

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.55 OF 2000

Bafna Motors,
Parola Road, Dhule,
Tq. and Dist. Dhule
through it's partner
Pravin Suwalal Bafna

..Appellant

Versus

Assistant Regional Director,
Sub-Regional Office,
Employees' State Insurance
Corporation, "Panchdeep Bhavan",
689/690, Bibwewadi, Pune

..Respondent

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Mr.B.R.Warma, advocate for appellant

Mr.V.D.Sonwane, advocate for respondent

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CORAM : M.T. JOSHI, J.
JUDGMENT RESERVED ON : FEBRUARY 10, 2015
JUDGMENT PRONOUNCED ON : MARCH 10, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the rejection of the application
under Section 75 of the Employees State Insurance
Act (hereinafter referred as 'the ESI Act') of

filed by present appellant by learned Judge, Labour Court, Dhule, present appeal is filed.

3] The present appellant is an establishment dealing with the tractors of International Tractors Company. On 5th March, 1982, the Inspector of the respondent - Corporation visited the premises of the appellant. During inspection, from the documents, it was found that seven persons were employed by the appellant as per the muster-roll while, three persons were additionally employed in the preceding month i.e. February, 1982 and were paid wages on vouchers. Thus, according to the Inspector, ten persons were employed on the said establishment. The establishment of the appellant was covered by the provisions of ESI Act and was liable to pay the contribution. Therefore, notices were issued to the appellant and ultimately, after hearing the appellant, it was held that the appellant's

establishment would be covered by the provisions of the ESI Act. Therefore, the appellant has challenged the said order in the Labour Court as per the provisions of Section 75 of the ESI Act.

4] The respondent – Corporation came with a case that the Inspector has found that besides seven regular employees on the muster-roll, three other employees were also paid wages for the month of February, 1982. Therefore, time and again, notices were issued and ultimately, it was directed that the appellant has secured code number for paying regular contribution to which, the provisions of ESI Act would be applicable.

5] The appellant, however, submitted before the Corporation that in fact, only nine persons were employed in it's establishment. The vouchers in the name of Salim and Ayubkhan are regarding one

and the same person and therefore, it would not be governed by the provisions of the ESI Act. The Corporation, however, did not agree for the same and as per the provisions, the orders were issued.

6] Before learned Judge of the Labour Court, the Accountant of the present appellant was examined, who deposed on the line of the explanation, as quoted above. Learned Judge, however, did not accept the said version and dismissed the application of the appellant. Hence, the present appeal.

7] Mr. Warma, learned counsel for the appellant, submits that Salim Khan @ Ayub Khan is one and the same person though two different vouchers were shown for the the month of February, 1982 for Rs.200/- and Rs.325/-. He, therefore, submits that as evidence shows that only nine persons were employed, learned Judge of the Labour Court ought

to have allowed the application filed by the appellant.

8] On the other hand, Mr.Sonawane, learned counsel for the respondent, submits that immediately after inspection, notices were issued to the appellant from time to time for two years, however, the appellant's stand was that only nine persons were employed in the it's establishment and it is only after two years, the appellant, suddenly, came with a case that Salim Khan and Ayub Khan are one and the same person. He submits that there is clear admission from the witness of the appellant that in all, ten persons were employed. He, therefore, submits that the appeal may be dismissed.

9] On the basis of this material, following point arises for my determination :-

Whether the appellant has employed ten persons during the period of inspection ?

. My point to the above point is in the affirmative and the appeal is, therefore, dismissed for the reasons to follow.

R E A S O N S

10] It should be noted that for a period of two years from the date of inspection, the appellant's establishment never explained that though two different vouchers were issued, one in the name of Salim Khan and another in the name of Ayub Khan, those are not two different persons, but of one and the same person. No documentary evidence regarding the same could be produced on record by the appellant. Further, the Accountant of the appellant, in the witness box, has admitted that ten persons were paid wages for the month of February, 1982. In my view, said Salim Khan @

Ayub Khan could also have examined by the appellant, who could have deposed about his two different names being used by him at different times.

11] In that view of the matter, the finding of the learned Judge of the Labour Court need not be interfered with. The appeal is, therefore, dismissed with costs.

[M.T. JOSHI, J.]

kbp