SUPREME COURT OF INDIA

Bangalore Turf Club Ltd.

Vs.

Regional Director, ESI Corporation

C.A.No.2416 of 2003

(Markandey Katju and H.L. Dattu JJ.)

28.04.2009

ORDER

Heard learned counsel for the parties. The short question involved in these cases is whether the appellant Turf Clubs are covered by the Employees' State Insurance Act, 1948 (for short the 'ESI Act'). Under Section 1 sub-section (5) of the ESI Act all establishments are not automatically covered by the said Act but only such establishments as are mentioned in the notification issued by the appropriate Government under Section 1(5). This provision is not like sub-section (4) of Section 1 by which all factories are automatically covered by the ESI Act. The notifications issued under Section 1(5) in these cases use the word 'shop' and it has been held by the impugned judgments in these cases that the turf clubs are shops. Reliance in this behalf has been placed on the judgment of this Court in the case of Employees State Insurance Corpn. Vs. Hyderabad Race Club 2004 (6)SCC,191. With great respect to the aforesaid decision in the case of Hyderabad Race Club (supra), we think that the said decision requires reconsideration. In common parlance a club is not a shop. The word 'shop' has not been defined either in the ESI Act nor in the notification issued by the appropriate government under Section 1(5). Hence, in our opinion, the meaning of 'shop' will be that used in common parlance. In common parlance when we go for shopping to a market, we do not mean going to a racing club. Hence, prima facie, we are of the opinion that the appellant-club is not a shop within the meaning of the Act or the notification issued by the appropriate government. In our opinion, the error in the judgment in the case of Hyderabad Race Club (supra) is that it has been presumed therein that all establishments are covered by the Act. That is not correct. Only such

establishments are covered as are notified under Section 1(5) in the official gazette. The High Court in the impugned judgment has placed reliance on the judgment of this Court in the case of Bangalore Water Supply & Sewerage Board Vs. A. Rajappa & Ors.1978(2) SCC, 213. In our opinion,reliance on the aforesaid decision is wholly misplaced. The definition of 'industry' in the Industrial Disputes Act is very wide as interpreted in the aforesaid decision. We cannot apply the judgment given under a different Act to a case which is covered by the ESI Act. Under various labour laws different definitions have been given to the words 'industry' or 'factory' etc. and we cannot apply the definition in one Act to that in another Act (unless the statute specifically says so). It is only where the language used in the definition is in pari materia that this may be possible. Hence, we are of the opinion that the decision of this Court in the case of Hyderabad Race Club (supra) should be reconsidered by a larger Bench. In the meantime, the respondents shall not raise any demand against the appellant-clubs. Let the papers of these cases be placed before Hon'ble the Chief Justice of India for constituting an appropriate Bench.