

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

FIRST APPEAL NO.599 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.601 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.605 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.606 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.607 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.608 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.609 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.610 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.611 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.612 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.613 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.614 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.617 OF 2008

Maharashtra State Cooperative Cotton

4

Growers Marketing Federation Ltd.,
Nagpur. Appellant.

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. Respondent.

FIRST APPEAL NO.624 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. Appellant.

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. Respondent.

FIRST APPEAL NO.625 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. Appellant.

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. Respondent.

FIRST APPEAL NO.665 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. Appellant.

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. Respondent.

FIRST APPEAL NO.666 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. Appellant.

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.667 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

FIRST APPEAL NO.668 OF 2008

Maharashtra State Cooperative Cotton
Growers Marketing Federation Ltd.,
Nagpur. **Appellant.**

:: V E R S U S ::

The Employees State Insurance
Corporation, ESIC Bhavan,
Ganeshpeth, Nagpur. **Respondent.**

=====

Shri M.V.Samarth, Senior Counsel with Shri B.P.Ingle,
Advocate for the Appellant/Federation.
Mrs.B.P.Maldhure, Counsel for the Respondent/ESI
Corporation.

=====

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 22/02/2023

PRONOUNCED ON : 04/05/2023

COMMON JUDGMENT

1. By preferring these appeals, the
appellant/Maharashtra State Cooperative Cotton Growers
Marketing Federation Ltd., Nagpur (the federation) has

6

challenged the judgment and order dated 13.2.2008 passed by learned Judge of the Employees' State Insurance Court at Nagpur in Application (ESI) Nos.2 to 19/2003 holding the federation liable to pay contribution under the Employees' Insurance Scheme.

2. Brief facts necessary for disposal of these appeals, are as under:

The federation is a registered society under the provisions of the Maharashtra Cooperative Societies Act, 1960 (**the Societies Act 1960**) and acting as a chief agent of the Government of Maharashtra under the provisions of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971 (**the Act of 1971**) to administer the cotton monopoly procurement scheme in the State of Maharashtra. It is the seasonal establishment and it carries the work of procurement of raw cotton under the Act of 1971. The federation is the chief agent of the Government of Maharashtra aided and controlled entirely by the Government of Maharashtra. The activities of the federation are purely

7

seasonal which are carried out through the private ginning and pressing factories during the cotton season.

3. The federation being the agent appointed under Section 42 of the Act of 1971 is a cooperative society and from time to time issued various schemes for the benefits of the employees including group personal policy that is insurance schemes for the employees in case of personal accidents, staff benevolent fund, medical reimbursement etc.. Thus, the federation is directly covered under the exception provided under proviso to Section 1(4) of the Employees' State Insurance Act, 1948 (**the ESI Act**). As per the contention of the federation, the federation being the establishment under the control of the Government of Maharashtra and its employees are in receipt of benefits under other schemes, the ESI Act has no application on the establishment of the federation.

4. The respondent/the Employees State Insurance Corporation (the ESI Corporation) had issued 19 different demand notices to the federation calling upon the federation to deposit the ESI contribution for the respective years,

Judgment

35 fa599.08 & connected appeals

8

mentioned in the chart below, alleging that the federation is covered under the provisions of the ESI Act:

FA No.	EL Case No.	Adhoc				45A		C19		
		Date	Period		Amt	date	Amt and Intt up to	Date	C19	
667/08	2/03	16.09.87	27.11.76	26.1.85	30324	15.2.88	30324+intt 1430.70 up to 31.12.87	29.3.88	31754.7	revised 8.2.94
617/08	18/03	16.09.87	27.1.85	31.3.87	19905.6	15.2.88	19905.6+intt 1322.65 upto 31.12.87	29.3.88	21228.25	revised 8.2.94
610/08	3/03	15.2.88	1.4.87	31.12.87	6890.4	9.3.88	6890.4+intt.14 7.45 upto 31.1.88	29.3.88	7037.85	revised 8.2.94
		16.5.88	1.1.88	31.3.88	2296.8	20.6.88	2296.8+intt 26.55 upto 31.5.88	14.7.88	2323.35	revised 8.2.94
613/08	13/03	29.8.88	1.4.88	30.6.88	13590	29.9.88	13590+intt 160 upto 31.8.88	27.10.88	13750	revised 8.2.94
612/08	09/03	23.1.89	1.7.88	3.09.88	13590	21.2.89	13590+intt 326 upto 14.2.89	17.3.89	13916	revised 8.2.94
		24.9.04	1.10.88	31.3.04	1992897	21.2.05	1992897	25.4.05	3947364	
Zonal office, 283/286, nd floor, Mahatma Fule Market, Nagpur										
611/08 607/08	6/03 & 12/03	19.3.83	27.11.76	25.9.82	63630	22.8.84	(27.11.76 to 26.3.83) 69090+intt 6807.75 upto 30.6.84	13.12.84	75897.75	revised 21.7.93
608/08 & 599/08	10/03 & 11/03		27.3.83	30.4.84		19.9.84	(27.3.83 to 30.4.84) 11970+intt 555 upto 31.8.94	13.12.84	12525	revised 21.7.93
668/08 & 609/08	8/03 & 19/03	13.12.84	1.5.84	30.9.84	7260	12.3.85	7260+ intt 194.35 upto 31.1.85	21.1.87	7453.35	revised 21.7.93
625/08 & 614/08	5/03 & 16/03	25.5.87	1.10.84	26.1.85	6160	8.7.87	6160 + intt 885 upto 31.5.87	14.9.87	7045	revised 21.7.93
624/08	7/03	25.5.87	27.1.85	31.3.87	66352	8.7.87	66352 + intt 4525 upto 31.5.87	14.9.87	70887	revised 21.7.93

.....9/-

Judgment

35 fa599.08 & connected appeals

9

606/08	15/03	2.2.88	1.4.87	31.12.87	29858.4	9.3.88	29858.4 + intt 638 upto 31.1.88	23.3.88	30496.4	revised 21.7.93
600/06	4/03	17.5.88	1.1.88	31.3.88	9952.8	20.6.88	9952.8 + intt 115.2 upto 31.5.88	14.7.88	10068	revised 21.7.93
605/08 601/08 & 17/03	14/03	6.9.88	1.4.88	31.6.88	9953	12.10.88	9953+intt 116 upto 31.9.88	3.11.88	10119	revised 21.7.93
		21.2.89	1.7.88	30.9.88	9953			7.7.06	33629	revised 21.7.93

5. The federation had challenged the aforesaid notices by filing different applications under Section 75 of the ESI Act before the ESI Court at Nagpur vide application No.2 to 19/2003 stating the relief of quashing the notices on the ground that the provisions of the ESI Act are not applicable to the federation.

6. The ESI Corporation resisted the said applications on the ground that the federation is commercial in nature as it is registered under the Bombay Shops and Establishment Act, 1948. The inspection carried out by the ESI Corporation on 13.4.1982 shows that 20 and more persons were appointed and it carried the commercial activities and, therefore, the federation is covered under the definition of the Bombay Shops and Establishment Act and liable to pay

10

the contribution. The ESI Corporation denied that the activities of the federation is seasonable in nature.

7. Learned Judge of the ESI Court recorded the relevant evidence and after hearing both the sides was pleased to hold that the federation is covered under the ESI Act and all the applications were dismissed.

8. Being aggrieved and dissatisfied with the judgment and order of the ESI Court, the present appeals are preferred on the ground that the observation of learned Judge of the ESI Court, that provision of Section 1(4) of the ESI Act does not help the federation, is erroneous as learned Judge of the ESI Court totally lost sight that the proviso exempts the seasonal factories from the application of the ESI Act. The further ground raised by the federation is that the ESI Act does not apply to any establishment belonging to or under the control of the Government whose employees are otherwise on receipt of benefits substantially similar or superior to the benefits provided under the ESI Act. Thus, the observation of learned Judge of the ESI Court holding the

11

federation liable to pay contribution is erroneous and liable to be quashed and set aside.

9. While admitting these appeals on 3.10.2022, following substantial questions of law were framed:

(1) Whether the establishment of the appellant is covered under the provisions of the Employees' State Insurance Act, 1948?

(2) Whether the appellant is liable to contribute in accordance with the provisions of the said Act? Though the employees are in receipt of benefits similar or substantially superior to the benefits provided under this Act?

10. Heard learned senior counsel Shri M.V.Samarth with Advocate Shri B.P.Ingle for the federation and learned counsel Mrs.B.P.Maldhure for the ESI Corporation.

11. Learned senior counsel Shri M.V.Samarth for the federation submitted that the federation being a cooperative society is wholly owned and controlled by the State Government and the provisions of Section 1(5) of the ESI Act do not cover any factory which is of seasonal nature. The federation does not carry any manufacturing process as defined under the ESI Act. The federation was established on

12

account of provisions under Section 42 of the Act of 1971. The statement of objects and reasons are to protect the farmers from the businessmen and to get remunerative prices enabling the growers of cotton in the State by providing them guaranteed price declared by the State of Maharashtra and also assured a substantial bonus to each farmer from the profits accruing under the Scheme. Section 42 of the Act of 1971 enables the State Government to delegate its powers under the Act to an agent. By virtue of Notification dated 29.6.1972 in Maharashtra Government Gazette, the Government appointed the federation as chief agent for purchasing, selling, storing, processing, marketing, and carrying on other business in cotton on behalf of the Government. In view of letter dated 10.8.1984, the Government of Maharashtra decided to form a new organization which is designated as the federation to implement the cotton monopoly scheme in future. It was directed to the chairman of the federation to hand over the assets and liabilities. In pursuance of the said decision, a new society was registered which was classified as agricultural society with a sub classification as marketing

13

society. Thus, the federation is belonging to and is under total control of the Government performing the functions of the State Government which are delegated to the federation on account of powers of the State Government under Section 42 of the Act of 1971. As the employees of the federation are getting better facilities than the facilities provided by the ESI Corporation, the provisions of Section 1(5) of the ESI Act are not applicable. The federation has never been within the purview of the ESI Act. The federation has merely obtained the cotton from the farmers. This clearly amplifies the fact that the federation is governed by the Government Maharashtra and not amenable to the provisions of the ESI Act. In view of the Notification dated 19.9.1976, it does not cover the establishment of the federation. Moreover, the ESI Act does not apply to the seasonal nature of operations or establishments. In view of that, the federation is a seasonal operated establishment and, therefore, the provisions of the ESI Act are not applicable to the federation. In view of that, the judgment and order passed by learned Judge of the ESI Court is arbitrary, illegal, and liable to be set aside.

14

12. *Per contra*, learned counsel Mrs.B.P.Maldhure for the ESI Corporation submitted that the federation, as a chief agent of the Government of Maharashtra, carries on the business of raw cotton, ginning of raw cotton, pressing of ginned cotton into full pressed bales and sell of full pressed bales and sell of cotton seeds. Thus, the federation is carrying the manufacturing process and, therefore, the provisions of the ESI Act are applicable to the federation. She further submitted that the federation is covered under Section 1(5) of the ESI Act under Notification dated 19.11.1976 as 'shop.' The bye-laws of the federation are to carry out commercial and economic activities and, therefore, the provisions are applicable. The ESI Act has been enacted to provide certain benefits to the employees in case of sickness, maternity and employment injury. Thus, the Act aims at providing a remedy for the widespread evils resulting from the national poverty and is a piece of social security legislation. Section 1(4) of the ESI Act was applicable to all the factories. The ESI Court rightly considered these facts and rightly rejected the applications. Hence, no interference is called for.

15

13. Learned senior counsel Shri M.V.Samarth for the federation placed reliance on following decisions in supports of his contentions:

(1) Regional Director, Employees State Insurance corporation vs. Tulsiani Chambers premises Co-operative Society, reported in 2008(1) Mh.L.J. 178;

(2) Kapus Ekadhikar Karmachari Sangh vs. State of Maharashtra and another, reported in 2000 AIR SCW 1983;

(3) Maharashtra State Cooperative Cotton Growers' Marketing Federation Ltd. and another vs. Maharashtra State Cooperative Cotton Growers' Marketing Federation Employees Union and another, reported in AIR 1994 SC 1046;

(4) The Regional Director, Employees' State Insurance Corporation vs. M/s.High Land Coffee Works, reported in AIR 1992 SC 129;

(5) The Regional Director, Employees State Insurance Corporation vs. High Land Coffee Works of PFX Saldanha and Sons and ors, reported in AIR 1992 SC 129, and

(6) VPR College Beedi Company vs. Union of India and another, reported in 2003 SCC OnLine Madras 232.

14. Learned counsel Mrs.B.P.Maldhure for the ESI Corporation also placed reliance on the following decision:

16

(1) Cochin Shipping Co vs. ESI Corporation, reported in 1992 LawSuit (SC) 508;

(2) Karnataka State Co-operative Marketing Federation vs. Regional Director, Employees State Insurance Corporation, reported in 2003 LawSuit (Karnataka) 674, and

(3) Shri Narakesari Prakashan Ltd. and others vs. Employees' State Insurance Corporation etc etc., reported in AIR 1984 SC 1916.

15. Undisputedly, the federation is a society registered under the provisions of the Societies Act 1960 and acting as a chief agent of the Government of Maharashtra under the provisions of the Act of 1971. The federation has come with a case that the federation was constituted on account of the provisions under Section 42 of the Act of 1971 with an intent to protect the farmers from the businessmen and to get remunerative prices enabling the growers of cotton in the State by providing them guaranteed price. In view of Section 42 of the Act of 1971, the State Government delegated the powers to agents. By virtue of notification dated 29.6.1972 published in the Government Gazette, the federation was appointed as a chief agent for purchasing, selling, storing, processing, marketing, and carrying on other business in the cotton on behalf of the Government. In the

17

year 1984, the Government of Maharashtra decided to form a new organization designated as the Maharashtra State Cooperative Cotton Growers Marketing Federation Limited. In pursuance of the decision, vide letter dated 10.8.1984, the Government of Maharashtra established a new society which was classified as agricultural society with sub classification as marketing society. Thus, the federation is belonging to as is under the control of the Government performing the functions of the State Government. The State Government delegated the powers under Section 42 the Act of 1971. The employees of the federation are covered by other facilities and, therefore, the provisions of the ESI Act are not applicable to the federation.

16. To support the said contentions, the federation placed reliance on the Government Gazette published on 29.6.1972, which reads as follows:

1."The Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971, was enacted in December 1971. The next cotton season begins on 1.7.1972. Government had decided to bring into operation the scheme of the monopoly procurement, processing and marketing of cotton as envisaged in the Act from the next cotton season, but had come across

18

some major difficulties in the matter of implementation of the scheme effectively, it was considered necessary to make certain arrangements in the Act immediately.

2. Under Sections 20 and 21 of the Act, there is an obligation on growers and other holders of cotton to tender it at a collection centre. To avoid any inconvenience, it is necessary to cast a statutory duty on the market committees to designate and maintain sufficient collection centres at convenient places.

3. Section 38 provided for referring disputes.....

4. Section 42(2) provided for appointment of agents. Government has decided that the Maharashtra State Co-operative Marketing Federation Limited should be appointed as the Chief Agent for the purpose of purchasing, selling, storing, processing, marketing, and carrying on other business in cotton on behalf of the Government. The Reserve Bank of India had agreed to sanction credit limits required by the Federation for this purpose, through the Maharashtra State Co-operative Bank Limited. With a view to ensuring the integrated character of the co-operative movement and to enable the Chief Agent to raise the necessary money by way of loans or advances, it was necessary to amend this Section.

5. Amendments to certain other Sections.....

6. As both Houses of the Legislature of the State were not in sessions,”

The further Notification published in the Government Gazette on 12.2.1974 shows, as under:

"The Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971 was brought into operation on 1.8.1972 with a view, *inter alia*, enabling the growers of cotton in the State to get remunerative prices for their crop. The operation of the scheme during the cotton season 1972-1973 showed good results as the growers of cotton were not only paid prices for their procedure at the guaranteed prices declared by the Government of Maharashtra, but also assured a substantial bonus from the profits accruing under the scheme."

17. Thus, it is apparent that the federation's activities are under the control of the Government. Section 42 of the Act of 1971 is reproduced below for perusal:

"Section 42(1) The State Government may, by notification in the Official Gazette, direct that any power or duty which by this Act is conferred or imposed upon the State Government (except the power to make rules) shall, in such circumstances and under such conditions, if any, as may be specified in the direction be exercised or discharged also by an Officer or authority subordinate to it.

(2) (a) The State Government may for the purpose of purchasing, selling, storing, processing, marketing and carrying on other business in cotton, on its behalf appoint agents for the whole State or any specified area, and any such agent may be appointed for more than one such area.

20

(b) any agent so appointed, if specifically authorised by the State Government in this behalf, shall be entitled to pledge, mortgage, or otherwise dispose, of all or any of the stocks of cotton for the time being in his possession as such agent, for the purpose of raising any money by way of loans or advances required by the agent for carrying on his business in cotton, and any person, in whose favour any such pledge, mortgage or dispose, is effected shall have had if the agent were the owner of stocks of cotton so pledged, mortgaged or otherwise disposed of, as the case may be.

(c) the terms and conditions of appointments of agents shall be such as may be mutually agreed upon between the State Government and the agent concerned."

18. The State Government under Section 42 of the Act of 1971 appointed the Maharashtra Cooperative Marketing Federation, a cooperative Society as the chief agent to implement the cotton monopoly procurement scheme. The marketing federation was before that date engaged in the marketing of several commodities. From that date onwards till 31.8.1984, it continued to act as the chief agent of the State Government for procurement, processing, and marketing of cotton, as well. The cotton scheme introduced by the Government has three aspects - (i) procurement (ii) processing, and (iii) marketing. The cotton

21

trade is mostly in Vidarbha, Marathwada, and in Khandesh Region. Thus, the contention of the federation that the federation belonging to and under the control of the Government performing the functions of the State Government, which were delegated to the federation on account of powers of the State Government under Section 42 of the Act of 1971, is established by the federation on the basis of the above Notifications published in the Government Gazette.

19. The federation has adduced its evidence to prove the same before the ESI Court. The evidence was also adduced by producing the said Notification before the ESI Court. However, the ESI Court held that the federation has failed to place on record the particulars and details showing the wages of the employees under question for whom the contribution is claimed. The ESI Court further held that it is for the federation to show that the employees which are covered under the provisions of the ESI Act, they are exempted because their wages are exceeding limits of wages prescribed in the Act. The coverage is under Section 1(5) of

22

the ESI Act because of the activities conducted by the federation as per the Notification dated 19.11.1976.

20. Learned senior counsel Shri M.V.Samarth for the federation submitted that merely because the federation is registered under the Bombay Shops and Establishment Act, 1948, it does not take away its character since the Government owns and controls the federation as the entire provisions of the Act of 1971 and bye-laws of the society demonstrate that the federation is not a commercial establishment. No manufacturing is carried out by the federation. So, it is not the commercial establishment. Moreover, the activities of the federation are seasonal in nature and on that ground also the provisions of the ESI Act are not applicable to the federation.

21. On the contrary, learned counsel Mrs.B.P.Maldhue for the ESI Corporation submitted that the federation is covered under Section 1(5) of the ESI Act as it is a shop in view of Notification dated 19.11.1976. The ESI Act has been enacted to provide certain benefits to the employees in case of sickness, maternity and employment injury. Thus, the Act

23

aims at providing a remedy for the widespread evils resulting from the national poverty and is a piece of social security legislation. She placed reliance on the Notification dated 19.11.1976 which says that in exercise of powers referred by sub Section (5) of Section 1 of the ESI Act, the Government of Maharashtra having already given six months' notice as required by said sub section (5), under the Government Notification, Urban Development, Public Health, and Housing Department No.ESI-1374/1/47/8 dated 7.11.1974 whereby appoints the 27th day of November 1976 as the date on which all the provisions of the said Act shall extend to the classes of establishments mentioned in column I of Schedule hereto appended in the areas specified in column 2 of that Schedule. As per column I of Schedule, "any premises including the precincts thereof whereon ten or more persons but in any case less than 20 persons are employed or were employed for wages on any day of the preceding twelve months, such in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on; but excluding a subject to the operation of the Mines Act 1952 of a Railway Running shed or an Establishment which is

24

exclusively engaged in any of the manufacturing process specified in clause (12) of Section 2 of the Employees' State Insurance Act, 1948. Sub clause (2) of the said Schedule shows that any premises including precincts thereof whereon twenty or more persons are employed or employed for wages on any day of preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on but excluding a time subject to the operation of the Mines Act, 1952 or a railway running shed or an establishment which is exclusively engaged in any of the manufacturing process specified in clause (12) of the Section 2 of the Employees' State Insurance Act, 1948.

22. Thus, the schedule shows that the provisions of the ESI Act are applicable to the premises whereon ten or more persons and less than twenty persons are employed or were employed for wages on any day of the preceding twelve months. The main contention of the ESI Corporation is that as the federation is involved in purchase of cotton, sell of cotton bails, and seeds and, therefore, the federation is covered under the definition of shop under Section 1(5) of

25

the ESI Act. Whereas, as per the contention of the federation, the federation was constituted under Section 42 of the Act of 1971. It is submitted that by learned senior counsel Shri M.V.Samarth for the federation that the federation is belonging to and is under total control of the Government. In view of Section 42 of the Act of 1971, the employees of the federation are getting better facilities, as such the provisions of Section 1(5) of the ESI Act are not applicable to the federation. It is further submitted that there is no manufacturing process carried out by the federation nor it is a commercial establishment required to be registered under the Bombay Shops and Establishment Act and, therefore, the provisions of the ESI Act are not applicable to the federation as the federation's activities are of seasonal nature.

23. Before considering the applicability of the provisions of the ESI Act, it is necessary to see short title, extent, commencement and application. The ESI Act is applicable to whole of India. Section 1(4) of the ESI Act reads as under:

26

“It shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories.

Provided that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.”

24. Thus, in view of Section 1(4) of the ESI Act, the provisions of the ESI Act are applicable to all factories including the Government factories and excluding the seasonal factories. The proviso clarifies that these provisions are not applicable to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under ESI Act.

25. Section 1(5) of the ESI Act states that the appropriate Government may, in consultation with the Corporation and (where the appropriate Government is a State Government, with the approval of the Central Government), after giving (one month's) notice of its intention of so doing by notification in the official gazette,

27

extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

The proviso to Section 1(5) of the ESI Act states that where the provision of this Act have been brought into force in any part of the State, the said provision shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.

26. Thus, Section 1(5) of the ESI Act states that the appropriate Government has powers to apply the provisions by issuing notification to any establishment or class of establishments, industrial, commercial, and agricultural.

27. As the ESI Corporation has raised the issue that the federation is a shop within the meaning of the definition given under the Bombay Shops and Establishment Act, admittedly, the definition of shop is not defined under the ESI Act. The Dictionary of Law Lexicon defines "shop, a place where things are kept for sale, usually in small quantities to

28

the actual consumers. By the Shops Act, 1912, Section 19, 'shops' includes any premises where any 'retail trade or business' is carried out; 'retail trade or business' includes the business of a barber, hairdresser, but not the sale of programmes etc..

28. In the case of **M/s. Hindu Jea Band, Jaipur vs. Regional Director, Employees' State Insurance Corporation, Jaipur**, reported in **AIR 1987 (SC) 1166**, the Honourable Apex Court held that the word shop has not been defined in the Act. A shop is no doubt an establishment (other than a factory) to which the Act can be extended under Section 1(5) of the Act provided other requirements are satisfied. In Collins English Dictionary the meaning of the word 'shop' is given thus: "(i) a place especially. a small building for the retail sale of goods and services and (ii) a place for the performance of a specified type of work; workshop." It is obvious from the above meaning that a place where services are sold on retail basis is also a shop.

29. In the case of **International Ore and Fertilizers (India) Private Limited vs. Employees' State Insurance**

Corporation, reported in (1987)4 SCC 203, the Honourable Apex Court held that The word "shop" is not defined in the Act or in the notification issued by the State Government. According to the Shorter Oxford English Dictionary the expression "shop" means "a house or building where goods are made Or prepared for sale and sold". It also means a "place of business" or "place where one's ordinary occupation is carried on". In ordinary parlance a "shop" is a place where the activities connected with the buying and selling of goods are carried on. Considering the applicability of the ESI Act, the Honourable Apex Court held in the said judgment that in our view the Employees' Insurance Court placed a very narrow interpretation on the expression "shop" while upholding the contention of the petitioner by confining "shop" to a place where goods are actually stored and delivered pursuant to a sale. We agree with the decision of the High Court that while construing a welfare legislation like the Act and the notification issued thereunder a liberal construction should be placed on their provisions so that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified.

30

30. The definition of seasonal factory is also material here in the present cases. Section 2(12) of the ESI Act defines as regards the "factory" and Section 2(19-A) defines "seasonal factory" means a factory which exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar, including (gur) or tea or any manufacturing process which is identical to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year – (a) in any process of blending, packing or repacking of tea or coffee or (b) in such other manufacturing process as the Central Government may by notification in the official gazette.

31. Admittedly, in view of Section 1(4) of the ESI Act, all the factories including factories belonging to the Government to whom the provisions of the ESI Act are made applicable. Section 1(4) of the ESI Act excludes the seasonal factories. The definition of the seasonal factories shows that seasonal factories are those which are involved in

31

manufacturing process namely cotton ginning, cotton jute pressing etc.. The federation is a society registered under the provisions of the Societies Act 1960. It carries the work of procurement of raw cotton under the said Act. The federation is the chief agent of the Government of Maharashtra aided and controlled entirely by the Government of Maharashtra. As per the contention of the federation, the entire activities of the federation are, therefore, purely seasonal which are carried out through private ginning and pressing factories during the cotton season. The federation was appointed as a chief agent under Section 42 of the Act of 1971. The Act of 1971 is enacted and extended to whole the State of Maharashtra. In view of definition of Section 2(j), cotton season means the period from the first day of July of any year to the 30th day of June of the next year both days inclusive. Section 42 of the Act 1971, deals with the powers to delegate and to appoint the agent. In view of Section 42 of the Act of 1971, the federation was appointed as a chief agent. The Notification dated 29.6.1972 shows that Section 42(2) of the Act of 1971 provides for appointment of agents. The Government has decided that

32

the Maharashtra Marketing Federation Limited should be appointed as chief agent for the purpose of purchasing, selling, storing, processing, marketing and carrying on other business in cotton on behalf of the Government. The Notification dated 12.2.1974 discloses that the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971 was brought into operation on 1.8.1972 with a view, *inter alia*, enabling the growers of cotton in the State to get remunerative prices for their crop. The operation of the scheme during the cotton season 1972-1973 showed good results as the growers of cotton were not only paid prices for their produce at the guaranteed prices declared by the Government of Maharashtra, but also assured a substantial bonus from the profits accruing under the scheme.

32. The entire issue revolves around whether the federation is a seasonal factory and, therefore, the federation is exempted from the provisions of the ESI Act. The another ground raised is that when the better facilities are already available to the employees of the federation, the provisions of ESI Act are not applicable to the federation. It is vehemently submitted that if the better facilities are available, in view of

33

proviso of Section 1(4), the provisions of the ESI Act are not applicable to the federation.

33. The Honourable Apex Court has determined and defined the cotton season in the case of **Kapus Ekadhikar Karmachari Sangh vs. State of Maharashtra and another** cited *supra* by observing that the State Government under Section 42 of the Act of 1971, appointed the Maharashtra Cooperative Marketing Federation, a cooperative society as the chief agent to implement the Cotton Monopoly Procurement Scheme. The marketing federation was before that date engaged in the marketing of several commodities. From that date onwards till 31.8.1984 it continued to act as the chief agent of the State Government for procurement, processing and marketing of cotton as well. For this purpose, it recruited and maintained a separate section with a separate staff. The staff consisted of those who were needed through out the year and those who were needed only during the season. The cotton trade (which expression will include procurement, processing, and manufacturing of cotton) is mostly in Vidarbha, Marathwada, and Khandesh Region, and commences roughly in the first week of

34

November and extends up to April of the next year. The cotton scheme introduced by the Government has three aspects (i) procure, processing, and (3) marketing. The first two activities extend over four to six months in a year depending upon the extent of the availability of the crop and the third stage is that the marketing and also the function of maintenance of account are spread over throughout the year. The seasonal employees engaged in the said two activities consist of supervisors etc. who worked at the collection centres and the processing centres. On an average, the seasonal employees are about twice the number of the perennial employees. The Honourable Apex Court further in paragraph No.6 observed that this is clear from the following observations that, although some attempt was made before us on behalf of the respondent-Union to show that the operation of procuring and processing of cotton is carried on throughout the year, there is nothing on record to support the said contention. On the other hand, the record shows that out of the three operations under the Scheme, the procurement and processing of cotton lasts on an average only for six months from November to April in the principal

35

cotton regions, viz., Vidarbha, Marathwada and West Khandesh and rarely extends beyond that period depending upon the cotton crop. It is further held that it is only the operation of marketing which goes on throughout the year and for the marketing as well as for the maintenance of accounts the staff is needed throughout the year. Thus, the Honourable Apex Court held that the procurement and processing of the cotton is a seasonal activity.

34. In another judgment, the Honourable Apex Court, in the case of **The Regional Director, Employees' State Insurance Corporation vs. High Land Coffee Works of PFX Saldanha and Sons and others** cited *surpa*, has defined "seasonal factory" with reference to Section 1(4) of the ESI Act which excludes the "seasonal factory" from the scope of Act and held that seasonal factory means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton, ginning, cotton or jute pressing. decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental.

36

35. The Honourable Apex Court in the above said judgment interpreted that after the amendment vide Amendment Act 44 of 1966 which came into effect from 20.1.1968, the definition of seasonal factory has been amended. After the said amendment, the ESI Corporation called upon the respondent to pay the contribution payable under the Act and threatened to take coercive steps to recover the arrears under the Revenue Recovery Act and prosecute them. The validity was challenged before the Honourable Apex Court and the Honourable Apex Court held that the sole question for consideration is whether the respondents' factories in view of the amendment to the definition of 'seasonal factory' have lost the benefit of exclusion from the Act. The High Court on this aspect has observed that the purpose of the amendment was to enlarge and not to restrict the statutory concept of 'seasonal factory' and the position of respondents establishments as seasonal factories under and for the purpose of the Act remained unaltered even after the amendment. The view taken by the High Court seems to be justified. The statement of Objects and Reasons of the Bill which later became the Act 44 of

37

1966 indicates that the proposed amendment was to bring within the scope of the definition of 'seasonal factory', a factory which works for a period of not exceeding seven months in a year - (a) in any process of blending, packing or repacking of tea or coffee; or (b) in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify. The amendment therefore, was clearly in favour of the widening the definition of 'seasonal factory'.

36. In view of the above interpretation, there is no dispute that the society being a cooperative society controlled by the State Government is of seasonal nature. Even if the contention of the ESI Corporation is taken into consideration that the federation is involved in the manufacturing process, the work of manufacturing is of seasonal nature and not carried out throughout the year. The various Government Notifications show that the federation was constituted to protect the farmers from the businessmen and to get remunerative prices enabling the growers of cotton in the State by providing them guaranteed price declared by the State of Maharashtra and also assured a

38

substantial bonus to each farmer from the profits accruing under the Scheme. The federation is belonging to and is controlled by the Government performing the functions and in view of Section 42 it was appointed as a chief agent.

37. As already observed by the Honourable Apex Court that the cotton trade which includes procurement, processing and manufacturing of cotton is mostly in Vidarbha Marathwada and Khandesh Region in Maharashtra. It is roughly commences in the first week of November and extends up to April of the next year. Thus, the activities like procurement and processing extend over 4-6 months in a year. However, the marketing activities run for whole year.

38. In view of the above observations and in view of the definition provided under Section 2(19-A) of the ESI Act, the federation, which is involved in the manufacturing process namely cotton ginning and cotton pressing which is not exceeding more than seven months in a year, is covered under the seasonal factory.

39. Though it is vehemently submitted by the ESI Corporation that the federation is involved in a business of

raw cotton, ginning of raw cotton, pressing of ginned cotton into full pressed bail and sale of full pressed bails which are manufacturing process and, therefore, the federation is covered under the shop, the same is not acceptable. The process of procurement and manufacturing is seasonal in nature.

40. Learned counsel Mrs.B.P.Maldhure for the ESI Corporation has placed reliance on the decision of the Karnataka High Court in the case of **Karnataka State Cooperative Marketing Federation vs. Regional Director, Employees' State Insurance Corporation** cited *supra*. However, in view of the observation of the Honourable Apex Court, the activities of the federation are seasonal in nature and, therefore, in view of Section 1(4) of the ESI Act, the federation is exempted from the applicability of the provisions of the ESI Act. The provisions of the ESI Act are further not applicable to the federation as the federation is providing group personal policy which is an insurance scheme for the employees in case of personal accident. The federation has established a staff benevolent fund as well as medical reimbursement facilities. Thus, the employees

working in the federation are getting similar type of benefits which are given under the ESI Scheme. Thus, in view of the proviso to Section 1(4) of the ESI Act, the federation is exempted from contributing to the ESI Scheme and the employees are in receipt of benefits substantially similar or superior to the benefits provided under the ESI Act.

41. It is true that the provisions of the ESI Act being welfare legislation aim at providing benefits to the employees. At the same time, the seasonal factories are excluded from the applicability of the said Act. In view of the proviso to Section 1(4) for the ESI Act, an exemption is granted if employees are getting similar types of benefits under the other schemes. The federation has established that it covers under the seasonal factory and, therefore, it is exempted under the provisions of the ESI Act. The ESI Court had not considered the same and erroneously rejected the applications.

42. In view of the well accepted statutory construction by the Honourable Apex Court that the work of manufacturing and procurement of cotton extends at the

41

most five to six months and, therefore, the federation is covered under the seasonal work, the decision of the ESI Court is erroneous and liable to be set aside. As such, the appeals deserve to be allowed by holding that the activities carried out by the federation are of seasonal nature and the federation is exempted in view of Section 1(4) of the ESI Act being the seasonal factory and is also exempted in view of proviso to Section 1(4) of the ESI Act as similar types of benefits the employees are receiving. In the result, this Court passes following order:

ORDER

(1) The First Appeals are allowed.

(2) The judgment and order dated 13.2.2008 passed by learned Judge of the Employees' State Insurance Court at Nagpur in Application (ESI) Nos.2 to 19/2003 holding the federation liable to pay contribution under the Employees' Insurance Scheme is set aside.

(3) It is held that the federation is not liable to pay contribution under the Employees' Insurance Scheme

Judgment

35 fa599.08 & connected appeals

42

(4) The federation is at liberty to move appropriate proceeding to recover the amount, if any, is deposited.

The First Appeals are disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

...../-