

(1998) 01 BOM CK 0048

Bombay High Court

Case No: Appeal From Order No"s. 855, 856, 857, 858, 859, 860, 861, 862, 863, 864 and 865 of 1991

The Employees State Insurance Corporation

APPELLANT

Vs

Everest Advertising Pvt. Ltd. and others

RESPONDENT

Date of Decision: Jan. 22, 1998

Acts Referred:

- Bombay Shops and Establishments Act, 1948 - Section 1(a)

Citation: (1998) 3 BomCR 297

Hon'ble Judges: V.K. Bhairavia, J

Bench: Single Bench

Advocate: M.V. Jakar, instructed by Jaykar and Co, for the Appellant; S.F. Parekh, N. Abhay and Kiran S. Bapat, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.H. Bhairavia, J.

The aforesaid appeals arise out of the orders passed by the learned Judge, Employees Insurance Court, Bombay, reframing the issues and shifting the onus of proof on the appellants E.S.I. Corporation.

2. The respondents companies who are advertising agencies, filed applications in the Employees Insurance Court at Bombay, challenging the notice issued by the appellant E.S.I. Corporation on the ground [hat the provisions of E.S.I. Act are not applicable to the advertising agencies as it does not fall under the provisions of section 1(a) of the Act. The learned Judge after hearing both the parties, considered the point regarding the applicability of the provisions of E.S.I. Act and held that in view of the various judgments, mainly the judgment rendered by this Court in E.S.I. Corporation v. Dattaram Advertising Pvt. Ltd., reported in 1988(1) L.L.J. page 430, the

advertising agencies does not fall under the definition of section 1(a) as it is not a shop and therefore, the Act is not applicable. In view of the ruling of this Court, the learned Judge has reframed the issue as under:-

1. Does the Corporation prove that the Applicant's Establishment is liable to be covered under the E.S.I. Act, 1948?
2. If yes, what amount is to be paid to the Corporation by way of contribution?
3. It has been observed by the learned Judge that in view of this judgment, the point is concluded in favour of the respondents/applicants (Advertising agencies) companies that they are not shops and establishments and it is rightly held so. However, the learned Counsel Mr. Jaykar, appearing on behalf of the appellant-Corporation submitted that this issue has been elaborately considered by the Supreme Court and the judgments of this Court including the one in the case of Employees State Insurance Corporation v. R.K. Swamy & others, in Civil Appeal Nos. 1543 and 1544 of 1988 have been set aside and the Supreme Court held that the advertising agencies are covered under the definition of shops and establishments. Therefore, obviously, now it is a statutory liability of the applicants advertising companies to comply with the provisions of E.S.I. Act. Now, the question is whether the provisions of the Act fall under the definition of shops and establishments. Therefore, the issue regarding non-applicability of the Act as held by the learned Judge is resolved by this Judgement. In view of this, the Court is required to frame the same issue in the other form in this fashion:-

1. Does the applicant-advertising agency prove that the establishment is not liable to pay the employees contribution under the E.S.I. Act, 1948?
2. If not, what amount is to be paid to the Corporation in view of the contribution?
4. Having regard to the facts and circumstances of this case, the E.S.I. Court is directed to decide this issue on merits after giving opportunity of being hearing to both the parties. Accordingly, all the appeals are allowed with no order as to costs.
5. Appeal allowed.