

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO.No. 366/2003**

% *Reserved On: 01.12.2010*  
*Decided On: 07.12.2010*

ANANT RAJ AGENCIES P. LTD. .... Appellant  
Through: Mr. Neeraj Malhotra, Mr. Sourabh  
Khanna, Adv.

Versus

REGIONAL DIRECTOR, ESI CORPORATION & ANR. .... Respondents  
Through: Mr. K.P. Mavi, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE MOOL CHAND GARG**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not?                                | Yes |
| 3. | Whether the judgment should be reported in the Digest?                | Yes |

: **MOOL CHAND GARG,J.**

1. This appeal has been filed by the appellants against order dated 10.03.2003 passed by the ESI Court in ESIC Petition No.47/1998 whereby while dismissing the petition filed by the appellant under Section 75 of the Employees State Insurance Act (hereinafter referred to as 'the Act'), the Court held that the establishment of the appellant company was a establishment/shop under the Act and as such was liable to be covered under the provisions of the Act. It was, therefore, held that the respondents rightly called upon the appellant to pay the contributions as claimed to be deposited w.e.f. August, 1997 having found 38 employees working in the said establishment.

2. The relevant observations made by the ESI Court in the impugned order reads as under:

"12. The only question is whether a company engaged in providing services of sale and purchase of immovable properties is an 'establishment/shop' under the Act and, as such, is liable to be covered. Now the question is whether the petitioner-company which is engaged in providing services of sale and purchase of immovable properties is a 'shop' and, as such, has rightly been covered or not under

the Act. In a authority reported as Employees State Insurance Corporation Vs. R.K. Swamy 1994(I) LLJ 636 (SC), it was held by the Hon'ble Supreme Court that the word 'shop' has acquired extended meaning. It was observed by the Hon'ble Supreme Court that in place where a systematic economic or commercial activity is carried on will be a 'shop'. In this case, an advertising agency was held to be a 'shop' and was held liable to be covered under the Act.

13. In Hindu Jea Band Vs. Regional Director, Employees State Insurance Corporation- 1987 LLJ 502 SC, it was held by the Hon'ble Supreme Court that a 'shop' is a place where services are sold on retail basis. In this cases, the petitioner was carrying on the business of playing music on occasions such as marriage and other social functions. The petitioner was held to be carrying on a 'shop' and was held liable to be covered under the Act.

14. In M/s International Ore and Fertilizers (India) Limited Vs. Employees State Insurance Corporation, 1980(I) LLJ 235 (SC), it was held by the Hon'ble Supreme Court that it is not necessary that actual sale and purchase of goods take place in premises to be called 'shop'

15. In M/s. Cochin Shipping Company Vs. ESI Corporation 1993 (II) (LLJ) 795 (SC), the petitioner was engaged in processing documents at customs clearing house and there was no other activity, the petitioner was held to be carrying on systematic economic or a commercial activity and, as such, was held to be a 'shop'.

16. No contrary authority has been brought to my notice. As such, the petitioner-company, which is engaged in the sale and purchase of immovable properties, is engaged in systematic economic or a commercial activity and, as such, is a 'shop' liable to be covered under the Act. When there is no dispute regarding the number of employees, i.e. it is employing 38 employees, there is no dispute that it is not liable to be covered under the Act. Accordingly, I find that the petitioner-company has rightly been covered under the Act and the contribution has been claimed lawfully. The issue is accordingly decided in favour of the respondent and against the petitioner."

3. The only submission made by the appellant is that the appellant-company, who is doing business of providing services for sale and purchase of immovable property, is not a shop/establishment which is sought to be covered under Section 1 (5) of the Act. It is stated on behalf of the appellant that this appeal under Section 82 of the Act against the impugned order raises following questions of law:

- a) Whether the appellant company, which is engaged in the sale and purchase of immovable property is an establishment/shop under the ESI Act?
- b) Whether in the absence of issuance of notification to this effect the appellant could be considered to be covered under ESI Act?

4. It has been submitted that since the appellant are engaged in the activity of sale and purchase of immovable properties, the notice issued by the respondent calling upon them to pay ESI contribution from August, 1997 on the basis of survey alleged to have been conducted on August, 1997 and allotting them No.11-30436-101 dated 18.09.1997 was illegal and the order needs to be set aside. It has been submitted that the basis of the liability of the appellant as fixed by the respondents is the orders dated 26.10.1998 and 10.09.2008. The appellant-company had explained to the respondents that the appellant was not an establishment notified in terms of Section 1(5) of the Act nor it was engaged in any business whereby the unit could be said to be covered in terms of any notification.

5. On the other hand it is stated by the respondents that the appellant-company did come within the purview of establishment or factory as per the meaning given to these words under Section 1(4)(5)(6) of the Act and, therefore, found that they were employing more than 38 persons, they are covered as a establishment responsible for making contributions under the Act.

6. The respondents, in this regard, have relied upon various judgments which have been referred to by the ESI Court to support its judgment and in particular the judgment delivered by the Apex Court in the case of ESI Vs. R.K. Swamy (Supra) wherein while interpreting the word 'shop', it has been observed by the Apex Court that place where systematic, economic or commercial activity is carried on will be a 'shop'. In this regard even an advertising agency was held to be a shop and was held to be covered under the Act.

7. It is also submitted that in the given Hindu Jea Band Vs. Regional Director, ESI, the Apex Court again interpreting the word 'shop' held that 'shop' is a place where services are sold on retail basis even with respect to an establishment who was playing music on

occasion such as marriage and other social events, it was held that the activities carried over by them was as if they were carrying a shop and thus, were covered under the Act.

8. In *M/s Hindu Jea Band Jaipur Vs. Regional Director, Employees' State Insurance Corporation, Jaipur*, AIR1987 SC 1166, it has been held as under :

“It is not that a place where goods are sold is only a shop. A place where services are sold on retail basis is also a shop. The place of business of a firm carrying on the business of playing music on occasion, such as marriages and other social functions which made available on payment of the stipulated price the services of the members of the group of musicians employed by it on wages is a shop to which the Act is applicable by virtue of the notification, the fact that the services are rendered by the employees engaged by the firm intermittently or during marriages does not entitle the firm to claim any exemption from the operation of the Act. The firm cannot rely on sub-s.(4) of S.1 of the Act which refers to factories only in support of its case. Moreover, the services of the employees of the firm are not confined only to marriages. It cannot also be said that marriages take place only during a specified part of the year. Nowadays marriages take place throughout the year.”

9. It is the admitted case of the petition that they are providing services. When services are being sold, it becomes a commercial activity. Since the Act is intended for social welfare of the workers, it has to be given an extended meaning.

10. The most interesting definition of the shop has been given in the judgment delivered by the Apex Court in *M/s. Cochin Shipping Company Vs. ESI Corporation(supra)* which is again a judgment of the Supreme Court wherein with respect to an establishment engaged in processing the documents at Custom Clearing House and there being no other activity, it was held that those activities comprised of systematic economic or commercial activity and, therefore, happened to be an activity carried out by a ‘shop’.

11. It is not in dispute that by way of notification under Section 1 (5) of the Act, shops have also been included for the purpose of coverage under the Act vide notification dated 30.09.1988. The shop as per the Delhi Shops and Establishments Act, 1954 also means a ‘shop’. In the present case, inspection carried out by the respondents with

respect to the establishment of the appellant was after 30.09.1988 and, therefore, in view of the definition of 'factory' which now covers 'shops' also and the employees employed by the appellants at the relevant time being more than 20, they are covered under the Act. This is more so in view of the judgments delivered by the Apex Court in R.K. Swamy (Supra) as well as in M/s. Cochin Shipping Company.

12. Thus, there is no merit in the appeal. The same is hereby dismissed with no order as to costs.

13. A copy of this order be sent to the trial Court along with records.

**C.M.777/2003**

Interim order stands vacated.

Application is disposed of.

**MOOL CHAND GARG,J**

**DECEMBER 07, 2010**

*'anb'*