SUPREME COURT OF INDIA

Employees State Insurance Corporation

Vs.

Mangalam Publications (I) Private Limited.

C.A.No.4681 of 2009

(Arun Mishra and Mohan M.Shantanagoudar,JJ.,)

21.09.2017

JUDGMENT

Mohan M. Shantanagoudar,J.,

1. The judgment dated 28.02.2007 passed in Insurance Appeal No. 2 of 2004 by the High Court of Kerala at Ernakulam is called in question in this appeal. By the impugned judgment, the High Court allowed the appeal filed by the respondent herein and seted aside the order dated 13.10.2003 passed by the ESI Court,

2. Brief facts leading to this appeal are as follows:

> "The respondent is an establishment covered by the provisions of Employees State Insurance Act, 1948 (hereinafter referred to as the 'ESI Act'). It is a private limited company engaged in the business of printing and publishing of a daily Malayalam newspaper called "Mangalam"; the respondent has more than 250 employees including working and non-working journalists. In order to have a uniform formula regarding the wages payable to the employees of newspaper companies like the respondent, the Central Government appointed Wage Boards from time to time to study and submit reports from time to time. Earlier, the Wage Board headed by Justice Bachawat, known as Bachawat Wage Board' was constituted and the Board submitted its recommendations. Thereafter, the Government of India appointed a new Wage Board, headed by Justice Manisana which was called as 'Manisana Wage Board'. As per the recommendations of 'Manisana Wage Board', the Government of India issued a notification dated 24.09.1996 fixing interim rates of wages in respect of working journalists, non-working journalists and newspaper agency employees at the rate of twenty per cent of the basic wages and an additional amount of Rs.100/- per month, with effect from 20.04.1996. As per the said notification, the respondent started paying interim relief to its employees, and paid such interim relief from 01.04.1996 to 31.03.2000. However, the respondent did not pay the statutory contribution under the ESI Act for the period during which it paid interim wages to its employees. The ESI contribution due on interim wages paid by the respondent from

01.04.1996 to 31.03.2000 worked out to Rs.2,53,272/- (however, as per demand notice dated 02.11.2000, the figure is Rs.2,58,061.50). Subsequently, another office memorandum was issued by the Government of India, Department of Public Enterprises, Ministry of Industry, providing for the grant of interim relief to the employees of Central Public Sector Enterprises (PSES). The said office memorandum was subject to the following conditions:

a) These instructions are applicable to the employees of Central PSES following IDA pattern.

b) The amount paid as interim relief would be fully adjusted and .... in the final pay revision package.

g) The amount of interim relief will be....viz. it will neither be termed as 'pay' nor 'allowances' nor 'wages'. Accordingly, this amount would not count for any service benefit i.e. computation of house rent allowance, compensatory allowance, overtime allowance, cash compensation, encashment of leave, pay fixation, pension or gratuity etc. The afore-mentioned office memorandum dated 19.08.1998 of the Ministry of Industry had nothing to do with the notification dated 20.04.1996 providing for interim relief to the employees of newspaper agencies. The office memorandum dated 19.08.1998 makes itself clear that the same was applicable to employees of the Central PSES, and consequently it had no application to employees of private sector undertakings like that of the respondent company.

3. The premises of the respondent-company was inspected by the Insurance Inspector of the appellant-Corporation on 13.06.2000, wherein it was found that the respondent had not paid any contribution on the interim wages paid by it to its employees during the period from 01.04.1996 to 31.03.2000. The contention of the respondent was that it was not required to pay any contribution on the interim relief paid by it to its employees in view of office memorandum dated 19.08.1998. Since the contribution was not paid by the respondent, as mentioned supra, a notice dated 18.07.2000 was issued by the appellant to the respondent to pay contribution of the afore-mentioned amount for the afore-mentioned period. The notice of demand dated 02.11.2000 was also served on the respondent demanding an amount of Rs.2,58,061.50 with interest thereon.

4. Feeling aggrieved by the afore-mentioned notices, the respondent moved the Employees Insurance Court, Idukki, Kerala, by filing a petition under Section 75 of the ESI Act, which came to be numbered as Insurance Case No. 19/2000. In the said petition also, the respondent relied upon the office memorandum dated 19.08.1998 and a clarificatory letter dated 20.12.1996 of the Indian Newspaper Society. The said petition was opposed by the appellant contending that the office memorandum dated 19.08.1998 was not applicable to the respondent, and that the clarification given by the Indian Newspaper Society has no legal validity; the effect of the Act of Parliament i.e., ESI Act cannot be superseded by the office memorandum issued by the department; that under Section 2(22) of the ESI Act, all remuneration is wages except the categories mentioned in clauses (a) to (d) of Section 2(22)

of the ESI Act, and that interim relief does not come within the excluded parts of clauses (a) to (d). After consideration of the material on record, the ESI Court dismissed the application filed by the respondent holding that the interim relief paid by the respondent to the employees was "wages" as defined under Section 2(22) of the ESI Act, and hence the respondent was liable to pay contribution for the interim relief paid. It was observed by the ESI Court that the respondent paid interim relief to its employees as per the direction contained in the notification dated 20.04.1996 and the provisions of the notification became a part of the contract of employment of the employees of the respondent company. It was also observed that the office memorandum dated 19.08.1998 was only applicable to the employees of the Central PSES, and it does not anywhere say that the interim relief is not "wages" as defined under Section 2(22) of the ESI Act or that contribution need not be paid on the payment of interim relief. The respondent filed Insurance Appeal No. 2/2000 before the High Court of Kerala under Section 82 of the ESI Act, challenging the order passed by the ESI Court on 13.10.2003. The appeal came to be allowed by the impugned judgment, holding that the appellant herein is not entitled to collect any contribution in respect of interim relief paid by the respondent to its employees. While concluding so, the High Court has held that the amount paid as interim relief cannot be treated as "wages" or "part of wages" and can only be treated as "ex-gratia payment". Hence, this appeal.

5. The only question to be considered and decided in this appeal is as to whether the interim relief paid by the respondent to its employees, during the period from 01.04.1996 to 31.03.2000, is to be treated as "wages" as defined under Section 2(22) of the ESI Act, and if so, whether the respondent is liable to pay the ESI contribution?

6. There cannot be any dispute that if the interim relief paid by the respondent is held by this Court as "wages" as defined under Section 2(22) of the ESI Act, then the respondent is necessarily liable to pay ESI contribution on the amount of interim relief paid to its employees.

7. Before proceeding further, it would be relevant to note the definition of wages, as defined under Section 2(22) of the ESI Act. The same is extracted hereunder:

> "Section 2 (22) of the Employees' State Insurance Act, 1948 defines Wages. It reads as follows:-
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> "wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorized leave, lock-out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include-
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> (a) Any contribution paid by the employer to any pension fund or provident fund, or under this act;
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> (b)Any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(d)Any gratuity payable on discharge."

A plain reading of the afore-mentioned definition of Section 2(22) of the ESI Act makes it amply clear that "wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of the employment, expressed or implied, were fulfilled and includes other additional remuneration, if any, paid at intervals not exceeding two months. But payments made on certain contingencies under Clauses (a) to (d) of Section 2(22) of the ESI Act, do not fall within the definition of "wages". The interim relief paid to the employees of the respondent in the matter on hand, as mentioned supra, will definitely not fall within the excluded part of clauses (a) to (d) of Section 2(22) of the ESI Act, inasmuch as such payment is not travelling allowance or the value of any travelling concession, contribution paid by the employer to any pension fund or provident fund; sum paid to an employee to defray special expenses entailed on him by the nature of his employment; or any gratuity payable on discharge.

8. The Employees' State Insurance Act is a welfare legislation. It has been enacted to protect and safeguard the rights of the working class. Its preamble states that it is meant to "provide for certain benefits to employees in case of sickness, maternity and 'employment injury' and to make provision for certain other matters in relation thereto". The Employees' State Insurance Fund set up under this Act survives primarily on contributions paid to the Employees' State Insurance Corporation (the appellant). All employees insured in accordance with this Act are entitled to benefits under the Act. Undoubtedly, the literal meaning of statutory provisions cannot be ignored. However, in cases where there may be two or more ways to interpret a statutory provision, the spirit of this legislation warrants a construction that benefits the working class. The inclusive part and exclusive portion of the definition of "wages" clearly indicate that the expression "wages" has been given wider meaning. As mentioned supra, under the definition, firstly whatever remuneration is paid or payable to an employee under the terms of the contract of the employment, expressed or implied, is "wages". Secondly, whatever payment is made to an employee in respect of any period of authorized leave, lock-out etc. is "wages". Thirdly, other additional remuneration, if any, paid at intervals not exceeding two months is also "wages". Any ambiguous expression, according to us, should be given a beneficent construction in favour of employees by the Court. If the definition of "wages" is read in its entirety including the inclusive part as well as the exclusive portion, it appears that inclusive portion is not intended to be limited only of items mentioned therein, particularly, having regard to the objects and reasons for which the Employees' State Insurance Act is enacted. The Act has to be necessarily so construed as to serve its purpose and objects. This Court in the case of *M/s Harihar Polyfibres vs. Regional Director, ESI Corporation*[1], has held that the definition of "wages" contained in Section 2(22) of the ESI Act is wide enough to include House Rent Allowance, Night Shift Allowance, Incentive Allowance and Heat, Gas and Dust Allowance. To come to the aforesaid conclusion, this Court observed thus:

"2. The Employees' State Insurance Act is a welfare legislation and the definition of 'wages' is designedly wide. Any ambiguous expression is, of course, bound to receive a beneficent construction at our hands too. Now, under the definition, first, whatever remuneration is paid or payable to an employee under the terms of the contract of the employment, express or implied is wages; thus if remuneration is paid in terms of the original contract of employment or in terms of a settlement arrived at between the employer and the employees which by necessary implication becomes part of the contract of employment it is wages ; second, whatever payment is made to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off is wages; and third, other additional remuneration, if any, paid at intervals not exceeding two months is also wages; this is unqualified by any requirement that it should be pursuant to any term of the contract of employment, express or implied. However, 'wages' does not include any contribution paid by the employer to any pension fund or provident fund, or under the Act, any travelling allowance or the value of any travelling concession any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment and any gratuity payable on discharge. Therefore wages as defined includes remuneration paid or payable under the terms of the contract of employment, express or implied but further extends to other additional remuneration, if any, paid at intervals not exceeding two months, though outside the terms of employment. Thus remuneration paid under the terms of the contract of the employment (express or implied) or otherwise if paid at intervals not exceeding two months is wages. The interposition of the clause "and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off" between the first clause, "all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, was fulfilled" and the third clause, "other additional remuneration, if any, paid at intervals not exceeding two months," makes it abundantly clear that while 'remuneration' under the first clause has to be under a contract of employment, express or implied, 'remuneration' under the third clause need not be under the contract of employment but may be any 'additional remuneration' outside the contract of employment. So, there appears to our mind no reason to exclude 'House Rent Allowance', 'Night Shift Allowance', 'Incentive Allowance' and 'Heat, Gas and Dust Allowance' from the definition of 'wages'. A Full Bench of the Karnataka High Court in N.G.E.F. Ltd. v. Deputy Regional Director, E.S.l.C. considering the question at some length held that the amount paid by way of incentive under the scheme of settlement entered into between the Management and its workmen was wages within the meaning of Section 2(22) of the Employees' State Insurance Act. It was observed by the Full Bench of the Karnataka High Court as follows:

It is true that the word 'remuneration' is found both in the first and second parts of the definition. But the condition attached to such payment in the first part cannot legitimately be extended to the second part. The other 'additional remuneration' referred to in the second part of the definition is only qualified by condition attached thereto (that is, paid at intervals not exceeding two months). That was also the view

taken by a Full Bench of the Andhra Pradesh High Court in E.S.I. Corpn., Hyderabad vs A.P Paper Mills Ltd., and also the Bombay High Court in Mahalaxmi Glass Works Pvt. Ltd. v. E.S.I. But this aspect of the matter has been completely overlooked by this Court in Kirloskar case (1974) 1 Kant LJ 358. Justice Amarendra Nath Sen, concurred with the aforementioned observations of Justice O. Chinnappa Reddy and supplemented as under:

> "8. I entirely agree that on true interpretation of the word 'wages' defined in Section 2(22) of the Employees' State Insurance Act, 'wages' must necessarily include 'House Rent Allowance, Night Shift Allowance, Heat, Gas and Dust Allowance and Incentive Allowance'.
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> 9. The definition of 'wages' has been set out in the judgment of my learned brother. The inclusive part and the exclusive portion in the definition clearly indicate, to my mind, that the expression "wages" has been given a very wide meaning. The inclusive part of the definition read with exclusive part in the definition clearly shows, to my mind, that the inclusive portion it not intended to be limited only to the items mentioned therein. Taking into consideration the excluding part in the definition and reading the definition as a whole the inclusive part, to my mind, is only illustrative and tends to express the wide meaning and import of the word 'wages' used in the Employees' State Insurance Act.
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> 10. The Employees' State Insurance Act is a piece of social welfare legislation enacted for the benefit of the employees. The Act has to be necessarily so construed as will serve its purpose and objects.
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> 11. I entirely agree with my learned brother that on a proper interpretation of the term 'wages' the legislative intent is made manifestly clear that the term 'wages' as used in the Act will include House Rent Allowance, Night Shift Allowance, Heat, Gas and Dust Allowance, Night Shift Allowance, Heat, Gas and Dust Allowance and Incentive Allowance. The definition, to my mind, on its plain reading is clear and unambiguous. Even If any ambiguity could have been suggested, the expression must be given a liberal interpretation beneficial to the interest of the employees for whose benefit the Employees' State Insurance Act has been passed."

9. This Court, in the case of *Whirlpool of India Ltd. Vs Employees' State Insurance Corporation*[2], has succinctly described the intention of the legislature in passing the E.S.I. Act, and the same reads as thus,

> "5. The Act is a social legislation enacted to provide benefits to employees in case of sickness, maternity and employment injury and to make a provision for certain other matters in relation thereto. Broadly this is the purpose for which the Corporation has been established under Section 3 of the Act. The main source of the Employees' State Insurance Fund is the contributions paid to the Corporation (Section 26). The benefits to be provided to insured persons and others are as provided in Chapter V, in

particular, Section 46 thereof. The words and expressions used but not defined in the Act and defined in the Industrial Disputes Act, 1947, are to have the meanings respectively assigned to them in the Industrial Disputes Act, Undoubtedly, any provision of which two interpretations may be possible would deserve such construction as would be beneficial to the working class but, at the same time, we cannot give a go-by to the plain language of a provision."

10. As mentioned supra, the High Court while allowing the appeal filed by the respondent has mainly relied upon the office memorandum dated 19.08.1998 issued by the Department of Public Enterprises, Ministry of Industry, New Delhi, which is not applicable to the facts of this case. The said notification makes it abundantly clear that the instructions contained in the said office memorandum are applicable to Central Public Sector Enterprises (PSES) only. Admittedly, the respondent is a private limited company and hence the instructions contained in office memorandum dated 19.08.1998 are not applicable to the respondent company. In the matter on hand, the appellant claimed ESI contribution only on the amount paid by the respondent as interim relief to its employees, treating the same as "wages" as per Section 2(22) of the ESI Act. The amount paid as interim relief by the respondent to its employees definitely falls within the definition of "wages" as per Section 2(22) of the ESI Act. On the other hand, the High Court has strangely observed that the interim relief paid for the period from 01.04.1996 to 31.03.2000 can only be treated as "ex-gratia payment" paid by the employer to its employees and cannot be treated as "wages" for the purpose of ESI contribution. In our considered opinion, the High Court has ignored to appreciate that the effect of ESI Act enacted by the Parliament cannot be circumvented by the department office memorandum. The High Court has also failed to appreciate that the payment of interim relief/wages emanates from the provisions contained in terms of the settlement, which forms part of the contract of employment and forms the ingredients of "wages" as defined under Section 2(22) of the ESI Act and that the respondent paid interim relief, as per a scheme voluntarily promulgated by it as per the notification dated 20.04.1996, issued by the Government of India, in view of the recommendations of "Manisana' Wage Board, pending revision of rates of wages. It was not an ex-gratia payment. In this context, it is beneficial to note the observations of this Court in the case of *Employees State Insurance Corporation vs. Gnanambigai Mills Limited*[3], which read thus:

> "6. In our view the High Court has gone completely wrong in concluding that by virtue of the award it ceases to be wages. As stated above, the Tribunal has not applied its mind as to whether or not the payments were wages. All that the Tribunal did was to give its imprimatur to a compromise between the parties. Merely because the parties in their compromise chose to term the payments as "ex gratia payments" does not mean that those payments cease to be wages if they were otherwise wages. As stated above, they were wages at the time that they were paid. They did not cease to be wages after the award merely because the terms of compromise termed them as "ex gratia payments". We are therefore unable to accept the reasoning of the judgments of the High Court. The judgment of the Division Bench as well as that of the Single Judge accordingly stands set aside. It is held that the amounts paid are

wages and contribution will have to be made on those amounts also. We, however, make it clear that payments of the interest will be as per the statutory provisions."

11. The interim relief paid by the respondent to its employees is not a "gift" or "inam", but is a part of wages, as defined under Section 2(22) of the ESI Act. In view of the above, we hold that the payment made by way of interim relief to the employees by the respondent for the period from 1.04.1996 to 31.03.2000 comes within the definition of "wages", as contained in Section 2(22) of the ESI Act, and hence the respondent is liable to pay ESI contribution.

12. Accordingly, the instant appeal is allowed, the impugned judgment of the High Court is set aside, and that of the ESI Court is restored. The appellant is held to be entitled to recover the ESI contribution from the respondent for the period from 01.04.1996 to 31.03.2000 as per demand notice dated 02.11.2000. No order as to costs.

Judgment Referred.

[1] *(1984) 4 SCC 0324*
[2] *(2000) 3 SCC 0185*
[3] *(2005) 6 SCC 0067*