IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1086 OF 1998

Satvichar Darshan)
a Public Trust registered)
under the Bombay Pubic)
Trust Act, 1950, having its)
Office at Vimal Jyoti, 6/8,)
Wilson Street,)
Mumbai 400 004, and their)
factory known as)
Prabhodhak Mudralaya,)
situate at 257, A-Z)
Industrial Estate, Ganpatrao)
Kadam Marg, Lower Parel,)
Mumbai – 400 013) .... Appellant

Versus

1. The Regional Director)
Employees State Insurance)
Corporation, Colaba,)
Mumbai – 400 005)

2. The Recovery Officer,)
Old Customs House)
Mumbai) .... Respondents

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Mr. Anand Pai a/w. Mr. Rahul Sanghvi, Netaji Gawade and Mr. Nayan Bhalekar i/b. M/s. Sanjay Udeshi & Co. Advocate for Appellant.
None for Respondents.

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CORAM : M.M. SATHAYE, J.

RESERVED ON : 29th NOVEMBER 2023

PRONOUNCED ON : 5th JANUARY, 2024

JUDGMENT (Per M.M. SATHAYE, J.)

1. This is an appeal under section 82 of the Employees State Insurance Act, 1948 **('the said Act' for short)**, filed by the Appellant-Trust, challenging the Judgment and Order dated 16/12/1997 passed by the Judge of Employees Insurance Court, Mumbai in Application (ESI) No. 107 of 1990. By this impugned Order, the Order dated 12/06/1990, passed by the Deputy Regional Director under section 45-A of the said Act is confirmed. Under the said Order dated 12/06/1990, payment was directed to be made towards contribution for a period from July 1982 to September 1984 alongwith interest for the employees of the Appellant-Trust.

2. Heard learned counsel for the Appellant. None appeared for Respondents despite due service. The circumstances under which this Appeal was finally heard and closed for judgment, are recorded in Order dated 29/11/2023.

Appellant's Case

3. The Appellant is a public charitable trust having its Office at Vimal Jyoti, 6/B, Wilson Street, Bombay – 400 004. It owns a printing press called 'Prabhodhak Mudranalaya' **('the said Printing Press' for short)**. The said Printing Press is a separate establishment registered under the said Act on 12/11/1978. The address of the said

Printing Press is 257, A-Z Industrial Estate, Ganpatrao Kadam Marg, Lower Parel, Mumbai, which is distinct and separate from the address of the Appellant-Trust.

4. The main activity of the Appellant-Trust is to impart education for the masses in Indian culture and philosophy and for this purpose, the Appellant tapes and records lectures of Revered Pandurang Shashtriji Athavale and these lectures are written in multiple languages to be circulated worldwide and kept ready for printing. The Appellant-Turst is admittedly not a commercial organization and it is a public charitable trust. Therefore, the provisions of the Income Tax Act are not applicable to the Appellant-Trust. Similarly, other applicable provisions such as the provisions of the said Act are also not applicable to the Appellant-Trust. Though the Appellant-Trust owns the said Printing Press, the press is run independently and has its own Managerial staff. Since the said Printing Press has more than 10 employees, it is a separate establishment registered under the said Act.

5. The dispute arises because despite specific correspondence, which is placed on record before the lower authorities, the impugned Orders hold that the employees of the Appellant-Trust are liable to be covered as employees of the Printing Press, under the provisions of the said Act.

Appellant's first submission

6. At the outset, learned counsel Mr. Pai submitted that although the Appellant-Trust is not a party in application before the lower authorities, it can still maintain this Appeal because the impugned Order directly affects the Appellant-Trust in as much as the Appellant-Trust's employees are sought to be included as employees of the said Printing Press and therefore, the Appellant is squarely an aggrieved party. On the basis of these submissions, the Appellant sought leave of the Court to prefer, maintain and press the present Appeal.

7. This aspect, being that of the Appellant's *locus-standi*, is taken up forthwith for consideration. It is trite law, settled way back in the year 1949 by the division bench of this Court in the case of **The Province of Bombay V. Western India Automobile Association and Ors. AIR 1949 Bom 141**, that if a party is affected by any Order or Decree, he can prefer an Appeal challenging it, even if he is not a party to the proceedings before the lower Court, provided that such party seeks leave of the Court.

8. Indeed, effect of the impugned Order is that the employees of the Appellant-Trust are included under the purview of the said Act and payment of contribution for the period July 1982 to September 1984 for those employees are held to be proper and legal.

Therefore, obviously the impugned Order affects the Appellant-Trust. Also it is clear from the cause title of the Appeal memo that the said Printing Press which was Applicant before the Employees Insurance Court is also an Appellant. Therefore, I hold that the Appellant-Trust can file, maintain and press this Appeal. Leave to file this Appeal is granted. Record anyway shows that this appeal is already admitted on 27/11/1998.

Appellant's other submissions

9. Mr. Pai invited this Court's attention to the communications dated 01/06/1984 and 07/12/1989 by the said Printing Press with the authorities under the said Act. He submitted that under the said communications, the concerned authorities were made aware that the establishments of the Appellant-Trust and the said Printing Press are two distinct and separate entities and cannot be considered as one. He submitted that the main activity of the Trust is already informed to the concerned authorities, under the said communications. He submitted that the Appellant being a Public Charitable Trust, is not engaged in any commercial activities, it is neither a factory nor an establishment and as such the provisions of the said Act cannot be held applicable to the Appellant-Trust and its employees. He further submitted that the issue involved in this matter is not about money which is directed to be paid under the

impugned Orders, but the issue is purely of legal nature and the Appellant-Trust is pressing this Appeal in principle to vouch for its clear stand that its employees cannot be brought under the purview of the said Act.

10. Without prejudice to the aforesaid arguments, Mr. Pai further submitted that the said Printing Press is covered under the Factories Act and carrying out manufacturing activities covered under the said Act. When the said Printing Press is separately registered under the said Act, duly paying its contribution, merely because the salary and records of the Appellant-Trust as well as that of the said Printing Press are maintained together by the Appellant-Trust, it cannot be a ground to treat the employees of both the establishments (Appellant-Trust and the said Printing Press) as employees of Printing Press. For this submission the Judgment of the Hon'ble Supreme Court in the case of **Isha Steel Treatment, Bombay V. Association of Engineering Workers Bombay and Anr. (1987) 2 SCC 203,** especially para 9 thereof is relied upon.

11. As already explained earlier, none appeared for the Respondents to counter the arguments advanced on behalf of the Appellant. But from the impugned order, it can be seen that the Respondents' case is that the Appellant-Trust is exercising absolute financial and administrative control over the said Printing Press.

According to them, the activities of the said printing press and that of the Appellant-Trust are inseparable and inter-connected. It is their case that for execution of printing work of the Appellant-Trust, the said Printing Press does not keep written records such as challans, orders etc. and this shows that the Appellant-Trust is exercising absolute control over the affairs of the said Printing Press. Therefore, it is the case of the Respondents that the employees working for the Appellant-Trust come under the definition of employees under section 2(9) of the said Act.

12. In view of rival claims, following substantial question of law is framed and considered, as required under section 82(2) of the said Act :

"Whether the lower Authorities were justified in treating the Appellant-Trust's employees as employees of the said Printing Press and bring them within the purview of the said Act, when the said Printing Press is already a separate entity registered under the said Act, paying contribution for its employees ?"

The Answer is "NO".

REASONS AND CONCLUSIONS

13. Perusal of the communications/letters dated 01/06/1984 and 07/12/1989 indeed shows that it was specifically communicated

to the concerned authorities that Appellant-Trust's Office does not supervise the work of the said Printing Press, who has its own staff and the said Printing Press is an independent entity by itself. It is clearly informed that the Manager and other employees of the said Printing Press are paid from the Press itself and there is no connection whatsoever between the Appellant-Trust Office and the Press. It was also communicated that the Press functions independently for its day-to-day activities. The salary sheet of the Press is separately prepared and maintained and day-to-day transactions of the Press, such as cash book etc. is also maintained by the Press independently. It was clearly stated that employees working in the Appellant-Trust Office are not in any way connected with the activities of the Press. In the said letter, there is clear readiness shown by the Press to disclose all the records to prove its claim and a request was made that the said Act should not be made applicable to the Appellant-Trust.

14. Perusal of communication dated 07/12/1989 also shows that it was clearly pointed out to the Respondents' authorities that they are wrongly clubbing the activities of the Appellant-Trust and the said Printing Press together. It was further informed that working of the Trust was looked after separately by the Manager and by separate staff. It was specifically communicated that all dues payable under the said Act are being paid by the said Printing Press regularly

till date and therefore, the unilateral decision to treat the staff of the Appellant-Trust within the purview of the said Act, should be reconsidered.

15. In view of the said clear communications, the authorities under the said Act were obviously expected to verify the records of both the Appellant-Trust and the said Printing Press and take a decision. The said Printing Press, which was a party before the authorities had examined the erstwhile Trustee of the Appellant-Trust who has supported the case of the Appellant.

16. Perusal of the impugned Order shows that the authority has gone into the object and purpose of the Trust which includes organizing a Printing Press for printing magazines and books published by the Trust. It is held that from the said object, it is clear that the said Printing press is established by the Trust for its own purpose. It is therefore, found appropriate by the concerned Judge to presume that the work of the Press is incidental to the objects of the Trust and the Press exclusively works for the Trust. The impugned Order records that there is no specific evidence to show that the said Printing Press is also taking job works of other persons. The learned Judge has found that the accounts regarding payment of wages are maintained in common and therefore, the employees working in the Head Office of the Appellant-Trust shall also be considered for the

payment of contribution, as there is common ledger for payment of wages to the employees of Printing Press as well as the Trust.

17. I have carefully considered the submissions advanced on behalf of the Appellant-Trust. It is not disputed that the said Printing Press is a separately registered entity under the provisions of the said Act and it is paying its contribution for its employees. When this is the position (duly communicated to the Respondents' authorities), simply because the salaries and/or records of the Appellant-Trust and the said Printing Press are maintained together, it cannot be said that the two establishments are one and same and it can not make employees of the Appellant Trust as employees of the Printing Press. The Judgment of the Hon'ble Supreme Court in the case of ***Isha Steel (supra)*** is found appropriately supporting the case of the Appellant. In that case also the authorities had taken the stand that because the accounts of Provident fund and Employees' State Insurance (PF & ESI) had common numbers, two units of the factory should be treated as one having functional integrality. However, this interpretation was rejected by the Hon'ble Supreme Court.

18. Provisions of Section 45A of the said Act shows that the amount of contribution payable in respect of the employees can be ordered only in respect of 'a factory or establishment'. In the present case, the Appellant-Trust is neither a factory nor an establishment as

contemplated under the said Act. For achieving its object, the Appellant-Trust tapes and records the discourses by Revered Pandurang Shashtriji Athavale and the written form of the lectures are circulated in multiple languages. The actual work of the printing is done by the said Printing Press which is already registered under the said Act and is duly paying its contribution. In the oral deposition, the Appellant's Trustee at the relevant time – Mr. Krishnakumar Mehta has clearly stated that even other printing press are utilized by the Appellant-Trust for its printing work. In fact the witness of the Respondents – its Officer Mr. Jayasinha Pawar has admitted that in the records he inspected, the staff members were not the employees of the Printing press but were of the head office (meaning Appellant-Trust). As such, there is no occasion to treat the Appellant-Trust's employees under section 2(9) of the said Act as employees of the said Printing Press.

19. In that view of the matter, there is merit in the Appeal. The impugned Order has not considered the aspect narrated above in proper perspective. Therefore, in the opinion of this Court, the act of including the employees of the Appellant-Trust within the purview of the said Act is illegal and not sustainable.

20. The Appeal is therefore allowed. The impugned Judgment and Order dated 16/12/1997 is quashed and set aside.

Application (ESI) No. 107 of 1990 is allowed. The Order dated 12/06/1990 passed by Deputy Regional Director of the ESI Corporation is quashed and set aside. There shall be no order as to costs.

21. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)