**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.78 OF 1993**

ISMT Limited, a Company incorporated under the Companies Act, 1956, Pune ...Appellant

Versus

The Employees State Insurance Corporation, New Delhi and Ors. ...Respondents

...

Mr. Kiran Bapat with M/s. Vipul Patel i/b. M/s. Haresh Mehta and Co. or the Appellant.
Mr. P.M. Palshikar for the Respondents.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.**

**DATED : 1st AUGUST, 2022.**

**P. C. :-**

1. The Appellant herein has assailed the judgment dated 13/08/1992 passed by the learned Civil Judge, Employees Insurance Court, Pune, in Application (ESI) 8 of 1986.

2. The Appellant-Establishment had filed an application challenging the demand by the E.S.I. Corporation under Section 45A of the Employees' State Insurance Act, 1948. The case of the Appellant was that the Appellant has its factory at Ahmednagar where the provisions of E.S.I. scheme were not made applicable. The Appellant has its head office at Pune, which was registered under the Shops and

Establishment Act, 2017. Notification dated 19/11/1976 has been made applicable to the premises from 01/01/1986. The Appellant had alleged that though more than 20 employees are working in the establishment at Pune, no manufacturing process was being carried out in the said establishment and that the work being carried out in the said establishment was in connection with and incidental and ancillary to the business of the factory at Ahmednagar. It was stated that since the provisions of ESI scheme were not made applicable to the factory at Ahmednagar, the employees at the registered /head office of the Appellant's establishment at Pune could not be covered under the provisions of ESI Act.

3. The Respondent herein had filed written statement wherein it was specifically averred that the establishment of the Appellant at Pune is engaged in the control and co-ordination of the sale of the products of its factory at Ahmednagar and that it satisfies the definition of 'shop'. It is averred that it is engaged in sale of goods even though no activity of retail or wholesale sale of goods is carried out in the establishment of the Appellant at Pune.

4. The learned Judge, upon considering the evidence on

record held that the establishment at Pune is covered under the notification dated 19/11/1976 and accordingly dismissed the application. Being aggrieved by this order the Appellant has filed this appeal.

5. Mr. Kiran Bapat, learned counsel for the Appellant submits that the Court has recorded a finding that the activity in the Appellant's establishment at Pune was related to the business in the factory at Ahmednagar. A finding has been recorded that the establishment at Pune does the work in connection with and incidental and ancillary to the business of the Company at Ahmednager. He submits that since the factory at Ahmednagar is not covered under the E.S.I. Act, the employees at the head office could not be covered under the provisions of the ESI Act.

6. Per contra, Mr. P.M. Palshikar, learned counsel for the Respondent submits that the establishment at Pune is a separate and distinct establishment covered under the Notification dated 19/11/1976. He has relied upon the decision of the Hon'ble Supreme Court in ***Bangalore Turf Club Limited vs. Regional Director, Employees' State Insurance Corporation (2014) 9 SCC 657*** to contend that the

term 'establishment' would mean the place for transacting any business, trade or profession or work connected with or incidental or ancillary thereto. He submits that the establishment at Pune is covered by Notification dated 19/11/1976 since it carries out trade and business. He submits that there is no dispute that there are 20 employees in the said establishment, which controls and co-ordinates sale and it is a 'shop'. Considering that it carries on the work in connection with and incidental and ancillary to the business of the Company, it has been rightly covered under the provisions of ESI Act.

7. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. The Appellant has its factory at Ahmednagar. It is not in dispute that the provisions of ESI scheme were not made applicable to the said factory. The Appellant's establishment at Pune, is the head office of the Company, which is registered as commercial establishment. The question for consideration is whether the registered office of the company would stand covered under the provisions of ESI Act when the provisions of ESI scheme have not been made applicable to its factory at Ahmednagar.

9. Before adverting to the facts of the case, it would be relevant to refer to the decision of ***Bangalore Turf Club*** (supra) wherein the question before the Hon'ble Supreme court was whether a 'race-club' would fall under the scope of the definition of the word 'shop', for the purposes of notification issued under sub-section (5) of Section 1 of the Employees' State Insurance Act, 1948. The Hon'ble Supreme Court observed that "*the legislature has enacted the ESI Act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The provisions of ESI Act applied to all the factories other than seasonal factories. The State Government with the approval of the Central Government is authorised to make the provisions of the ESI Act applicable to any other establishment or establishments. The provisions of the ESI Act provides that all employees in factories or establishments to which the ESI Act applies shall be insured in the manner provided under the ESI Act. Since the ESI Act is passed for conferring certain benefits to employees in case of sickness, maternity and employment injury, it is necessary that the ESI Act should receive a liberal and beneficial construction so as to achieve legislative purpose without doing violence to the language of the enactment.*"

10. The Hon'ble Supreme Court has further held that "*The term 'establishment' would mean the place for transacting any business, trade or profession or work connected with or incidental or ancillary thereto".*It is held that "*The test of finding out whether professional activity falls within the meaning of the expression 'establishment' is whether the activity is systematically and habitually undertaken for production or distribution of the goods or services to the community with the help of employees in the manner of a trade or business in such an undertaking. If a systematic economic or commercial activity is carried on in the premises, it would follow that the establishment at which such an activity is carried on is a 'shop'."*

11. In the instant case, the evidence adduced by Appellant reveals that the Appellant is registered under the Companies Act, 1956. It has 3 divisions viz. Finance, Personnel and Commercial. In Finance Division there are three sub divisions -accounts, finance and secretarial. Commercial division undertakes procurement of the materials required by the Appellant. The record of the employees is maintained by the personnel division. It is stated that manufacturing activities are carried out solely at the factory at Ahmednagar Branch of the Appellant. The

branches at Bombay, Calcutta, Delhi and Bangalore are looking after the sales. The Appellant only forwards the orders to Ahmednagar factory for execution and it does not sell goods at Pune. It is further stated that if customer comes for enquiry, he is directed to Ahmednagar office and no other service is rendered to the customers at Pune office. In the cross-examination of the said witness there is absolutely no denial of the statement that the establishment at Pune is not engaged in sale and that the only activity, carried out in the establishment at Pune was to forward the material as well as orders received from the customers to the factory at Ahmednagar.

12. The Respondent has not adduced evidence to indicate that the Appellant's establishment at Pune had undertaken activity of production and distribution of goods and services or that it had carried out trade or business with the help of the employees. As observed by the learned Judge, the work carried out by the Appellant's establishment at Pune, which was not carrying out activities was in connection with and incidental to and also ancillary to the business of the Company to which provisions of ESI Act were not made applicable. Since the provisions of ESI Act were not made applicable to the factory at Ahmednagar, the employees employed at Appellant's establishment

at Pune, which was not carrying out activities distinct and independent of the activities of the factory cannot be brought under the purview of the said Act. Under the circumstances and in facts of the case, the learned Judge has erred in concluding that the provisions of the ESI Act are applicable to the Appellant's establishment at Pune.

13. Under the circumstances, the appeal is allowed in terms of prayer clauses (a) and (b) of the Application (ESI) No.8 of 1986. Impugned judgment is set aside.

**(SMT. ANUJA PRABHUDESSAI, J.)**