

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 76 OF 2001

The Assistant Director,
Employees State Insurance
Corporation, Panchdeep Bhavan,
Ganesh Peth, Nagpur.

... APPELLANT
(Orig. Respondent)

VERSUS

The Proprietor,
M/s. Divekar School Bus Services,
Padampura, Aurangabad.

... RESPONDENT
(Orig. Applicant before
ESIC, Court, Aurangabad)

...
Mr. Vilas D. Sonwane, Advocate for the Appellant.
Mr. B. R. Kaware, Advocate for the Respondent.
...

CORAM : **V. K. JADHAV, J.**
DATE : 19th July, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and order dated 26th October, 1999 passed by the Employees Insurance Court, Aurangabad in Application (ESI) No.9 of 1998, the original Respondent / Assistant Director, Employees State Insurance Corporation has preferred this appeal.

2 Brief facts giving rise to the present appeal are as follows:

- a) M/s. Divekar School Bus Services is a proprietorship concern, registered under the Motor Transport Workers Act, 1961 as well as under Bombay Shops and Establishment Act, having its registered office at Bhagiratnagar, Station Road (Padampura), Aurangabad. According to the Applicant, the Applicant is rendering its transport services to the school children who are below the age of 15 years within the territory of Municipal Corporation, Aurangabad. The Applicant had started its transport services in the year 1991 employing one driver and one school bus. Even the Road Transport Authority has given the special concession in tax purpose. In all six persons are working including the Manager / supervisor in the said Establishment concern. The motive of the Establishment is not profit making but to serve the people. The Applicant is having another business namely Divekar Auto Works, at another place,

Opposite Building and Construction Department, Padampura, Aurangabad. The said Divekar Auto Works is covered under the Employees State Insurance Corporation registration code No.25-0984-90 and the said Establishment making regular compliance under the Employees State Insurance Act, 1948 (hereinafter referred to as "the Act of 1948"). However, the ESI Corporation called upon M/s. Divekar School Bus services through its letters dated 9th November, 1998 and 4th August, 1998 respectively directing to make the compliance in respect of Divekar School Bus services from the date 1st October, 1996 without giving any justification. It is further the case of the Applicant that the Establishment as well as the Applicant had replied the letter narrating all the facts that there is no interconnection or physical proximity between the two units and both the units are independent and separate from each other and as such, the Applicant is not liable to make any compliance or any contribution as contemplated under

the Act of 1948. The Respondent / Assistant Director, Employees State Insurance Corporation has come to a conclusion that the Applicant Establishment is clubbed with the Divekar Auto Works.

- b) The Appellant / Corporation has strongly resisted the application by filing the reply. It has been contended that M/s. Divekar Auto Works is covered under the provisions of the Act of 1948 and there are three units namely (1) M/s. Divekar Auto Works, (2) M/s. Divekar School Bus Services and (3) M/s. D. A. Agencies and all the three units situated in one factory shed/ premises of the Applicant's and therefore, they are covered under the Act of 1948. It has also been contended that the Applicant was making the compliance under the provisions of the Act of 1948 in respect of all the three units. However, the Applicant suddenly discontinued the E.S.I. compliance of the employees in respect of Divekar School Bus services from 10/96 and onwards. The Respondent / Corporation has also raised some other grounds. Both

the parties have not adduced any oral evidence but placed their reliance on the documentary evidence. The learned Judge of the E.S.I. Court vide impugned judgment and order allowed the said application and held that M/s. Divekar School Bus Services is an independent and separate from Divekar Auto Woks and as such, the provisions of Act of 1948 are not applicable to the said Unit and further held that the order of Corporation dated 4th November, 1998 is illegal and set aside accordingly. Being aggrieved by the same, the original Respondent / Corporation has preferred this appeal.

3 I have heard the learned counsel for parties at length. However, this Court has allowed Civil Application No.10907 of 2016 in terms of prayer clause (A) and accordingly permitted the Applicant / Appellant herein for production of additional evidence i.e. inspection report of inspection conducted by E.S.I. Inspector and other record and correspondence, as per the list, in terms of the provisions of Order XLI, Rule 27 (1) (b) of the Code of Civil Procedure. It appears

that the xerox copies of those documents are placed on record. It is thus, necessary for the Appellant / Corporation to produce the original documents before the Court below and to prove those documents in accordance with law. In view of the above, the matter needs to be remanded to the Employees Insurance Court with certain directions. Hence, the following order:

ORDER

- I. The appeal is hereby partly allowed. No costs.
- II. The judgment and order dated 26th October, 1999 passed by the Employees Insurance Court, Aurangabad in Application (ESI) No.9 of 1998, is hereby quashed and set aside.
- III. The matter is remanded to the Employees Insurance Court, Aurangabad with the following directions:
 - a) Restore Application (ESI) No.9 of 1998 to its original number and the Employees Insurance Court, Aurangabad shall decide the said application afresh.
 - b) The Respondent / Corporation is at liberty to

produce the original documents before the Court below as per the list of documents submitted alongwith Civil Application No.10907 of 2016 and lead evidence to prove the same if required.

- c) The original Applicant / Proprietor, M/s. Divekar School Bus Services is also at liberty to adduce oral and documentary evidence in rebuttal.

IV. The parties shall appear before the Employees Insurance Court, Aurangabad on 16th August, 2017 and the Employees Insurance Court, Aurangabad shall decide the said application within six months from the date of appearance of the parties before it.

V. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]