SUPREME COURT OF INDIA

Bangalore Turf Club Ltd.

Vs.

Regional Director, Employees State Insurance Corporation

C.A.Nos.2416 of 2003, 49 and 1575/2006, 3421, 3422 and 6212/2012

(H.L. Dattu, R.K. Agrawal and Arun Mishra JJ.)

31.07.2014

JUDGMENT

H.L. DATTU, J.

CIVIL APPEAL NO. 2416 OF 2003, CIVIL APPEAL NO. 49 OF 2006, CIVIL APPEAL NO. 1575 OF 2006, CIVIL APPEAL NO. 3421 OF 2012 AND CIVIL APPEAL NO. 3422 OF 2012

1. The issue that arises for our consideration and decision is, 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 (for short, "the ESI Act").

2. The matter is referred to three-Judge Bench of this Court as two-Judge Bench of this Court is of the view that the decision of two-Judge Bench of this Court in the case of Employees State Insurance Corporation v. Hyderabad Race Club MANU/SC/0554/2004 : (2004) 6 SCC 191 may require reconsideration. By the aforesaid judgment, it was observed by this Court that 'race-club' is an 'establishment' within the meaning of the said expression as used Under Section 1(5) of the ESI Act. The order of reference reads as under:

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 '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 Corporation v. Hyderabad Race Club MANU/SC/0554/2004 : 2004 (6) SCC 191.

With great respect to the aforesaid decision in the case of Hyderabad Race Club (supra), we think that the said decisions 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 and Sewerage Board v. A. Rajappa and Ors. MANU/SC/0257/1978 : 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.

3. By the said referral order dated 28.04.2009, it is the view of the two-Judge Bench of this Court that in view of the meaning as used in common parlance, the term 'shop' may not include racing clubs as stated by this Court in the Hyderabad Race Club case (supra). Therefore, prima facie, the view of this Court is that the Appellant-Turf Clubs would not be a shop for the purpose of the ESI Act or notifications issued thereunder. It is further observed that the meaning of 'shop' will be that as would be used in common parlance.

ISSUES:

4. The issues that arise for our consideration and decision are firstly, whether the judgment in the Hyderabad Race Club case (supra) was correct in holding that a 'race-club' is an "establishment" for the purposes of the ESI Act, and secondly, whether the Appellant-Turf Clubs fall within the scope of the definition of the word 'shop' as categorised in the notifications.

RELEVANT PROVISIONS:

5. To appreciate the view points of the learned Counsel, we require to notice certain provisions of the ESI Act. The relevant sections are Sub-section (4) and

Sub-section (5) of Section 1 of the ESI Act, and further the respective impugned notifications in the present set of appeals. The relevant provisions are reproduced:

> 1. Short title, extent, commencement and application.-
>
> ...
>
> (4) It shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories.
>
> ...
>
> (5) 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, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.
>
> ...

6. Sub-section (4) of Section 1 provides that the ESI Act shall apply to all factories including factories belonging to the Government other than seasonal factories. Sub-section (5) of Section 1 enables the appropriate Government to extend the provisions of the ESI Act to any other establishment or class of establishments-industrial, commercial, agricultural or otherwise. The State Government is empowered, subject to the conditions specified in the aforementioned provision, to extend the provisions of the ESI Act, by issuing a notification in the official gazette, to any establishment or class of establishments as specified therein. This Sub-section is an enabling conditional legislation.

7. The meaning of the words 'or otherwise' after the words "industrial, commercial or agricultural" establishments in Sub-section (5) of Section 1 indicate that the Government can extend the ESI Act or any portion thereof to any other establishment or class of establishments. The genus lies in the words 'any other establishment or class of establishment'. The three words industrial, commercial and agricultural represents a specie. Since the legislature did not want to restrict

the operation of the ESI Act to these three species has used the catch words 'or otherwise'.

8. The Notification that prompted the Appellant-Bangalore Turf Club Limited to initiate proceedings before various forums read as under:

> NOTIFICATION
>
> In exercise of the powers conferred by Sub-section (5) of Section 1 of the Employee's State Insurance Act, 1948 (34 of 1948) the Government of Karnataka having already given six months' notice as required there under, vide the Government of Karnataka Notification No. SWL/134/LSI/76 dated 19.12.1976 published in the State Gazette (Extraordinary) dated 19.12.1976 hereby appoints 27th January 1985 as the date on which all provisions of the said act shall extend to the classes of establishments and in the area specified in the schedule annexed hereto:

SCHEDULE

Description of Establishment	Name of the Centre	Area in which establishments are situated
1. ...		
2. ...		
3. Shops, Road Motor Transport Establishments, Cinema including preview theatres and newspaper Establishments which are employing or were employing twenty or more persons for wages on any days of the preceding twelve months.		

..."

9. In view of the aforesaid Notification issued by the Government of Karnataka, the ESI Corporation had directed the Appellant-Bangalore Turf Club Limited to make contributions with regard to all its employees in accordance with the provisions of the ESI Act, since the race-club is covered under the term 'shop' as enumerated in the notification.

10. Similarly, as regards the Royal Western India Turf Club Ltd., the Government of Maharashtra issued a Notification No. ESI. 1677/3910/PH-15 dated 18.09.1978 whereby the State, exercising its power under Sub-section (5) of Section 1 of the ESI Act, extended the provision of the ESI Act to certain classes of establishments as found mentioned therein. The relevant portion of the notification reads as under:

> ...
>
> The following establishments wherein twenty or more employees are employed, or were employed for wages on any day of the preceding twelve months, namely:
>
> (i) hotels;
>
> (ii) restaurants;
>
> (iii) shops;
>
> (iv) cinemas, including preview theatres;
>
> and
>
> (v) newspaper establishments as defined in Section 2(d) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955).
>
> ...
>
> SUBMISSIONS:

11. Shri K.K. Venugopal, learned Counsel for the Appellant-Bangalore Turf Club Limited would submit, that, a shop cannot be said to include a race-club within its

definition. For this, he relies upon the definition clause under the Karnataka Shops and Commercial Establishments Act, 1961 (for short 'the Act, 1961'). He would submit that in the absence of a definition of the word 'shop' under the ESI Act, this Court should refer to definitions under the Act, 1961 as the two statutes are in pari materia with each other. It is further submitted that the meaning of 'shop' must be understood in common parlance, that is as per its traditional meaning. It is submitted that the Court should not prefer a liberal or expansive interpretation to ascertain the meaning of a 'shop', and that the literal rule of construction would be best suited to the given case. The learned Counsel would, in aid of his submissions rely on the view point expressed in the case of M/s. Hindu Jea Band v. ESIC (1987) 2 SCC 101; M/s. Cochin Shipping Co. v. ESIC (1992) 4 SCC 245; and Transport Corporation of India v. ESIC (2000) 1 SCC 332. It is further submitted that the case of ESIC v. R.K. Swamy and Ors. (1994) 1 SCC 445 and ESIC v. Hyderabad Race Club (2004) 6 SCC 191 requires reconsideration. He further submits that the common thread, as it would appear from the various judgments cited in this regard, for ascertaining whether a premises may be called a shop, would be that such a place is commonly used for the sale of goods or services or to facilitate the same.

12. Shri Venugopal would further submit that a club would not be covered under the scope and purview of 'shop'. It is submitted that a 'shop', in its traditional meaning, would necessarily be a building where goods are sold or kept for sale and therefore it would require a well-defined and enclosed premises. It is stated that a permanent structure consisting of four-walls and a roof would be essential for any premises or establishment to be called a 'shop'. Pictures of the race-club in question were displayed before this Court to show that the race-club had large open area for conducting the actual race, that is the track, stables, etc. Shri Venugopal would contend that the race-club in question cannot be called a 'shop' by any stretch of imagination as it lacked the necessary enclosed space or roof.

13. Shri C.U. Singh, learned Counsel appearing for the Royal Western India Turf Club Ltd., the Appellant in Civil Appeal No. 49 of 2006, while adopting the submissions of Shri Venugopal, would make reference to the definition clause of the Maharashtra Shops and Establishments Act, 1948 (for short "the Act, 1948") to ascertain the meaning of the word 'shop'. He further submits that the decision in

R.K. Swamy's case (supra) may be said to be a slight aberration in the line of cases preceding the given case. By this case, this Court observed that an advertising agency would be a shop for the purposes of the ESI Act. It is submitted that as there is no sale of goods or services in such premises, the Court should not have held it to mean a 'shop'.

14. Shri Singh, learned Counsel, would submit that the impugned notification must be interpreted in accordance with the Literal Rule of construction. He would submit that - firstly, where different words are used in the same statutory scheme, in the absence of a strong intent to the contrary, normally the courts should ascribe different meanings to the same; secondly, where words are plain and admit of a plain meaning, in the absence of a strong indication to the contrary, the plain meaning should be adopted; thirdly, literal interpretation should be preferred, unless it does violence to the scheme of the statute; and fourthly, an exact meaning should be preferred over loose meanings. He would refer to Principles of Statutory Interpretation, Justice G.P. Singh, 13th Edition to support the above contentions.

15. Per contra, Shri Krishnamani, learned Counsel for the Respondent-ESIC, would submit, that, in the absence of a definition under the ESI Act, dictionaries may be used as an external aid of construction. He further contends that it is inappropriate to refer to the definition of "shop" found in the Act, 1961 or the Act, 1948 as neither would be pari materia with the ESI Act. He further contends that the ESI Act is a beneficial legislation aimed at ensuring social security of employees and in view of the same the Court must adopt an expansive and liberal interpretation to achieve the objects and purpose of the ESI Act. Reference is made to the observations made in Cochin Shipping case (supra) and the R.K. Swamy's case (supra) and in Bombay Anand Bhavan Restaurant v. ESI Corporation (2009) 9 SCC 61. It is submitted that the nature of the activities of the race-clubs would be the same as the nature of the activities of a shop. For the said purpose, support is taken from the Memorandum of Association of the Bangalore Turf Club and to the impugned order of the High Court of Karnataka in Civil Appeal No. 2416 of 2003.

16. Shri Krishnamani, learned Counsel invites our attention to the doctrine of stare decisis and would submit that the principles utilized in interpreting and evolving

the term 'shop' by this Courts in the country, since the year 1987, are well-established principles of law. It is stated that the judgments rendered by this Court in its earlier decisions whereby the word 'shop' has been interpreted has been a binding precedent on all the High Courts across the country, as well as upon the ESI Court and therefore to alter such a position of law would be against the doctrine of stare decisis. It is stated that such an established principle of interpretation should not be deviated. To elaborate upon the maxim "Stare decisis et non quieta movere", he would refer to Krishena Kumar v. Union of India (1990) 4 SCC 207. Reference is also made to the principle as laid down in the case of Waman Rao v. Union of India (1981) 2 SCC 362 which was reiterated and explained in the case of Raju v. Union of India (2011) 2 SCC 132.

DISCUSSION:

17. The primary rule of interpretation of statutes may be the literal rule, however, in the case of beneficial legislations and legislations enacted for the welfare of employees, workmen, this Court has on numerous occasions adopted the liberal rule of interpretation to ensure that the benefits extend to those workers who need to be covered based on the intention of the Legislature.

18. The ESI Act is a welfare legislation enacted by the Central Government as a consequence of the urgent need for a scheme of health insurance for workers. It would be beneficial to reproduce the preamble of the ESI Act in this context. It is as under:

> An 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.

19. In the case of Regional Director, ESI Corporation v. Francis De Costa 1993 Supp (4) SCC 100 (at page 105), this Court, held that:

> 5. The Act seeks to cover sickness, maternity, employment injury, occupational disease, etc. The Act is a social security legislation. It is settled law that to prevent injustice or to promote justice and to effectuate the object and purpose of the welfare legislation, broad interpretation should be given, even if it requires a departure from literal construction. The court

must seek light from loadstar Articles 38 and 39 and the economic and social justice envisaged in the Preamble of the Constitution which would enliven meaningful right to life of the worker Under Article 21. The State is enjoined Under Article 39(e) to protect the health of the workers, Under Article 41 to secure sickness and disablement benefits and Article 43 accords decent standard of life. Right to medical and disability benefits are fundamental human rights Under Article 25(2) of Universal Declaration of Human Rights and Article 7 (b) of International Convention on Economic, Social and Cultural Rights. Right to health, a fundamental human right stands enshrined in socioeconomic justice of our Constitution and the Universal Declaration of Human Rights. Concomitantly right to medical benefit to a workman is his/her fundamental right. The Act seeks to succour the maintenance of health of an insured workman. The interpretative endeavour should be to effectuate the above. Right to medical benefit is, thus, a fundamental right to the workman.

6. Moreover, even in the realm of interpretation of Statutes, Rule of Law is a dynamic concept of expansion and fulfilment for which the interpretation would be so given as to subserve the social and economic justice envisioned in the Constitution. Legislation is a conscious attempt, as a social direction, in the process of change. The fusion between the law and social change would be effected only when law is introspected in the context of ordinary social life. Life of the law has not been logic but has been experience. It is a means to serve social purpose and felt necessities of the people. In times of stress, disability, injury, etc. the workman needs statutory protection and assistance. The Act fastens in an insured employment, statutory obligation on the employer and the employee to contribute in the prescribed proportion and manner towards the welfare fund constituted under the Act (Sections 38 to 51 of the Act) to provide sustenance to the workmen in their hours of need, particularly when they become economically inactive because of a cause attributable to their employment or disability or death occurred while in employment. The fact that the employee contributed to the fund out of his/her hard-earned wages cannot but have a vital bearing in adjudicating whether the injury or occupational disease suffered/contracted by an

employee is an employment injury. The liability is based neither on any contract nor upon any act or omission by the employer but upon the existence of the relationship which employer bears to the employment during the course of which the employee had been injured. The Act supplants the action at law, based not upon the fault but as an aspect of social welfare, to rehabilitate a physically and economically handicapped workman who is adversely affected by sickness, injury or livelihood of dependents by death of a workman.

(Emphasis supplied)

20. A three-Judge Bench of this Court, in reference to the ESI Act, in the case of Transport Corporation of India v. ESI Corporation (2000) 1 SCC 332 (at page 357), held that:

27. Before parting with the discussion on this point, it is necessary to keep in view the salient fact that the Act is a beneficial piece of legislation intended to provide benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. It is enacted with a view to ensuring social welfare and for providing safe insurance cover to employees who were likely to suffer from various physical illnesses during the course of their employment. Such a beneficial piece of legislation has to be construed in its correct perspective so as to fructify the legislative intention underlying its enactment. When two views are possible on its applicability to a given set of employees, that view which furthers the legislative intention should be preferred to the one which would frustrate it....

28. Dealing with this very Act, a three-Judge Bench of this Court in the case of Buckingham and Carnatic Co. Ltd. v. Venkatiah AIR 1964 SC 1272 speaking through Gajendragadkar, J., (as he then was) held, accepting the contention of the learned Counsel, Mr. Dolia that:

It is a piece of social legislation intended to confer specified benefits on workmen to whom it applies, and so, it would be inappropriate to attempt to construe the relevant provisions in a technical or a narrow sense. This

position cannot be disputed. But in dealing with the plea raised by Mr. Dolia that the section should be liberally construed, we cannot overlook the fact that the liberal construction must ultimately flow from the words used in the section. If the words used in the section are capable of two constructions one of which is shown patently to assist the achievement of the object of the Act, courts would be justified in preferring that construction to the other which may not be able to further the object of the Act.

(Emphasis supplied)

21. In the case of Bombay Anand Bhavan Restaurant v. ESI Corporation (2009) 9 SCC 61 (at page 66), it was observed that:

20. The Employees' State Insurance Act is a beneficial legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Employees' State Insurance Act is a social security legislation and the canons of interpreting a social legislation are different from the canons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects.

(Emphasis supplied)

22. The legislature enacted the ESI Act to provide certain benefits to employees in case of sickness, maternity in case of female employees, employment injury and to make provision in certain other matters in relation thereto. The provision of the ESI Act apply 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.

23. As regards the principles to be followed in the event a particular word or phrase has not been defined by the Statute, whether the Courts would be justified in placing reliance upon the meanings as provided for by dictionaries, and if so whether such reliance would be guided by any principles. The position as regards to using dictionaries as an external aid of construction is reflected in the following decisions of this Court.

24. In the case of Raja Benoy Kumar Sahas Roy [1957] 32 ITR 466 (SC), this Court pointed out that meanings of words used in Acts of Parliament are not necessarily to be gathered from dictionaries which are not authorities on what Parliament must have meant. It was also indicated that, where there is nothing better to rely upon, dictionaries may be used as an aid to resolve an ambiguity. The ordinary dictionary meaning cannot be discarded simply because it is given in a dictionary. To do that would be to destroy the literal rule of interpretation. It was observed in the given case that it would be a basic rule to rely upon the ordinary dictionary meaning of a word which, in the absence of some overriding or special reasons to justify a departure, must prevail.

25. In the case of State of Orissa v. Titaghur Paper Mills Co. Ltd. 1985 Supp SCC 280, this Court was concerned with determining the meaning of the terms 'timber' and 'logs' for the purpose of levying purchase tax. It was the contention of the State that the meaning of the said terms must be ascertained in common parlance. In this context it was held that (at page 374):

> (9) The dictionary meaning of a word cannot be looked at where that word has been statutorily defined or judicially interpreted but where there is no such definition or interpretation, the court may take the aid of dictionaries to ascertain the meaning of a word in common parlance, bearing in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word, and the court has, therefore, to select the

particular meaning which is relevant to the context in which it has to interpret that word.

26. In the case of State of U.P. v. Hari Ram (2013) 4 SCC 280, this Court was faced with the question of ascertaining the meaning of 'acquired' and 'vested' for the purpose of Section 10 of the Urban Land (Ceiling and Regulation) Act, 1976. This Court not only referred to the dictionary meanings assigned to these terms, but also placed heavy reliance to the context in which the words were used. This Court observed that:

> 21...Each word, phrase or sentence that we get in a statutory provision, if not defined in the Act, then is to be construed in the light of the general purpose of the Act. As held by this Court in Organo Chemical Industries v. Union of India (1979) 4 SCC 573 that a bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficial legislation to futility. Reference may also be made to the judgment of this Court in Directorate of Enforcement v. Deepak Mahajan (1994) 3 SCC 440. Words and phrases, therefore, occurring in the statute are to be taken not in an isolated or detached manner, they are associated on the context but are read together and construed in the light of the purpose and object of the Act."

27. In the aforementioned context, this Court further referred to the case of S. Gopal Reddy v. State of A.P. (1996) 4 SCC 596, wherein it was held that:

> 12. It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary.

28. As regards the question as to whether the Court should rely upon the meaning of the word 'shop' in common parlance or in its traditional sense, or should the Court refer to the dictionary meaning, it would be appropriate to consider the following cases.

29. In the decision rendered by the Queen's Bench in Lyons v. Tucker (1880) 6 QBD 664, it was observed that a statute consists of two parts, the letter and the sense. In this regard it was noticed that it was the internal sense of the law that would make the law, and not the mere letter of the law. In the case of Caledonian Railway v. North British Railway (1881) 6 AC 114, it was held as under:

> The mere literal construction of statute ought not to prevail if it is opposed to the intentions of the Legislature as apparent by the statute and if the words are sufficiently flexible to admit of some other construction by which that intention can be better effectuated.

30. In the case of Sheikh Gulfan v. Sanat Kumar Ganguli (1965) 3 SCR 364, it was held that:

> ...Normally, the words used in a statute have to be construed in their ordinary meaning; but in many cases, judicial approach finds that the simple device of adopting the ordinary meaning of words does not meet the ends of a fair and a reasonable construction. Exclusive reliance on the bare dictionary meaning of words may not necessarily assist a proper construction of the statutory provision in which the words occur. Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject-matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute assume relevance and become material. As Halsbury has observed, the words "should be construed in the light of their context rather than what may be either their strict etymological sense or their popular meaning apart from that context (See Halsbury's Laws of England, Vol. 36, p. 396, para. 593).

31. We may safely conclude that the literal rule of construction may be the primary approach to be utilized for interpretation of a statute and that words in the statute should in the first instance be given their meaning as understood in common parlance. However, the ESI Act is a beneficial legislation. It seeks to provide social security to those workers as it encompasses. In light of the cases referred

above, it may be seen that the traditional approach can be substituted. A dictionary meaning may be attached to words in a statute in preference over the traditional meaning. However, for this purpose as Well, the scheme, context and objects of the legislature must be taken into consideration. Taking into due consideration the nature and purpose of the ESI Act, the dictionary meaning as understood in the context of the said Act, would be preferable to achieve the objects of the legislature.

32. Having glanced through the relevant provisions and the settled legal principles of interpretation of statutes, let us revert back to the factual matrix as present in the given set of appeals.

33. The first point for consideration in this reference is, whether there is any flaw in the judgment and order passed by this Court in the case of Hyderabad Race Club (supra). In the said decision this Court has concluded that "race-club" is an establishment. Therefore, what then is an 'establishment' for the purpose of the ESI Act.

34. In the absence of any definition as provided in the ESI Act, this Court may look into its dictionary meaning for guidance or as an aid of construction of the term 'establishment'. Dictionaries do define the meaning of a word as understood in common parlance.

35. According to Black's Law Dictionary, 7th Edition (1999), the term 'establishment' means, inter alia:

Establishment, n. 2. An institution or place of business.

36. According to the Words and Phrases, Permanent Edition, Volume 15, the term 'establishment' has been held to mean, Inter alia, the following:

> An establishment means a permanent commercial organisation or a manufacturing establishment. Spielman v. Industrial Commission 295 N.W. 1, 4 : 236 Wis. 240.;

> An establishment is the place where one is permanently fixed for residence or business such as an office or place of business with its fixtures. Lorenzetti v. American Trust Co., D.C. Cal. 45 F. Supp. 128, 139.

37. According to Corpus Juris Secundum, Volume LXXX, the term 'establishment' has been explained as follows:

> ESTABLISHMENT
>
> ...More specifically, a fixed place where business is conducted, or a place where the public is invited to come and have its work done; an institution or place of business with its fixtures and organised staff; any office or place of business, with its fixtures, the place in which one is permanently fixed for residence or business; a permanent commercial organisation, as a manufacturing establishment; the place of business or residence with grounds, fixtures, equipage, etc., with which one is fitted out; also that which serves for the carrying on of a business....

38. Therefore, it can be simply stated that an 'establishment' is a term which can have a wide meaning. It would be any place where business is conducted, or in other words, it would be any place of business. Mow the question arises whether a 'race-club' is in the nature of a place where business is conducted. To answer the same, the activities that are undertaken by the Appellant-Turf Club requires to be noticed. The Bangalore Turf Club Limited and the Royal Western India Turf Club are two of the five 'Turf Authorities of India'. The activities of these two turf clubs are more or less the same as of the Madras Race Club. Therefore, we may usefully refer to the observations made by this Court in the case of Dr. K.R. Lakshmanan v. State of Tamil Nadu (1996) 2 SCC 224, which is as follows:

> 17. We may at this stage notice the manner in which the Club operates and conducts the horse-races. Race meetings are held in the Club- race courses at Madras and Ooty for which the bets are made inside the racecourse premises. Admission to the racecourse is by tickets (entrance fee) prescribed by the Club. Separate entrance fee is prescribed for the first enclosure and the second enclosure. About 1 1/2 of the entrance fee represents the entertainment tax payable to the Commercial Tax Department of the State

Government. The balance goes to the Club's account. Betting on the horses, participating in the races, may be made either at the Club's totalizators (the totes) by purchasing tickets of Rs. 5 denomination or with the bookmakers (bookies) who are licensed by the Club and operate within the first enclosure. The totalizator is an electronically operated device which pools all the bets and after deducting betting tax and the Club charges, works out a dividend to be paid out as winnings to those who have backed the successful horses in the race. Bookmakers, on the other hand, operate on their own account by directly entering into contracts with the individual punters who come to them and place bets on horses on the odds specified by the bookmakers. The bookmakers issue to the punters printed betting cards on which are entered the bookmaker's name, the name of the horse backed, the amount of bet and the amount of prize money payable if the horse wins. The winning punters collect their money directly from the bookmaker concerned. The net result is that 75% of the tote collections of each race are distributed as prize money for winning tickets, 20% is paid as betting tax to the State and 5% payable to the Club as its commission. It is thus obvious that the Club is entitled to only 5% as commission from the tote collections and also from the total receipts of the bookmakers. According to the Appellant the punters who bet at the totalizator or with the bookmakers have no direct contract with the Club.

18. The Club pays from its own funds the prize money (stake money) to the winning horses. The horses which win the first, second, third and up to 5th or 6th places are given prizes by the Club. The Club income consists of entrance fee, 5% commission paid by the bookmakers and the totalizators, horse entry fee paid by the owners of the horses participating in the race and the licence fee charges by the Club from the bookmakers.

39. 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 true that the definition in dictionaries is the conventional definition attributed to trade or commerce, but it cannot be wholly valid for the purpose of constructing social welfare legislation in a modern welfare State. 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'. This Court, in Hyderabad Race Club case (supra), keeping in view the systematic commercial activity carried on by the Club has held that the Race-Club is an establishment within the meaning of the said expression as used in the notification issued Under Section 1(5) of the ESI Act. Therefore, in our considered view, the view expressed by this Court is in consonance with the provisions of the ESI Act and also settled legal principles. Therefore, the said decision does not require re-consideration.

40. The next point to be considered by this Court, in accordance with the reference order, would be whether a 'race-club' would be covered under the definition of a 'shop'. The term 'shop', again, has not been defined in the ESI Act. Therefore the meaning assigned to this word in dictionaries may be noticed.

41. As per the Concise Oxford English Dictionary, Eleventh Edition (Revised), the term shop has been given the following meaning:

> shop n. 1. a building or part of a building where goods or services are sold.
>
> According to Wharton's Law Lexicon, 14th Edition (2003), a shop has been said to mean:
>
> Shop, a place where things are kept for sale, usually in small quantities, to the actual consumer.
>
> According to Black's Law Dictionary, 7th Edition (1999), the term 'shop' has been stated to mean:
>
> Shop, n. A business establishment or place of employment; a factory, office, or other place of business.
>
> According to the Words and Phrases, Permanent Edition, Volume 39, the term 'shop' has been stated to mean, inter alia, the following:

The word shop means a room or building in which the making, preparing, or repairing of any article is carried on, or in which any industry is pursued; the place where anything is made; the producing place or source. State v. Sabo 140 N.E. 499, 500 : 108 Ohio St. 200.;

Worcester defines a shop as a place, building, or room in which things are sold; a store. Salomon v. Pioneer Co-operative Co. 21 Fla. 374, 384 : 58 Am. Rep. 667.;

Webster defines the word shop as follows: (1) A building in which goods, wares, drugs, etc. are sold at retail; (2) a building in which mechanics work, and where they keep their manufacturers for sale. State v. O'Connell 26 Ind. 266, 267; Salomon v. Pioneer Co-operative Co. 21 Fla. 374, 384 : 58 Am. Rep. 667.

According to Corpus Juris Secundum, Volume LXXX, the term shop has been explained as follows:

SHOP

As a noun. The word shop appears to be derived from the old high German 'schopf' or 'scopf' which meant a building without a front wall. It is a term of various significance, and has many definitions, and it may have different meanings when used with different texts. In its popular sense, as well as its legal, meaning, the term shop is not confined to a store, and it may include both a store and a workshop.

...

The word shop may denote a place where goods are sold, a place, building, or room in which things are sold; and, expressing this concept, the term is defined as meaning a place kept and used for the sale of goods; a place where goods are sold for retail;....

42. From the above, it can be said that a 'shop' is a place of business or an establishment where goods are sold for retail. However, it may be noted that the definitions as given in the dictionaries are very old and may not reflect, with complete accuracy, what a shop may be referred as in the present day. Therefore, it

may be pertinent to consider the manner in which this Court has dealt with the word 'shop' in its judicial decisions.

43. The term 'shop', in regard to the ESI Act, has been discussed in earlier cases by this Court. In the case of Hindu Jea Band (supra) it is observed that a 'shop' would be a place where services are sold on a retail basis. In International Iron Ore and Fertilizers (India) Pvt. Ltd. v. ESIC (1987) 4 SCC 203, this Court stated that a 'shop' would be a place where the activities connected with buying and selling of goods is carried on. In the case of Cochin Shipping Company (supra) the Court observed that a 'shop' must be held to be a place where commercial activity of buying and selling of merchandise takes place. In R.K. Swamy's case (supra) the Court extended the meaning of a 'shop' to include even sale of services.

44. Therefore, certain basic features of a ' shop' may be culled out from the above. 11 can be said that a 'shop' is a business establishment where a systematic or organised commercial activity takes place with regard to the sale or purchase of goods or services, and includes an establishment that facilitates the above transaction as well.

45. The word 'shop' is not defined either in the ESI Act or in the notification. The ESI Act being a Social Welfare Legislation intended to benefit as far as possible workers belonging to all categories, one has to be liberal in interpreting the words in such a welfare legislation. The definition of a shop which meant a house or building where goods are sold or purchased has now undergone a great change. The word 'shop' occurring in the notification is used in the larger sense than its ordinary meaning. What is now required is a systematic economic or commercial activity and that is sufficient to bring that place within the sphere of a 'shop'.

46. In view of the fact that an 'establishment' has been found to be a place of business and further that a 'shop' is a business establishment, it can be said that a 'shop' is indeed covered under, and may be called a sub-set of, the term 'establishment'.

47. The next point for our consideration is whether the activities of a race-club are 'entertainment'. The said meaning is sought to be ascertained in order to determine whether the Appellant-Turf Clubs are engaged in providing entertainment to those

who come to their premises. Again, in the absence of any definition to that effect in the ESI Act, it may be relevant to understand its meaning in common parlance.

48. As per Concise Oxford English Dictionary, Eleventh Edition (Revised), the word entertainment has been assigned the following meaning:

> entertainment n. The action of providing or being provided with amusement or enjoyment; an event or performance designed to entertain.
>
> According to Black's Law Dictionary, 7th Edition (1999), the term 'entertain' means, inter alia:
>
> Entertain, vb. 2. To amuse or please.
>
> According to the Words and Phrases, Permanent Edition, Volume 14A, the term 'entertainment' has been held to mean, inter alia, the following:
>
> Entertainment denotes that which serves for amusement, and ' amusement' is defined as a pleasurable occupation of the senses, or that which furnishes it, as dancing, sports, or music. Young v. Board of Trustees of Broadwater County High School. 4 P. 2D 725, 726 : 90 Mont. 576.
>
> According to Corpus Juris Secundum, Volume XXX, the term 'entertainment' has been explained as follows:
>
> ENTERTAINMENT
>
> ...
>
> The second meaning of the term is a diverting performance, especially a public performance, as a concert, drama, or the like; a source or means of amusement; instruction or amusement afforded by anything seen or heard, as a spectacle, a play, etc.; mental enjoyment, or that which amuses or diverts; that which serves for amusement; also the act of providing gratification or diversion. The term has been held to include recreational activities, such as games, sports, plays and dancing.

49. Therefore it can be safely concluded that 'entertainment' is an activity that provides with amusement or gratification. Further, it would include public performances, including games and sports.

50. As observed in the case of Dr. K.R. Lakshmanan (supra) (at para 24), that, "Horse racing is an organised institution. Apart from a sport, it has become a huge public entertainment business...". Therefore, it can be said that horse racing is indeed a form of entertainment. Such an entertainment is provided not only to the members of the Appellant-Clubs, but also to the general public on the payment of a certain admission fee.

51. Further, the said race-clubs also provide the viewers with the facilities to indulge in betting activities, which may even be said to be an integral part of the sport. The race-clubs further even charge a fixed commission on the said betting. "Commission" in common parlance has duly been understood to mean a fixed charge payable to an agent or a broker for providing services for facilitating a transaction.

52. The next question is whether the Appellant-Turf Clubs fall under the definition of the term 'shop' for the purposes of the ESI Act.

53. It is not the case of the Appellants that the Club does not provide services. It may be gainsaid that the said services, apart from providing the viewers with a form of entertainment, is available to all members of the public at a mere payment of an admission or entrance fee. The only question, therefore, would be whether such services may be construed to be along the same lines as those provided for by a shop. If the answer is in the affirmative, then such race-clubs would surely fall within the definition of the term 'shop', and thereby under the ESI Act as well.

54. We have already noticed that a 'shop' is a business establishment where a systematic or organised commercial activity takes place with regard to the sale or purchase of goods or services, and includes an establishment that facilitates the above transaction as well.

55. We have also noticed that the modus operandi of the Appellant-Bangalore Turf Club is the same as that as has been mentioned in the case of Dr. K.R. Laksbmanan (supra), with a difference only in the percentages of tax and

commission collected. The Appellant- Turf Club, in essence, takes money from viewers, members as well as the general public, as admission fee and in return provides them with certain services, those being the actual viewing of the race and facilitating placing of bets. Some features of the mode of conducting horse races by the Appellant-Turf Club may be listed as follows:

> i. That the bets are made inside the race course premises;
>
> ii. That admission of the race is by tickets (entrance fee) as prescribed by the Club. Separate entrance fee is prescribed for the first enclosure and the second enclosure;
>
> iii. That betting on the horse, participating in the races may be made at either the club's totalizators (the totes) by purchasing tickets or with the Book Makers (Bookies) who are licensed by the club and operate within the first enclosure;
>
> iv. That 5% of the tote-collections of each race is retained by the club as commission.

56. It may also be relevant to make a reference to the Memorandum of Association of the Appellant in Civil Appeal No. 2416 of 2003, being the Bangalore Turf Club Limited. The objects of the said Appellant include, inter alia, the following:

> (a) to carry on the business of a race-club in all its branches and in particular to lay out and prepare lands for the running of horse races, steeplechases or races of any other kind....
>
> ...
>
> (d) to establish any Clubs, Hotels or other conveniences in connection with the Company's property;
>
> (e) to carry on the business of hotel-keepers, licensed victualler, refreshment purveyors;
>
> (f) to buy, maintain and sell horses and ponies for racing, breeding and training either directly or through riding clubs, studs or other agencies;

...

(j) to establish institutions, schools, funds and other conveniences for training jockeys and riders, both professional and amateur;

...

The above objects are reproduced, solely with the intention to establish that the Appellant cannot claim that the Turf Club is established for the limited purpose of conducting races. This does not imply that this Court is of the opinion that if the Turf Club were to merely conduct horse races, it would surely fall out of the purview of a shop. Further, it would not be relevant as to whether the said activities as enlisted above are being conducted as on date. One cannot argue that a given premises may not be a shop based on the grounds that certain contentious activities have been discontinued for the time being. These activities are provided for in the Memorandum of Association and therefore, the Turf Clubs may, legally and as a matter of right, resume them on a future date.

57. It can be safely concluded that, the Appellant-Turf Clubs conduct the activity of horse racing, which is an entertainment. The Appellant-Turf Clubs provide various services to the viewers, ranging from providing facilities to enjoy viewer ship of the said entertainment, to the facilitating of betting activities, and that too for a consideration- either in the form of admission fee or as commission. An argument may be advanced that not all persons who come to the race would avail the services as provided by the Appellant-Turf Clubs, however the same would fail as even in the case of a shop in the traditional meaning, that is to say, one where tangible goods are put for sale, a customer may or may not purchase the said goods. What is relevant is that the establishment must only offer the clients or customers with goods or services. In this light, it is found that a race-club, of the nature of the Appellants, would fall under the scope of the term 'shop' and thereby the provisions of the ESI Act would extend upon them by virtue of the respective impugned notifications issued under Sub-section (5) of Section 1 of the ESI Act.

58. An argument raised by the Appellants-herein is the issue relating to the 'doctrine of pari materia'. It is contended that since the ESI Act does not define the

term 'shop', the said definition may be ascertained in light of the definitions under the relevant Shops and Commercial Establishments Act as enacted by the respective State Legislatures, since the purpose and object of both the enactments are one and the same.

59. For the above purpose, it would be necessary to look into the concept of "doctrine of pari materia" and further ascertain whether the given statutes are in fact pari materia with the ESI Act. It is settled law that two statutes are said to be in pari materia with each other when they deal with the same subject-matter. The rationale behind this rule is based on the interpretative assumption that words employed in legislations are used in an identical sense. However, this assumption is rebuttable by the context of the statutes. According to Sutherland in Statutes and Statutory Construction, Vol. 2, Third Edition:

> Statutes are considered to be in pari materia to pertain to the same subject-matter when they relate to the same person or things, or to the same class of persons or things, or have the same purpose or object.

60. The preamble of the Maharashtra Shops and Establishments Act, 1948 (for short, "the Act, 1948") reads as follows:

> An Act to consolidate and amend the law relating to the Regulation of conditions of work and employment of shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, other places of public amusement or entertainment and other establishments.
>
> The preamble of the Karnataka Shops and Commercial Establishments Act, 1961 (for short, "the Act, 1961") reads as follows:
>
> An Act to provide for the Regulation of conditions of work and employment in shops and commercial establishments.

61. On a perusal of the above, it may be said that the said Acts, though they may relate to labour and workmen, is in essence intended to be regulatory. The Acts require mandatory registration of the establishments covered by the respective statutes, sets out provisions relating to working hours, wages, annual leave, etc. and further prescribe penalties for non-compliance with the said provisions. The

Acts further enable the local authorities to appoint local inspectors who are given certain powers to ensure the compliance of the provisions of the Acts. Under Sub-section (4) of Section 48 of the Act, 1948 such inspectors would also be deemed to be inspectors under the Minimum Wages Act, 1948. Further, the Act, 1961 under Chapter V makes an express reference to the applicability of the Payment of Wages Act, 1936 and the Workmen's Compensation Act, 1923. There is a clear absence of reference to any other legislation in the aforesaid provisions, thereby indicating that the legislature intended to exclude the applicability of the ESI Act.

62. The ESI Act, on the other hand, as has been noticed in the preamble quoted earlier, is an Act that provides for certain benefits to employees in case of sickness, maternity and employment injuries. It establishes the Employees' State Insurance Corporation for the administration of the scheme of Employees' State Insurance and sets up an Employees' State Insurance Fund in which all contributions paid under the ESI Act are held and accordingly administered. The ESI Act also establishes a Special Court for adjudication of disputes and claims under the same.

63. It can be concluded that though the ESI Act, the Act, 1948 and the Act, 1961 deal with labour and workmen, in essence and spirit they have a different scope and application. The acts do not appear to have any overlap in their fields of operation and have mutually exclusive schemes. Therefore, the argument that the acts are pari materia with each other, must fail.

64. This Court must also address the issue that arose in the course of the arguments that the word 'shop' has been used in the impugned notifications as well as the Act, 1948 and the Act, 1961 and therefore assistance may be taken from the latter statutes to interpret the notification. This argument, in light of the above discussion, does not appeal to us. In the case of Directorate of Enforcement v. Deepak Mahajan (1994) 3 SCC 440, this Court referred to the book titled "The Loom of Language", wherein it has been stated as follows:

> Words are not passive agents meaning the same thing and carrying the same value at all times and in all contexts. They do not come in standard shapes and sizes like coins from the mint, nor do they go forth with a decree to all

> the world that they shall mean only so much, no more and no less. Through its own particular personality, each word has a penumbra of meaning which no draftsman can entirely cut away. It refuses to be used as a mathematical symbol.

65. Furthermore, in the case of Deepak Mahajan (supra), at paragraph 24 quotes Maxwell on Interpretation of Statutes, Tenth Edn. at page 229, wherein the following passage is found:

> Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.

66. It is to be noticed that every word of a language is flexible to connote different meanings when used in different contexts. That is why it is said that words are not static, but dynamic and the Court should adopt the dynamic meaning which upholds the validity or scheme of any legislation. It is settled law that the words used in a particular statute cannot be used to interpret the same word in a different statute especially in light of the fact that the two statutes are not pari materia with each other and have a wholly different scheme from one another.

67. The learned Counsel Shri Singh would contend that the notification dated 18.09.1978 uses the term 'namely' followed by description of goods. Therefore, it is exhaustive and by interpretation it is impermissible to add any other business or trading or commercial activity to come under the notification.

68. In this regard, it may be useful to refer to the decision of this Court in the case of Cochin Shipping Company (supra), which is a three-Judge Bench decision. In the aforesaid case the impugned notification used the term 'namely' and on a bare perusal the same is similar to the notification impugned in the present case by the Royal Western India Turf Club Limited. In the said case, the Court went on to

observe, that, the term 'shop' be given an expansive interpretation and would include the Appellant-therein. The argument raised by the Appellant-therein was that as per the impugned notification, the term 'shop' would take within it sweep the other establishment enumerated as well. Therefore, the meaning of the word 'shop' must be ascertained in a manner that the other terms do not become meaningless. However, this Court found favour with the arguments of the Respondents-therein and observed that merely because of enumeration of other establishments which are akin to a shop, the same does not place an obligation on this Court to interpret 'shop' in a narrow manner. It was observed that the object was to cover as many establishments as possible without leaving any room for doubt. The Court further observed that the ESI Act is a social security legislation and the same was an outcome of a policy to provide remedy for the widespread evils arising from the consequences of national poverty. In the words of the Court:

> In this case, the argument advanced on behalf of the Appellant is slightly different, namely, other kinds of establishments which can easily fall within the definition of "shop" have been enumerated. Hence, a specific enumeration, so as to include the Appellant's business activity, is to be insisted upon. In our considered view, this argument cannot be accepted. First of all, merely because other establishments which are akin to shop are enumerated, it does not, in any manner, oblige us to give a narrow meaning to the word "shop" nor does it any way dilute the meaning of 'shop'. As rightly contended by the learned Counsel for the Respondent, the object is to envelope as many establishments as possible without leaving any room for doubt. That is precisely what the notification intends to do.

69. We are in agreement with the view expressed in the aforesaid decision.

70. We are of the view that, in the present case, the use of the word 'namely' and a consequent enumeration would simply imply that the notification seeks to enlist the classes of establishment or establishments that fall within the purview of the ESI Act.

71. It has consistently been the stand of the Appellants-herein that the term 'shop' must be understood in its 'traditional sense'. However, as has been observed by this Court in the case of Bombay Anand Bhavan Restaurant (supra), the language

of the ESI Act may also be strained by this Court, if necessary. The scheme and context of the ESI Act must be given due consideration by this Court. A narrow meaning should not be attached to the words used in the ESI Act. This Court should bear in mind that the ESI Act seeks to insure the employees of covered establishments against various risks to their life, health and well-being and places the said charge upon the employer.

72. We find that the term 'shop' as urged to be understood and interpreted in its traditional sense would not serve the purpose of the ESI Act. Further in light of the judgments discussed above and in particular the Cochin Shipping Case (supra) and the Bombay Anand Bhavan Case (supra), this Court is of the opinion that an expansive meaning may be assigned to the word 'shop' for the purposes of the ESI Act. As has been found above, the activities of the Appellant-Turf Clubs is in the nature of organised and systematic transactions, and further that the said Turf Clubs provide services to members as well as public in lieu of consideration. Therefore, the Appellant-Turf Clubs are a 'shop' for the purpose of extending the benefits under the ESI Act.

73. In light of the above discussions, the reference is answered in the following terms:

i. A 'race-club' is an 'establishment' as rightly held in the case of Employees State Insurance Corporation v. Hyderabad Race Club (2004) 6 SCC 191;

ii. The Appellant-Turf Clubs are duly covered under the term 'shop' for the purposes of the ESI Act and notifications issued thereunder.

74. The aforementioned are the only two issues that arise in the matter pertaining to the Bangalore Turf Club Ltd., and as a consequence are the only issues dealt with in the present reference.

75. In the matters regarding the Royal Western India Turf Club Ltd., it is brought to our notice by Shri J.P. Cama, learned Counsel, that there are other issues involved as well. Therefore, we now send back the matters, i.e. C.A. Nos. 49/2006, 1575/2006, 3421 and 3422/2012 insofar as Royal Western India Turf Club

Limited to an appropriate two-Judge Bench of this Court for adjudication and decision on the issues not addressed herein.

76. In our view, the interim order granted earlier need not be continued further. Accordingly, we vacate the same.

77. The Civil Appeal No. 2416/2003 is disposed of accordingly.

CIVIL APPEAL NO. 6212 of 2012

78. This appeal is directed against the judgment and order dated 29.03.2012 of the Madurai Bench of the Madras High Court in Civil Miscellaneous Appeal (MD) No. 1231 of 2011. The matter had reached before the High Court against the order of the Labour Court, Tirunelveli, whereby the Appellant was held to be a 'shop' under a Notification extending the provisions of the ESI Act to a certain class of establishments as mentioned under the said Notification. The High Court of Madras, by the said impugned judgment, upheld the order passed by the Labour Court. It was observed in the impugned judgment that the object of the ESI Act is beneficial in nature and the object of the legislature could not be defeated by adopting a narrow definition of the term 'shop'.

79. The given appeal is not a consequence of the aforementioned reference order. However, this appeal has been tagged with the above appeals since it involves the same question of law. The issue in this appeal is whether the business of a Chit Fund can be said to be a 'shop' for the purposes of the ESI Act.

80. The short facts leading to the dispute are that the Government of Tamil Nadu issued a Notification No. II(2)/LE/1859/76 dated 03.04.1976 as published on 21.04.1976. By the said impugned notification, the Government of Tamil Nadu sought to extend the provisions of the ESI Act over a given class of establishments as mentioned therein. Item 3 of the impugned notification enumerated six classes of establishments, one being 'shops'. As a consequence of the said impugned notification, the Respondent informed the Appellant-chit fund requiring them to comply with the provisions of the ESI Act. Hence the dispute.

81. Shri V. Giri, learned Counsel appearing for the Appellant-Chit Fund, in the first instance, would adopt the arguments of the learned Counsels appearing for

the Appellant-Turf Clubs in Civil Appeal Mo. 2416 of 2003 and Civil Appeal No. 49 of 2006, as regards the contention put forth that other statutes may be referred to in aid of interpreting the word 'shop'. As 'shops' has not been defined under the ESI Act, learned Counsel would argue that the Tamil Nadu Shops and Establishments Act, 1947 may be referred to for guidance. This line of arguments has already been negated by us while answering the referral order dated 28.04.2009.

82. Shri Giri, learned Counsel draw our attention to the nature of activities of a chit fund, in an attempt to differentiate the same from the activities of a shop. A reference is made to a three-Judge Bench decision in the case of Sriram Chits and Investments (P) Ltd. v. Union of India 1993 Suppl (4) SCC 226, wherein while considering the vires of the Chit Funds Act, 1982 (for short "the Chit Funds Act") the Court went into the concept of, inter alia, what may be a 'chit', 'chit fund' and the nature of a chit fund.

83. On the basis of the submissions of the learned Counsel for the Appellant-Chit Fund, and in light of the ratio in the Sriram Chits and Investments case (supra), this Court may enumerate a few features of a Chit Fund as follows:

i. Chit Funds are a special form of contract contemplated by Entry 7, List III of Schedule VII to the Constitution of India;

ii. The foreman acts as person to bring together the subscribers;

iii. The amounts are paid to the subscribers as per the chit and in accordance with the provisions of the Chit Funds Act;

iv. The agreement between the parties that is entered as per Section 6 of the Chit Funds Act, only provides for distribution of the chit amount. This agreement is treated as contract between the subscribers and the foreman, and it is the foreman who brings the subscribers together;

v. The. foreman is paid commission, in accordance with the Chit Funds Act, for the services rendered by the foreman as he does not lend money belonging to him;

iv. There is no debtor-creditor relationship, per se. There is no promise to repay an existing debt, but to pay in discharge of a contractual obligation. The prize amount is not received as a loan, but as of right by virtue of the terms of the contract between the parties.

84. Further, learned Counsel for the Appellant-Chit Fund would contend that the office of the Chit Fund is merely to facilitate such transactions. There may be a business, but the same would be governed by a contract. There is no buying or selling of goods, as contemplated by the dictionary or traditional meaning of a shop. Further, it is accepted that the foreman receives a commission for rendering of the service, however the same is as per the contract and the Chit Funds Act.

85. In fairness to the learned Senior Counsel, he conceded that the ratio of the case of ESIC v. R.K. Swamy (1994) 1 SCC 445, wherein an advertising agency was held to be a shop for the purposes of the ESI Act by virtue of there existing a systematic commercial activity and a rendering of services taking place, was indeed against: the contentions raised herein. It would further be argued that in the given factual matrix, there does not exist any customer-seller relationship, as would be existent in the case of a shop.

86. In light of the fact that the Appellant-Chit Fund provides for services and in return the foreman receives a commission, this Court is of the considered opinion that the activities of the Chit Fund would be those as would fall under the definition of a shop as evolved by this Court.

87. Therefore, in accordance with the reasoning of this Court in Civil Appeal No. 2416 of 2003 and other connected appeals, we hold that the Appellant-herein would fall within the meaning of the word 'shop' as mentioned in the notification issued under the ESI Act. Therefore, the provisions of the ESI Act would extend to the Appellant also.

88. The Civil Appeal is disposed of accordingly.