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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; J., P.S. NARASIMHA: J.
SPECIAL LEAVE PETITION (C) NOS. 13554-13555 OF 2022; AUGUST 18, 2022
Board of Control for Cricket in India *versus* **Regional Director Employees' State Insurance Corporation and Anr.**

Employees State Insurance Act, 1948 - Board of Control for Cricket in India [BCCI] can be said to be a "shop" for the purposes of attracting the provisions of Employees State Insurance Act - The activities of the BCCI can be said to be systematic commercial activities providing entertainment by selling tickets etc. *(Para 9-12)*

Interpretation of Statutes - The words used in a particular statute cannot be used to interpret the same word in a different statute especially when the two statues are not *pari materia* with each other and have a wholly different scheme from one another. *(Para 11)*

(Arising out of impugned final judgment and order dated 24-06-2022 in FAST No. 25980/2021 with IA No. 1026/2022 in FAST No. 25980/2021 passed by the High Court of Judicature at Bombay)

For Petitioner(s) Mr. Neeraj Kishan Kaul, Sr. Adv. Mr. Abhinav Mukerji, AOR Mr. Kanu Agarwal, Adv. Mrs. Bihu Sharma, Adv. Ms. Pratishtha Vij, Adv. Mr. Akshay C. Shrivastava, Adv. Mr. Dhruv Sharma, Adv. Mr. Raghav Agrawal, Adv.

For Respondent(s) Mr. Manish Kumar Saran, AOR Mr. Satya P. Sharan, Adv.

O R D E R

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Bombay dated 24.06.2022 passed in First Appeal ST No. 25980 of 2021 preferred by the appellant – the Board of Control for Cricket in India (hereinafter referred to as "BCCI") by which the High Court has dismissed the said first appeal, which was filed against the judgment and order passed by the Employees' Insurance Court at Bombay dated 09.09.2021, declaring that the BCCI is covered within the meaning of "shop" as per notification dated 18.09.1978 issued by the Government of Maharashtra under the provisions of Section 1(5) of the Employees State Insurance Act, 1948 (hereinafter referred to as the "ESI Act") and remitted the matter for determining the contribution from BCCI, BCCI has preferred the present special leave petitions.

2. By communication dated 22.06.2011, issued by the Regional Director of Employees' State Insurance Corporation, Mumbai, it was communicated that the BCCI is covered under the provisions of ESI Act w.e.f. 01.01.2007 and it was allotted a Code number, indicating applicability of the provisions of the ESI Act to the BCCI. The BCCI was communicated a notice in Proforma C-18 dated 01.07.2014, claiming contribution amount to the tune of Rs. 5,04,075/- as Employees' State Insurance Contribution for the period commencing from May, 2007 to March, 2014, being subjected to the provisions of the ESI Act. The BCCI resisted the same on the grounds inter alia that the coverage of the BCCI under the provisions of ESI Act is in violation of Section 2A of the ESI Act read with Regulation 10B of the Employees' State Insurance (General) Regulations

1950, since the primary object of the BCCI is to administer, promote and control the game of cricket throughout the country, and therefore, it is not covered or registered as "shop" under the provisions of Mumbai Shop and Establishment Act. It was also the case on behalf of the BCCI that it is not primarily engaged or involved in any trading or commercial activities and therefore, BCCI is not covered within the meaning of Section 1(5) of the ESI Act.

2.1 An appeal was preferred before the Employees' State Insurance Court, Bombay (hereinafter referred to as "ESI Court") against the order passed under Section 45A of the ESI Act, which determined the amount of contribution to the tune of Rs. 4,93,350/- for the period from June, 2010 to March, 2014. By a detailed judgment and order and on considering the various documents produced before it, including BCCI's Memorandum of Association, Rules and Regulations; its Annual Reports, the ESI Court concluded that the activities of the BCCI can be said to be purely commercial activities and therefore, the provisions of the ESI Act shall be applicable to BCCI. The judgment and order passed by the ESI Court was the subject matter of first appeal before the High Court.

2.2 On appreciation of entire evidence on record, the activities carried out by the BCCI and the relevant clauses of the Memorandum of Association and after following the decision of this Court in the case of **Bangalore Turf Club Limited Vs. Regional Director, Employees' State Insurance Corporation. 2014 (9) SCC 657,** the High Court has concurred with the findings recorded by the ESI Court that the BCCI can be said to be a "shop" as per the notification dated 18.09.1978 and therefore, subjected to the provisions of the ESI Act and specifically observed and held that the activities of the BCCI can be said to be commercial activities for the purpose of definition of "shop" and for applicability of the provisions of the ESI Act. Consequently, by the impugned judgment and order, the High Court has dismissed the first appeal, which is the subject matter of present special leave petitions.

3. Shri Neeraj Kishan Kaul, learned Senior Advocate has appeared on behalf of the petitioner – BCCI and Shri Manish Kumar Saran, learned counsel has appeared on behalf of the respondent – ESI Corporation.

4. Shri Neeraj Kishan Kaul, learned Senior Advocate appearing on behalf of the petitioner – BCCI has reiterated what was submitted before the High Court and the ESI Court. It is vehemently submitted that the activities of the BCCI cannot be said to be commercial activities to bring it within the definition of "shop" as per the notification dated 18.09.1978. It is submitted that the revenue earned by the BCCI is ultimately used for promoting the activities of sports – cricket. It is submitted that therefore, the BCCI cannot be said to be a "shop" and, therefore, the provisions of ESI Act shall not be applicable. Heavy reliance is placed on Clauses 2 and 3 of the Memorandum of Association of BCCI.

4.1 It is further submitted by Shri Kaul, learned Senior Advocate appearing on behalf of the petitioner – BCCI that to bring a particular entity within the definition of "shop" and while considering whether the activities of such entity can be said to be commercial activities, the predominant activity of such entity is to be considered. It is submitted that so far as the BCCI is concerned, the primary and dominant object is to promote the cricket. It is submitted that therefore if the pre-dominant activity of the BCCI is considered, in that case, BCCI shall not fall within the definition of "shop" and therefore the provisions

of the ESI Act shall not be applicable. Shri Kaul, learned Senior Advocate appearing on behalf of the BCCI has heavily relied upon the decisions of this Court in the case of **Secretary, Ministry of Information & Broadcasting, Govt. of India and Ors. Vs. Cricket Association of Bengal and Ors., (1995) 2 SCC 161** as well as the subsequent decision in the case of **Commissioner of Sales Tax Vs. Sai Publication Fund, (2002) 4 SCC 57** (paras 10, 11, 13 and 17) in support of this submission that the BCCI cannot be said to be a "shop" as per notification dated 18.09.1978 and that the provisions of the ESI Act shall not be applicable.

5. While opposing the present special leave petitions, Shri Manish Kumar Saran, learned counsel appearing on behalf of the respondents – ESI Corporation has taken us to the specific findings recorded by the ESI Court as well as the High Court holding that the activities of the BCCI can be said to be commercial activities to bring the BCCI within the definition of "shop" It is submitted that the findings recorded by the ESI Court and the High Court are on appreciation of evidence/material on record and considering the relevant clauses namely Clauses (e), (f), (k), (m), (n), (o), (p), (r), (s) of the Memorandum of Association. It is submitted that on considering the material on record and even considering the statement of the Chief Executive Officer of the BCCI, the ESI Court has specifically observed and held that the BCCI is the body involved in entertaining and/or the body carrying out systematic commercial activities and is engaged in providing public services to public at large by organizing events, promoting cricket as source of entertainment and thereby collecting funds.

5.1 It is further submitted by the learned counsel appearing on behalf of the ESI Corporation that the ESI Act being a beneficial legislation and therefore, as held by this Court in the case of **Bangalore Turf Club Limited (supra)**, a liberal meaning should be given to the word "shop". It is submitted that as held by this Court in the above case that since the ESI Act is passed for conferring certain benefits to employees in case of sickness, maternity in case of female employees and employment injury, the ESI Act should receive a liberal and beneficial construction so as to achieve legislative purpose.

5.2 Now, so far as reliance placed upon the decision of this Court in the case of **Sai Publication Fund (supra)** relied upon by the learned counsel appearing on behalf of the petitioner – BCCI is concerned, it is vehemently submitted by the learned counsel appearing on behalf of the ESI Corporation that the said decision shall not be applicable while considering the provisions of ESI Act as the decision in the said case is relating to Income Tax Act. It is submitted that as observed and held by this Court in the case of **Bangalore Turf Club Limited (supra)**, 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. It is submitted on the contrary that the decision of this Court in the case of **Bangalore Turf Club Limited (supra)**, which is dealing with the very provisions under the ESI Act shall be applicable with full force.

5.3 Making above submissions and heavily relying upon the decision of this Court in the case of **Bangalore Turf Club Limited (supra)**, it is prayed to dismiss the present special leave petitions.

6. Heard the learned counsel appearing on behalf of the respective parties at length.

7. The short question which is posed for consideration of this Court is: -

"Whether the BCCI can be said to be "shop" as per the notification dated 18.09.1978 and thereby the provisions of ESI Act shall be applicable to the BCCI or not?"

8. While considering the aforesaid issue/question posed for consideration, a direct decision of this Court in the case of **Bangalore Turf Club Limited (supra)**, which is dealing with the very issue and the applicability of the ESI Act is required to be referred to and considered.

8.1 In the case of **Bangalore Turf Club Limited (supra)**, this Court observed and held that 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 and, therefore, liberal rule of interpretation should be adopted to ensure that the benefits extend to those workers, who need to be covered based on the intention of the legislature. In paragraph 17, this Court considered the object and purpose of the enactment of the ESI Act and in paragraphs 18 to 20 considered the earlier decisions of this Court in the case of **Regional Director, E.S.I. Corporation Vs. Francis De Costa, 1993 Supp (4) SCC 100**; **Transport Corporation of India Vs. Employees' State Insurance Corpn. and Anr., (2000) 1 SCC 332**; **Buckingham and Carnatic Co. Ltd. v. Venkatiah [AIR 1964 SC 1272]** and **Bombay Anand Bhavan Restaurant Vs. Deputy Director, Employees' State Insurance Corporation, (2009) 9 SCC 61**, the relevant observations made in the aforesaid decisions are as under: -

"**18.** In ESI Corpn. v. Francis De Costa [1993 Supp (4) SCC 100], this Court held that: (SCC pp. 105-06, paras 5-6)

"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 the Universal Declaration of Human Rights and Article 7(b) of the International Convention on Economic, Social and Cultural Rights. Right to health, a fundamental human right stands enshrined in socio-economic 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)

19. A three-Judge Bench of this Court, in reference to the ESI Act, in Transport Corpn. of India v. ESI Corpn. [(2000) 1 SCC 332], held that: (SCC pp. 357-58, paras 27-28)

"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 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: (AIR p. 1277, para 10)

'10. … 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)

20. In Bombay Anand Bhavan Restaurant v. ESI Corpn. [(2009) 9 SCC 61], it was observed that: (SCC p. 66, para 20)

"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)

8.1.1 That thereafter in paragraph 21, it is observed and held as under: -

"**21.** 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 provisions 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 provide 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."

8.1.2 Thereafter while interpreting the terms "establishment" and "shop", it is observed in paragraphs 37, 38.6 and 39 to 42 as under: -

"**37.** 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 [ESI Corpn. v. Hyderabad Race Club, (2004) 6 SCC 191], 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 reconsideration.

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38.6. 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 to 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.

39. The term "shop", in regard to the ESI Act, has been discussed in earlier cases by this Court. In Hindu Jea Band [Hindu Jea Band v. ESI Corpn., (1987) 2 SCC 101 : AIR 1987 SC 1166] it is observed that a "shop" would be a place where services are sold on a retail basis.

In International Ore and Fertilizers (India) (P) Ltd. v. ESI Corpn. [(1987) 4 SCC 203] this Court stated that a "shop" would be a place where the activities connected with buying and selling of goods are carried on. In Cochin Shipping Co. [Cochin Shipping Co. v. ESI Corpn., (1992) 4 SCC 245] 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 case [ESI Corpn. v. R.K. Swamy, (1994) 1 SCC 445] the Court extended the meaning of a "shop" to include even sale of services.

40. Therefore, certain basic features of a "shop" may be culled out from the above. It 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.

41. 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".

42. 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 subset of, the term "establishment"."

8.1.3 That thereafter and after observing so, this Court considered whether the Turf Clubs fall under the definition of the term "shop" for the purposes of ESI Act and it is observed in paragraph 47 as under: -

"**47.** 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."

8.1.4 In the aforesaid decision, it is specifically observed and held that the scheme and context of the ESI Act must be given due consideration. A narrow meaning should not be attached to the words used in the ESI Act as 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. It is further observed that the term "shop" should not be understood and interpreted in its traditional sense as the same would not serve the purpose of the ESI Act. It is further observed that an expansive meaning may be assigned to the word "shop" for the purposes of the ESI Act. It is further observed that the activities of the Turf Clubs are in the nature of organised and systematic transactions, and that the Turf Clubs provide services to members as well as to the public in lieu of consideration, therefore, the Turf Clubs are a "shop" for the purpose of extending the benefits under the ESI Act.

9. Applying the law laid down by this Court in the case of **Bangalore Turf Club Limited (supra)** to the facts of the case on hand and considering the systematic activities being carried out by the BCCI namely, selling of tickets of cricket matches; providing entertainment; rendering the services for a price; receiving the income from international tours and the income from the Indian Premier League, the ESI Court as well as the High Court have rightly concluded that the BCCI is carrying out systematic economic commercial activities and, therefore, the BCCI can be said to be "shop" for the purposes of attracting the provisions of ESI Act. After analysing the relevant evidences/material on record, the ESI Court and the High Court had recorded the findings that the BCCI is engaged in systematic commercial activities and is a profit earning institution and is engaged in entertainment industry as it provides entertainment to the customers at a price, i.e., by selling tickets and therefore, it must pass on benefits to its employees by extending the coverage of ESI contribution on the wages payable to the coverable employees. The findings recorded by the ESI Court and the High Court are on appreciation of evidence/material on record, which as such are not required to be interfered by this Court in exercise of the powers under Article 136 of the Constitution of India.

10. The submission on behalf of the BCCI that what is required to be considered is the predominant activities and the predominant activity of BCCI is to encourage the cricket/sports and, therefore, the same shall not be brought within the definition of "shop" for the purposes of applying the ESI Act, the aforesaid has no substance. What is required to be considered is the overall activities. If the test as observed by this Court in the case of **Bangalore Turf Club Limited (supra)** is adopted, the activities carried out by the BCCI can be said to be commercial activities, providing entertainment by selling the tickets. Therefore, for the purposes of ESI Act, the BCCI can be said to be a "shop". As observed and held by this Court in the case of **Bangalore Turf Club Limited (supra)** the ESI Act being a beneficial legislation, the broadest meaning should be given so as to achieve the object and purpose of enactment of ESI Act namely to provide certain benefits to employees in case of sickness, maternity in case of female employees, employment injury etc.

11. Now, so far as the reliance placed upon the decisions of this Court in the case of **Secretary, Ministry of Information & Broadcasting, Govt. of India and Ors. Vs. Cricket Association of Bengal and Ors.,(1995) 2 SCC 161** and **Commissioner of Sales Tax Vs. Sai Publication Fund, (2002) 4 SCC 57** relied upon by the learned counsel appearing on behalf of the BCCI is concerned, while considering the provisions of the ESI Act and/or for the purposes of applicability of the ESI Act, which is a social beneficial legislation, the aforesaid decisions shall not be applicable and/or of any assistance to the BCCI. In the case of **Sai Publication Fund (supra)**, this Court was considering the provisions of Income Tax Act. As observed and held by this Court in the case of **Bangalore Turf Club Limited (supra)**, the two statutes are said to be pari materia with each other when they deal with the same subject matter. It is further observed 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 statues are not pari materia with each other and have a wholly different scheme from one another.

12. In view of the above and for the reasons stated above, no error has been committed by the ESI Court and/or the High Court in treating and considering the BCCI as a "shop" for the purposes of applicability of the ESI Act, which as observed hereinabove, is a social and beneficial legislation. It is also required to be noted that while holding so, the High Court has also taken into consideration the relevant clauses of the Memorandum of Association of the BCCI to come to the conclusion that the activities of the BCCI can be said to be systematic commercial activities providing entertainment by selling tickets etc. The Memorandum of Association as a whole is required to be considered.

13. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and order passed by the High Court as well as the ESI Court. As such, we are in complete agreement with the view taken by the High Court. The special leave petitions stand dismissed accordingly.

Pending application(s), if any, also stands disposed of.