agreed that such employees of the Turf Club have already been covered and shall continue to be covered as before and the employees of Racing Administration Department, casual labour engaged on race track, temporary staff engaged on race days for issue of tickets/dividends were not covered. In the aforesaid case the period involved was as specified in the notification dated 26.2.1976 which was prior and not related to the period in question 1978-79 to

1982-83 involved in C.A. No.49/2006 and in other appeals also the period is subsequent thereto. After issuance of the notification dated 18.9.1978 by the Government of Maharashtra, the remaining departments of Turf Club which were left out earlier were specifically covered under the purview of the ESI Act. Thus, the demand in the instant case is based upon the notification dated 18.9.1978 which left no room to entertain any doubt that the establishments of the aforesaid department in question were also covered under the ESI Act. Thus, no benefit can be derived by the consent terms which related to the earlier period when notification dated 18.9.1978 had not been issued. Notification has statutory force and agreement cannot supersede it. It is also clear that several departments of race club were covered under the notification issued in 1968. Thus, the submission raised on the basis of consent terms is hereby rejected.

14. Coming to the appeal preferred by the ESI Corporation raising question that the payment should have been ordered with effect from 1978-79 onwards instead of 1987 as in view of notification dated 18.9.1978, there was no room to doubt that departments in question of the Turf Club were also covered under ESI Act. In our opinion, the notification of 1978 is clear and has to be given full effect, for earlier period also the consent terms indicated that various other departments of Turf Club were covered under the notification of 1968. Reliance on the decision of this Court in Hyderabad Race Club case (supra) so as to waive the contribution from 1975 to 1986, is not available as in the instant case there was no doubt as to applicability of ESI Act in view of the specific notification issued in 1978. The provisions of ESI Act were applied to various departments of Turf Club w.e.f. 1968. The decision in Hyderabad Race Club case (supra) turned on its own different factual matrix. In this case, it was clear from 1968 itself that Turf Club was covered under ESI Act as is apparent from consent terms. The notification dated 18.9.1978 included other left out departments of race club. The provisions of ESI Act were complied with by Turf Club w.e.f. 1968. The High Court on the facts of the case has erred in quashing the demand for the contribution with effect from 1978 till 1987.

15. In our opinion, the Turf Club is liable to make the contribution as per notification dated 18.9.1978 along with interest at such rate as provided in the Act and the Rules till the date of actual payment. Let the amount be contributed within a period of three months from today. Consequently, the appeals preferred by ESI Corporation are allowed and the ones preferred by Turf Club are dismissed with costs of Rs.2 lakhs payable to the ESI Corporation.

.....J.

(V. Gopala Gowda)

New Delhi;
February 29, 2016.

.....J.
(Arun Mishra)