

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
FIRST APPEAL ST NO.25980 OF 2021  
WITH  
INTERIM APPLICATION NO. 1026 OF 2022  
IN  
FIRST APPEAL ST NO. 25980 OF 2021

The Board of Control for Cricket in .. Appellant  
India

Versus

Regional Director Employees State .. Respondents  
Insurance Corporation and anr

...

Mr. Aditya Thakkar with Mr.Ranjit Shetty and Mr. Rahul Dev i/b  
Argus Partners for Appellant.

Mr. Shailesh Pathak a/w Mr. Jay Vora for Respondents

**CORAM: BHARATI DANGRE, J.**

**RESERVED : 12<sup>th</sup> APRIL, 2022**

**PRONOUNCED : 24<sup>th</sup> JUNE 2022**

**JUDGMENT-**

1 The present Appeal is filed by the Board of Control for Cricket of India (hereinafter referred to as 'BCCI'), being aggrieved by the impugned judgment and order passed by the Employees Insurance Court at Bombay (ESI Court dated 9/9/2021, declaring that the BCCI is covered within the meaning

*Tilak*

of 'shop' as per notification dated 18<sup>th</sup> September 1978 issued by the Government of Maharashtra under the provisions of Section 1(5) of the Employees State Insurance Act and the ESI Court, has remitted the matter for determining the contribution from the appellant Board in the wake of the observations made in the impugned judgment.

2 In support of the Appeal, I have heard the learned Advocate Mr. Aditya Thacker with Mr. Rahul Dev i/b Argus Partners for the appellant and Mr. Shailesh Pathak along with Jay Vora for the respondent.

Since the parties expressed their desire to argue the Appeal finally and have placed on record the compilation of documents, and also the compilation of the relevant judgments on which they seek to place reliance, at the request of the parties, I have heard the Appeal finally.

3 The brief facts in the background of which the present Appeal deserve consideration, can be culled out as under :-

The BCCI is a Society registered under the provisions of Tamil Nadu Societies Registration Act, 1975 in Central Chennai. It claims to be a National Government Body for Cricket in India and stake its existence since the year 1928. It is an autonomous non-profit making sports body established for promoting the sports of Cricket in India.

*Tilak*

In the month of April-May 2011, the Board office was surveyed by the Insurance Inspector and the salary details of its employees were verified. Upon completion of the inspection, a visit note was recorded by the Inspector on 10/5/2011 and by communication dated 22/6/2011, issued by Regional Director of Employees State Insurance Corporation, Mumbai, it was communicated that the BCCI is covered under the provisions of Employees State Insurance Act, 1948 with effect from 1/1/2007 and it was allotted a Code number, indicating applicability of the provisions of ESI Act to the Board. The Board was communicated a notice in Proforma C-18 dated 1/7/2014, 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 ESI Act, the Board resisted by letter dated 11/8/2014, and clarified that it is a non-profit organization, where no commercial/economic/manufacturing activities are performed or carried on and it requested the ESI Corporation to reconsider its decision of allotment ESI Code. On various dates, hearing was conducted before the Assistant Director of ESI Corporation, and on 23/6/2015, the legal Advisor of the Assistant Director of ESI Corporation called for personal hearing, but refused to accept the claim of the Board that it is not covered under the provisions of the ESI Act, and the decision came as a shock, since no

*Tilak*

opportunity of hearing was afforded to it before the decision was taken.

In short, the claim of the BCCI, the appellant is, that the coverage of the appellant Board under the provisions of ESI Act is in utter violation of Section 2-A of the ESI Act read with Regulation 10-B of the ESI (General) Regulations 1950, since the Board is a governing body for cricket in India and its primary object is to administer, promote and control the game of cricket throughout the country, including women's cricket and to encourage formation of State, regional and other cricket associations and therefore, it is not covered or registered as 'shop' under the provisions of Mumbai Shop and Establishment Act. It is the claim of the appellant that it is not primarily engaged or involved in any trading or commercial activities and therefore, by no stretch of imagination, can it be covered within the meaning of Section 1(5) of the ESI Act, 1948.

4 Being aggrieved by the impugned order passed u/s.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, challenge was raised before ESI Court, Mumbai & the order was sought to be quashed and set aside. In the said application, the Regional Director, ESIC, Mumbai and the Recovery Officer, ESIC, Mumbai were impleaded as respondents.

*Tilak*

In response, ESIC raised a point of limitation and urged before the ESI Court, that the Board is carrying on Systematic, Economic, Commercial activity like selling of tickets of cricket matches and rendering service for a price and therefore, it is a 'shop' and hence covered u/s.1(5) of the ESI Act, 1948. The Annual Report of the Board was projected to depict its income in the financial year, which included the income from International Tours and also income from the conduct of Indian Premier League (IPL). It was argued by the Corporation before the concerned Court, that the Board is profit making establishment, carrying systematic commercial activity and on carrying out the inspection of the premises, it was found that the Board had employed 20 coverable employees since the year 2000 and it was rendering services for the price. Since the statute itself had covered the appellant Board under the provisions of ESI Act, it was argued that there was no question of affording an opportunity of personal hearing. The claim of the Board was vehemently opposed on the ground that it fall within the purview of the term 'shop' and since it employed 20 coverable employees, it is covered within the purview of ESI Act and by the authority of the Corporation, it had assessed the contribution, on the assumed wages as per the best method, by considering information available before it and since the Board had admitted that it is providing entertainment at a price i.e. selling tickets and broadcasting rights and selling sponsorship, it was considered to

*Tilak*

be sufficient enough to bring the applicant Board u/s/1(5) of the ESI Act, 1948.

5 The ESI Court determined the seminal issue arising in the Application, whether the applicant Board is covered by the provisions of ESI Act, 1948, and whether the decision of the Corporation to cover the applicant Board under ESI Act is bad in law. It also deliberated upon whether the Board has proved that out of 20 employees, 8 employees were engaged through contractor and if it is so established, what was its effect.

6 On consideration of the evidence of Shri Rahul Dinesh Johri, on behalf of the applicant Board and on referring to the various documents produced before it, including its Memorandum of Association, Rules and Regulations, its annual reports, the ESI Court delved upon the nature of functioning of the Board, including its activities like conducting international cricket matches, IPL Cricket matches, Indian Cricket League, Champion league etc, which, according to the Court, were purely commercial activities, and hence it repelled the contention advanced on behalf of the Board that it is engaged only in promoting sport cricket all over India and not engaged in profit making business. The contention of the Board that it is occasionally selling tickets and creating revenue for encouragement of Sports Cricket in India, also was turned down by referring to the admissions given by the Board's witness Johri in his cross-examination, to the effect that the Board is selling

*Tilak*

Television broadcasting rights to the concerned Television Company by auction and the applicant Board is receiving amount from sponsorship of Indian Cricket Team and the further admission that the Board exercised the control over IPL Cricket matches and in receipt of income from sponsorship from these matches. The Court concluded its finding as under:-

*“So all above stated facts clearly show that applicant board is engaged in systematic commercial activities and profit earning institution. It is working in entertainment industry and providing entertainment to its customers at price i.e. by selling tickets. Therefore, it is liable to pay ESI contribution on the wages paid to the coverable employees.”*

7 On analyzing the authoritative pronouncements brought to its notice, the ESI Court concluded that the impugned order passed u/s.45A of the ESIC Act dated 15/7/2015, clearly indicated that the determining authority considered the number of employees as 20 and claimed the ESIC contribution amount from June 2010 to March 2014. However, recording that both the parties to the proceedings have not brought on record any documentary evidence to demonstrate as whether the two contractors, who employed the 8 employees have paid the ESI contribution on the wages paid to them or not, the order passed u/s.45-A of the ESI Act on 15/7/2015 was held to be illegal and set aside. In order to calculate the correct outstanding ESI

*Tilak*

contribution payable by the Board, the matter was remitted back to the determining authority for fresh hearing.

8 However, the applicability of the provisions of ESIC to the BCCI, being held to be proved, it was declared that the decision of the Corporation to cover the Board as 'shop' in terms of the notification dated 18/9/1978 issued by the State Government was held to be legal.

9 It is this decision which is impugned in the First Appeal.

The learned counsel Mr.Thakkar appearing for the Board would assail the said decision by submitting that the test of systematic, economic activity or commercial activity or commercial activity as laid down by the Hon'ble Apex Court in case of Bangalore Turf Club Ltd Vs. Regional Director, ESIC, 2014 (9) SCC 656, is a qualitative test and not a quantitative one. The learned counsel would submit that the activities of the Board though structured to make them more economically viable, the basic character of the activity of the Board, being to promote and popularize cricket, has been lost sight of, by the ESIC Court, along with an important aspect that the appellant Board, is registered under the Tamil Nadu Societies Registration Act, 1975, which would be the most material and relevant factor, lending credence to the fact that the Board is involved exclusively in the promotion of cricket and activities incidental thereto. Relying

*Tilak*



upon the Memorandum of Association (MOA) of the Board which are placed on record, which has enlisted various activities of the Board, broadly, it is submitted that it was impermissible for the ESI Court to go beyond the objects of the appellant, as set out in the Memorandum of Association to hold that the appellant is engaged in profit making activities. He would submit that performance of some of the ancillary and/or incidental objects to achieve the main and pre-dominant object, would not amount to altering the principle object of the Board, being to promote cricket. It is argued by the learned counsel that the Board is the National governing body for Cricket in India and comprise of its affiliate members, which are primarily the central controlling bodies of the discipline of cricket in their respective states and the affiliated State Associations do select their representatives, who, in turn, elect the Board officials, in term of the Regulations of the Board. It is also submitted that the Board is affiliated to be the International Cricket Council, which is the Apex Governing body in the whole world.

10 To be precise, the submission is, the Board is an autonomous, non-profit making sports body and it is neither a 'shop' nor a 'commercial establishment' as contemplated under the provisions of the Bombay Shop and Establishment Act, but it is only the governing body for the sport of cricket and its functions are not akin to any commercial business trading activities. It is further submitted that merely because the

*Tilak*

applicant Board generate some revenue through sponsorship and from selling of broadcasting rights to promote the game of cricket in India, it cannot be assumed that the Board is a 'shop' within the meaning of ESI Act, and the learned counsel Mr.Thakkar would submit that the Corporation as well as the Court, in its impugned judgment has failed to consider the purpose of constituting the Board of Control for Cricket in India and the predominant activities, undertaken by it.

11 Apart from this, the legality of the order dated 15/7/2015 is also questioned on the ground that the Assistant Director determine contribution for 20 employees, whereas according to the Social Security Officer, out of 15 employees, only 12 were getting wages below the limit of coverage and moreover, the employees employed through the contractors, were covered separately under the Code number of the contractors, and since the impugned orders failed to mention that the Assistant Director had verified the records of the contractors, and did not find any contribution paid by them on behalf of the employees, it amount to total non-application of mind on part of the Assistant Director to pass the impugned order and this illegality was even percolated by the ESI Court.

12 Per contra, the learned counsel for the Corporation would heavily rely upon the evidence of the Social Security Officer, Regional Office, Lower Parel, Mumbai who had given a surprise visit to the office of the Board on 11/4/2011 and

*Tilak*

26/4/2011 for the purpose of survey and prepared a visit note. The learned counsel would emphasize on the activities carried out by the Board like selling of tickets of cricket matches and providing entertainment which could be clearly classified as rendering the services for a price. The learned counsel would submit that the annual report of the Board comprise of the income of the Board from International Tours and the income from Indian Premiere League. He would submit that the systematic economic commercial activity carried out on behalf of the Board would clearly make the establishment fall within four corners of the ESI Act. The Corporation would oppose the submission of the learned counsel for the Board, that the Memorandum of Association of the Board would be determinative of it's nature. The counsel would submit that the admissions given in cross-examination by the witness of the appellant would clearly lead to an inference that the Board is engaged in systematic commercial activity and it is a profit earning institution, engaged in 'Entertainment' industry as it provide entertainment to the viewers 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 learned counsel would place heavy reliance upon decision of the Apex court in Bangalore Turf Club Ltd (supra), where a Race Club is held to be an establishment coverable under

*Tilak*

the ESI Act. He would insist, that the Scheme and context of the ESI Act must be accorded due weightage and if narrow interpretation is given to the words used in the statute it would defeat the purpose of the enactment, which is to ensure, that the employees of the establishments are secured against risks to their life, health and well being by casting the said responsibility upon the employer. The learned counsel, would further submit that the term 'shop' has been accorded a wider interpretation, dehors its traditional use and when the Turf Club with its expansive activities has been classified as 'shop' for the purposes of ESI Act, there is no reason why the BCCI which is also engaged in a commercial activity shall not receive a similar treatment.

The learned counsel would thus submit that the impugned judgment dated 9/9/2021 is based on a sound logical reasoning and a broader interpretation of the provisions of ESI Act and he would urge this Court to uphold the said decision.

13 In order to determine the issue which arises in this appeal, as to whether the BCCI is a 'shop' in the context of the ESI Act, 1948, it would be necessary to briefly refer to the Statute.

The ESI Act, 1948 is a piece of social security legislation and in enacting the said statute, the legislature necessarily derived its guiding force from Article 38 and 39 of the Constitution as well as the concept of economic and social

*Tilak*

justice envisaged in the preamble of the Constitution, so as to effectively construe the most cherished fundamental right, being Right to life. The State is enjoined under Article 39(e) to protect the health of its workers, under Article 41, to secure sickness and disablement benefits and under Article 43 to ensure decent standard of life, right to medical and disability benefits are well recognized fundamental rights under Article 25(2) of the Universal Declaration of Human Rights and simultaneously, Article 7(b) of the International Convention of Economic, Social and cultural rights. Right to health is considered as a facet as a right to life and concomitantly, right to medical health of workman becomes his/her fundamental right.

The Act of 1948 seek to attain maintenance of health of an insured workman, recognizing the right to medical benefit as a fundamental right under the Constitution and confer certain benefits upon the employee in case of sickness, maternity and employment injury and to make provision for certain other benefits. Thus, the enactment is intended to operate as a beneficial piece of legislation to attain general welfare of the employees.

14 The coverage of the Act by inclusion of Section 1 was made applicable in the first instance, to all factories (including factories belonging to the Government) other than the seasonal factories. Sub-section (5) of Section 1, permitted expansion of the applicability of the provisions of the Act and empowered the

*Tilak*

appropriate Government in consultation with the Corporation and where the appropriate Government is the State Government and in other case with the approval of the Central Government to extend the provisions of the Act, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

The Act define the term 'employee' as a person employed for wages in or connection with the work of a factory or establishment to which the Act applies along with various distinct facets of the employment. It define the term 'factory' in Section 2(12), 'manufacturing process' in Section 2 and term 'principle employer and wages', as well as 'wage period'.

The Act, however, do not define the term 'establishment' though Section 1(5) empower the Government to extend the provisions to any other establishment or class of establishment, industrial, commercial, agricultural or otherwise. The interpretation to be accorded to the term 'or otherwise' has been a subject matter of various authoritative pronouncements, and the position is no more, *res intergra* that the term cannot be restricted by applying the principle of *noscitur sociis* and the consistent view has been to interpret and accord it a wider meaning.

15 The Government of Maharashtra issued notification No.ESI/1677/3910/PH-15 on 18/9/1978, exercising the power

*Tilak*

conferred on it under sub-section (5) and Section 1 and extended the provisions of ESI Act to certain classes of establishment and thus expanded the applicability of the provisions of the ESI Act as under :-

“The following establishments wherein 20 or more employees are employed, or were employed for wages on any day of the preceding 12 months i.e.

- (i) hotels,
- (ii) restaurants;
- (iii) shops;
- (iv) cinemas, including preview theatres; and
- (v) Newspaper establishment as defined in Section 2(d) of the working journalist (Conditions of Service) and Miscellaneous provisions Act 1955.

Similar notification came to be issued by the Government of Karnataka, extending the provisions of the ESI Act, establishment like shops road, motor transport, cinemas, including preview theaters and newspaper establishments which are employed; or were employing 20 or more persons for wages on any dates of the precedent 12 months.

16 In the wake of the said notification, the issue that arose for consideration and spelt out for determination, by the ESI Court was crystallized as under :-

- (1) Does the appellant prove that the order dated 15/7/2015 passed by the Corporation declaring that the

BCCI is liable to pay contribution under ESI Act, is illegal and bad-in-law?

(2) Whether the appellant prove that out of 20 employees, 8 are already covered through the contractor appointing them and what is it's effect?

17 Since the finding of ESI Court is recorded on these points, I shall deal with them in seriatim. In order to answer the first issue, it would be necessary to determine whether BCCI is 'a shop' covered under the notification issued by the State of Maharashtra covering shops, wherein 20 or more employees are employed or were employed for wages on any day of the preceding 12 months.

The argument of the appellant being that it is neither a 'shop' nor a commercial establishment, but it is an autonomous/non-profit making sports body.

The BCCI is a Society registered at Chennai under the provisions of Tamil Nadu Societies Act 1975 and project itself as a national governing body for cricket in India, which is in existence since 1928. The Board consists of it's affiliate members, which are primarily the Central Controlling bodies of the Discipline of Cricket in their respective states, who select their representatives and in turn, elect the Board's officials in terms of the Rules and Regulations of the Board. The BCCI also claim that it is a full member autonomous body affiliated to the

*Tilak*



International Cricket Council, which is the Apex body for the sport of cricket. It is the case of the Board that its day to day affairs are governed by an elected body, which necessarily function within the parameters/guidelines set out in its memorandum and Rules and Regulations.

18 In order to have an insight into the nature of the Board and its objectives, one must look into it's Memorandum and Articles of Association.

The amended Memorandum of Association (MOA) and Rules and Regulations, formulated as per judgment passed by the Hon'ble High Court on 9/8/2018, are placed on record.

The objects and purposes of BCCI are found to be contained in the MOA and since the rival parties have it's foundational argument based on its various clauses, it would be most appropriate to reproduce the objects of BCCI enlisted in clause(2) of Memorandum of Association.

- (a) To control and improve quality and standards of the game of Cricket in India, lay down policies, roadmaps, guidelines and make rules and regulations (and amend or alter them) in all matters relating to the game of Cricket, recognizing that the primary stakeholders are the players and Cricket fans in India, and that accountability, transparency and purity integrity of the Game are the core values;
- (b) To provide for measures necessary for promotion and development of the game of Cricket, welfare and interest of Cricketers and elimination of unethical and unfair practices in the Game of cricket; and

*Tilak*

for that purpose, organize coaching schemes, establish coaching academies, hold tournaments, exhibition matches, Test Matches, ODIs, Twenty/20, and any other matches and take all other required steps;

(c) To strive for sportsmanship and professionalism in the game of Cricket and its governance and administration; inculcate principles of transparency and ethical standards in players, team officials, umpires and administrators; and to ban doping, age fraud, sexual harassment and all other forms of inequity and discrimination.

(d) To encourage the formation of State, Regional or other Cricket Associations and the organization of Inter-State and other Tournaments; to lay down norms for recognition which achieve uniformity in the structure, functioning and processes of the Member Associations;

(e) To arrange, control, regulate and if necessary, finance visits of Teams that are Members of the International Cricket Council and teams of other Countries to India;

(f) To arrange, control, regulate and finance, visits of Indian Cricket Teams to tour countries that are members of the International Cricket Council or elsewhere in conjunction with the bodies governing cricket in the countries to be visited;

(g) To select teams to represent India in Test Matches, One Day International, Twenty/20 matches and in any other format in India or abroad as the BCCI may decide from time to time;

(h) To foster the spirit of sportsmanship and the ideals of cricket amongst school, college and university students and others and to educate them regarding the same;

- (i) To appoint India's representative/s on the International Cricket Council, as also to Conferences and Seminars connected with the game of Cricket;
- (j) To appoint Managers and/or other team officials for the Indian Teams;
- (k) To employ and appoint CEOs, professional managers, auditors, executive secretaries, administrative officers, assistant secretaries, managers, clerks, team support staff, players, and other service personnel and staff; and to remunerate them for their services, by way of salaries, wages, gratuities, pensions, honoraria, ex-gratia payments and/or provident fund; and to remove/terminate or dismiss such employees or personnel;
- (l) To ensure that tickets to cricket matches are widely available well in advance of the matches to members of the public at reasonable rates, and to prevent distribution of the same as largesse; and also to offer seats *gratis* or at nominal rates to students;
- (m) To lay out cricket grounds and to provide pavillion, canteen and other facilities and amenities for the convenience and benefit of the members, players, and the Cricket fans including the women and the disabled, and to ensure the availability of Cricket gear and amenities to Cricket players;
- (n) To constitute Committees, from time to time, and entrust or delegate its functions and duties to such Committees, for achieving the objects of the BCCI;
- (o) To vest immovable properties and funds of the BCCI in Trustees appointed by it, for carrying out the objects of the BCCI;
- (p) To sell, manage, mortgage, lease, exchange, dispose of or otherwise deal with all or any property of the BCCI;

- (q) To acquire or purchase properties – movable and immovable, and assets – tangible and intangible, and to apply the capital and income therefrom and the proceeds of the sale or transfer thereof, for or towards all or any of the objects of the BCCI;
- (r) To collect funds, and wherever necessary, borrow with or without security and to purchase, redeem or pay off any such securities;
- (s) To carry out any other activity which may seem to the BCCI capable of being conveniently carried on in connection with the above, or calculated directly or indirectly to enhance the value or render profitable or generate better income/revenue, from any of the properties, arises and rights of the BCCI;
- (t) To promote, protect and assist the Players who are the primary agents of the game by:
- (i) Creating a Players' Association to be funded by the BCCI;
  - (ii) Being Sensitive to Players' before international calendars are drawn up so that sufficient time is provided for rest and recovery;
  - (iii) Taking steps, particularly on longer tours, so the emotional wellbeing and family bonds of the Players' are strengthened;
  - (iv) Compulsorily having qualified Physiotherapists, Mental Conditioning Coaches/ Counsellors and Nutritionist among the Team's support staff;
  - (v) Having a single point of contact on the logistics and managerial side so that Players's can fully concentrate on the game;
  - (vi) Registering all duly qualified agents to ensure there is oversight and transparency in player representation;
  - (vii) Offering appropriate remuneration of an international standard when representing the country on

the international stage, and always recalling that national representation has priority over club or franchise;

(U) To grant/donate sum/s for:

(i) Such causes as would be deemed fit by the BCCI conducive to the promotion of the game of Cricket;

(ii) The benefit of Cricketers or their spouses and children by introducing benevolent fund schemes or other benefit schemes, as the BCCI deems fit, subject to its rules and regulations;

(iii) The benefit of any other persons who have served Cricket or their spouses and children as the BCCI may consider fit;

(iv) To award sponsorships to sportspersons in games other than Cricket for development of their individual skills; and

(v) To donate to any charitable cause;

19 Clause No.3 of the Memorandum of Association is stressfully relied upon which reads thus :-

“The income, funds and properties of the BCCI, however acquired, shall be utilized and applied solely for the promotion of the objects of the BCCI as set forth above to aid and assist financially or otherwise and to promote, encourage, advance and develop and generally to assist the game of cricket or any other sport throughout India”.

20 On being directed to pay Employees Contribution and Employer’s contribution and failure to abide by the said direction, action came to be initiated against the BCCI u/s.45A of

the Act which was contested by the Appellant Board broadly on the following grounds:

It is clarified that, BCCI is the apex Governing Body responsible for formulation and implementation of polices, for the game of Cricket in India.

It is registered under Tamil Nadu Society's Registration Act 21/1860 dated 28<sup>th</sup> Nov, 1940.

It is a non-profit organization, where no commercial economical and/or manufacturing activities are performed or carried on.

It is therefore stated that, we do not perform/carry out any functions, which falls under the purview of Section 1(5) of the act.

21 The coverage of BCCI under the provisions of ESIC Act as a shop within the meaning of notification issued by the Government of Maharashtra u/s.1(5) of the ESI Act, and the notice received by it, in form C-18 proposing to determine contribution for the period from May 2009 to March 2014, resulted in questioning the said decision by submitting that BCCI, in no manner, is engaged in any trading activities but its primary object is to administer, promote and control the game of cricket throughout the territory of India, including women cricket and to encourage formation of State, Regional or other Cricket Associations. The decision of the Corporation was clammed as arbitrary and its classification as 'shop' was seriously objected to, also by pleading non-adherence of principles of natural justice.

*Tilak*

The BCCI approached the Employees Insurance Court, calling in question the said decision of the Corporation initiating any proceedings, pursuant to its classification as a shop. The Employees Insurance Court, Mumbai stayed the recovery, subject to deposit of 50% of the amount.

22 In support of its claim, the Chief Executive officer Shri Rahul Dinesh Johri of the Board filed his affidavit in lieu of Examination-in-Chief and affirmed its stand that the Board only comprises of its affiliated members which are primarily central controlling bodies of the discipline of cricket In respective States and it is an autonomous, non-profit making sports body and its functions are not akin to any commercial or business trading activity. Making a grievance about not affording an opportunity of hearing before determining the coverage of ESI Act and allotment of Code number, he gave the following admission.

“12 I say that having heard us, the Assistant Director countered that the applicant Board is involved in sale of tickets, gets revenue through sponsorship, selling broadcasting rights and is also deriving income from ICC membership. To this, our representative had clarified that occasionally tickets are being sold during cricket matches, but the primary activities of the Board are not in any way involved with trading or commercial activities. Our representative further explained that we were generating revenue to meet the expenses, to achieve the aims and objectives, through sale of tickets, sponsorship, selling broadcasting rights, etc. I say that we emphatically had informed that the generation of income was necessary to plough back the same to the



game, its promotion and development. I say that a reference was drawn to the fact that a Sport, being part of education and entertainment, we provide our income for the promotion and development of infrastructure also and such expenses following income could not be correlated with commercial or business activities. It was also pointed out to the Assistant Director that the predominant activity of the Board is to administer, promote, develop and control the game of cricket throughout the territory of India”

On being cross-examined by the Corporation, following admissions surfaced before the Court.

“It is true to say that applicant board is selling television broadcasting rights to the concerned television companies by auction. Witness volunteers that applicant board is selling said rights on behalf of concerned state cricket association. It is true to say that till today applicant board has not produced any documentary evidence on record in order to show that applicant board is selling television rights on behalf of concerned state cricket association. It is true to say that applicant board is receiving amount from sponsorship of Indian cricket team. Witness volunteers that applicant board is receiving said sponsorship amount for Indian cricket team. It is true to say that applicant board is having control over Indian Premier League cricket matches. Witness volunteers that applicant board is exercising said control through IPL Governing Council. IPL Governing Council consists 5 members from applicant board, 2 members are representing players and 1 is nominee by Comptroller and Auditor General of India. It is true to say that after the judgment of Apex Court, CEO of applicant board, 2 representatives of players and nominee of CAG became member of IPL Governing Council. It is true to say that applicant board is receiving



income from sponsorship of IPL matches. It is not true to say that applicant board is receiving income from auction of players. The IPL matches tickets are sold by the hosting franchise team. There is a franchise agreement between applicant board and IPL franchise in respect of management of team commercial relationship and respective duties of both parties. It is true to say that applicant board is receiving income from IPC matches. The IPL franchise team is making payment of fixed percentage share of their respective income”.

23 In contrast, in support of it's stand, the Corporation examined the Social Security Officer Smt. Sadhana Pangare, who narrated the procedure that was followed while carrying out the inspection of the Board and deposed that 20 coverable employees were employed in the premises of BCCI on 10/5/2011 and during inspection, it was found that since January 2007, there were 15 employees employed by the BCCI and out of the, 12 employees were drawing salary less than Rs.10,000 per month, whereas M/s.Property Guard Security Services Pvt. Ltd had employed 5 coverable employees in the premises of BCCI with effect from 1/1/2007, whereas M/s.Rahul Housekeeping Services had employed three coverable employees in the premises of BCCI with effect from 1/2/2006.

The said witness brought on record the inspection note which categorically recorded as under :-

*Tilak*

“The unit has started its business of “sports and training activities” with effect from 28/11/1940 (as per pan card) The unit has been registered under the Tamil Nadu Societies Registration Act, 1975.

On verification of salary statements produced before me, it is observed that in the month of January 2007, there are total 15 employees employed for wages, out of which 12 employees are drawing salary below Rs.10,000/-.

Also two contractors namely, M/s.Property Guards Security Services (P) Ltd (31-43395-101) & M/s.Rahul Housekeeping Services (35-17063-101) have an agreement with BCCI w.e.f 1<sup>st</sup> Jan 2007 & 1<sup>st</sup> Dec 2006 respectively (copies of agreement enclosed)

As per agreement, both the contractors i.e. M/s.Property Guards has employees 5 coverable employees & M/s.Rahul Housekeeping Services has employed 3(three) coverable employees in the premises of BCCI.

Thus, in the month of January 2007, there are total 20(twenty) coverable employees working in the premises of BCCI.

As per employer’s version, they are exempted from Income Tax and also argued that they are not coverable under the ESI Act”.

24 In light of the evidence brought before it, the ESI Court decided the application preferred by the Court, seeking a declaratory relief that it is not covered under the provisions of ESI Act as a ‘shop’ and therefore, the order directing to deposit the contribution was just and proper. The ESI Court, apart from analyzing the factual scenario, also minutely scanned the

*Tilak*

authoritative judicial pronouncements, cited before it by the rival parties and in light of the factual and legal position, proceeded to determine, whether BCCI is a 'shop' and covered u/s.1(5) of the ESI Act, since it is engaged in commercial and trading activities. The learned Judge exhaustively referred to the Memorandum of Association and Rules and Regulations and extensively relied upon various clauses therein, to repel the contention of the Board that the Board is engaged only in promoting sport of cricket and not engaged in profit making business.

25 The Court rendered the following finding on the basis of the evidence placed before it and the following is the essence of its decision :

“The said witness has further admitted in his cross-examination that the IPL matches tickets are sold by hosting franchise team. There is a franchise agreement between applicant board and IPL franchise in respect of management of team, commercial relationship and respective duties of both parties. The said witness has specifically admitted in his cross-examination that applicant board is receiving income from IPL matches and IPL franchise team is making payment of fixed percentage share of their respective income. So all above mentioned admissions given by applicant's witness show that applicant board is engaged in systematic commercial activities and earning profit by arranging international cricket matches, IPL cricket matches as well as selling television broadcasting rights and taking percentage share earned by IPL franchises. The annual report for the financial year 2008-2009 to 2014-2015 are produced by applicant board on record alongwith Exh. 26 a sr. no.1 to 7 respectively. The audit report included in said annual report

*Tilak*

show following entries in respect of total income and paid entertainment tax :-

Year	Total Income
2008-2009	72,58,327,503/- (Page No. 63)
2009-2010	8,861,118,021/- (Page No. 95)
2010-2011	8,680,315,771/- (Page No. 101)
2011-2012	849.44 Crores /- (Page No. 102)
2012-2013	753.42 Crores (Page No. 97)
2013-2014	1,139.36 Crores (Page No. 86)
2014-2015	1266.41 Crores (Page No. 81)

All above stated reports show that applicant board has earned above mentioned income from the sources of income from grant of media rights, income from international tours, income from Indian Premier League, income from champion league T-20, distribution/ participation fee from the international/Asian cricket council (ICC), minimum guarantee royalty, interest income, additional sponsorship income and other income. The said reports also show that applicant board has paid entertainment tax during the period 2008 to 2015 and prayed for refund/recover of following amounts on the reason that it has paid entertainment tax on matches not held and pertaining to tickets which remained unsold.

YEAR	ENTERTAINMENT TAX	NOTES OF ACCOUNTS
2009-2011	Paid- Rs.31,250, 348/- Recoverable- Rs. 7,187,354/-	Para No. 34
2010-2011	Paid-Rs. 15,576,000/-, Recoverable Rs. 15,576,000/- (Match shifted from Bangalore to Mumbai)- Total Entertainment Tax amounting to Rs. 22,763, 354/- is recoverable	Para No. 37

*Tilak*

2011-2012	Rs.5.87 Crores is considered as recoverable	Para No. 31
2012-2013	Rs.3.02 Crores is considered as recoverable	Para No.31
2013-2014	Rs.4.49/- Crores paid and considered as recoverable	Para No. 31
2014-2015	Rs.4.69/- Crores paid and considered as recoverable	Para No. 31

26 A similar issue arose before the Hon'ble Apex Court when it was called upon to decide a reference whether it's earlier decision in case of ESI Corporation Vs. Hyderabad Race Club, 2004 (6) SCC 191, is a flawed decision, where it was held that 'Race Club' is an establishment and whether it is an establishment for the purpose of ESI Act. The Apex Court determined the said issue, on confronted with a factual aspect in determining whether the Bangalore Turf Club Ltd and Royal Western India Turf Club Ltd, are 'shops' engaged in systematic commercial activity and hence, covered by the notification issued u/s.1 (5) of the ESI Act.

The question which was taken up for consideration was whether 'a Race Club' would be covered under the definition of 'shop', which term is not defined either in the ESI Act or in the notification as well. The Apex Court then proceed to decide whether the activities of race club amount to entertainment. Keeping in mind the purpose of the ESI Act, to confer certain benefits to employees in case of sickness, maternity, employment injury and therefore, the wording used were given a wider

*Tilak*

interpretation.

The Apex Court referred to the notification issued by the Karnataka Government as well as the Government of Maharashtra in exercise of power conferred upon them u/s.1(5) of the ESI Act, 1948 to cover 'shops' and also referred to the term 'establishment' in its normal parlance and observed 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 (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.”*

Tilak

27 While determining the question whether a race club would be covered under the definition of 'shop', after referring to the meaning of the term, in various dictionaries, it was concluded as under :-

*“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 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 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.*

*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 sub-set of, the term 'establishment'."*

28 Analyzing the activity of racing and the facilities provided by the race clubs to indulge in betting activities, Their Lordships of the Apex Court have held 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.*

*48. 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".*

29 By referring to the objects of the Bangalore Turf Club as contained in its Memorandum of Association, it was held as under :-

*"50. 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.*

*51. 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 viewership 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."*

30 Conclusively, it was held that a race club is an establishment and the appellant Turf Clubs are duly covered under the term 'shop' for the purpose of ESI Act and notification issued thereunder.

31 It is this judgment which is heavily relied upon by the ESI Court while setting the impugned judgment. In the background of this judgment, I shall now turn my attention to the various clauses contained in the Memorandum of Association which are indicative as systematic commercial activity carried out by the BCCI in its functioning. The Board claim that it is the National Governing body for cricket in India and its prime objective is to promote cricket in the world and it's specific stand is, its functions are not akin to any commercial or business/trading activity.

The nature of the Board can be very well discerned from its Memorandum of Association and Rules and Regulations. The objects of the BCCI as enumerated in the Memorandum of Association are multiple and amongst its various objects, the key object is to control and improve the quality and standard of the game of cricket in India and to lay down the policies, road maps, guidelines and to make the rules and regulations in all matters relating to the game of cricket. It also aim to provide for measures necessary for promotion and development of cricket and for that

*Tilak*

purpose, organize coaching teams, establish coaching academics, hold tournaments, exhibition matches, test matches, ODI, 20-20 and any other matches.

32 As the learned counsel for the Board has argued that the object of the Board is to carry out the activities for promoting the game of cricket and while doing so, to earn money but to spend the same on cricket.

33 The argument of the learned counsel in the wake of certain objectives and purposes of the BCCI which are highlighted in the Memorandum of Association appear to be *prima facie* correct. However, when one look at the commercial angle of its objectives, being to hold matches of distinct categories, and permitting the cricket fans to watch those matches by purchasing tickets, the BCCI is engaged in an activity of providing entertainment to the viewers. The objective (i) of Memorandum of Association contemplate that the tickets of the cricket matches are made widely available in advance to the members of the public at reasonable rate.

The Chief Executive Officer of the BCCI in his evidence affidavit has highlighted upon the activities of the Board.

In the cross-examination, he has given admission that the Board is selling T.V. broadcasting rights to concerned T.V. companies by auction, though he clarify that it is on behalf of the concerned State Cricket Association. He, however, admit that

*Tilak*

there is no documentary evidence to make the said assertion good. He also admit that the Board is receiving amount from sponsorship of Indian Cricket Team.

34 It is an admitted fact that the Board exercise control over the Indian Premier League cricket matches, through the IPL governing council. A categorical admission on behalf of the witness examined by the Board, is receiving income from the sponsorship from the IPL matches. It is also admitted that the IPL matches tickets are sold by holding franchise Team and there is a franchise agreement between the Board and IPL franchisee in respect of the management of the team. This is clearly indicative of the commercial relationship between them and the duties to be discharged by both the parties. A specific admission has come on record from the said witness that the Board is receiving income from the IPL matches and IPL franchise team is also making payment of fixed percentage/share of their respective income to the Board.

The above admissions given by a person who is in helm of the affairs of the appellant Board, go a long way to establish the nature of the activities carried out by the Board. The Board is constituted for permitting the game of cricket, but at the same time, it has also carried out various systematic activities, which are commercial in nature by providing services and entertainment.

Entertainment is a wide term, which denote, that

*Tilak*

activity which serves for amusement and amusement is defined is a pleasurable occupation of the senses or that which furnishes it, such as dancing, sports or music etc. The above meaning of the term “entertainment” is found to be contained in words and phrases “*permanent edition Vol.14A*”. The term ‘entertainment’ has been held to include recreational activities such as games, sports, play and dancing as per corpus juris secundum Vol. XXX.

35 The question which fall for determination is whether the Board is a ‘shop’ for the purposes of ESI Act.

The term ‘shop’ which has not been defined in the Act, has been covered u/s.1(5) of the ESI Act, by way of a notification issued by the Government of Maharashtra on 18/9/1978 while exercising it’s power under sub-section (5) of Section 1 and in absence of the definition, one has to turn to the definition of the term in common parlance. The concise Oxford English Dictionary, 11<sup>th</sup> Edition define the term ‘shop’ as a building or part of the building where goods or services are sold. According to Blacks Law Dictionary 7<sup>th</sup> Edition, 1999, ‘Shop’ has been stated to home a business establishment or place of employment, a factory, office of other place of business. The words and phrases permanent Edition Vol.39 define the term ‘shop’ as under :-

“The word ‘shop’ means room or building in which the making, preparing or repairing of any article is carried out or in which ant industry is perused, the place where anything is made, the purchasing place or source”.

In common parlance, shop may denote a place where goods are things are sold, or a place where goods and things are kept on sale for retail.

In Bangalore Turf Club Ltd (supra), the Apex Court has referred to the judicial meaning assigned to the term 'shop' and has held that, the ESI being a social welfare legislation, intended to benefit as far as the workers belonging to different categories, it deserve a liberal interpretation.

36 By applying the very same analogy to the BCCI, where on ascertaining it's nature, functioning and object, it can be seen that the appellant is carrying out a business/commercial activity and earn money out of the said activity. Furthermore, it's activities are not only restricted to providing the entertainment, but as has been clearly admitted by Shri Dinesh Johri, but T.V. broadcasting rights are also sold by the Board to T.V. companies by auction, which is again a systematic commercial activity. By conducting Indian Premier League and exercising control over the IPL which was founded by the BCCI in the year 2007, which is the most attended cricket league in the world and ranked 6<sup>th</sup> by average attendance amongst all sports leagues is the major sporting event in the world to be broadcasted live on various channels. Though the Memorandum of Association prescribe that the income, funds and properties of the BCCI shall be

*Tilak*

utilized and applied solely for promotion of objects of BCCI, to aid and assist financially, or otherwise to promote, encourage, advance and develop the game of cricket, the fact that the Board engages itself in its various activities as indicated above, being purely commercial in nature, there is no reason why the test as laid down by the Hon'ble Apex Court in case of Bangalore Turf Club Ltd (supra), shall not be applied to it since the matches arranged and supervised by the Board enjoy future viewership of entertainment and that too, for a consideration, i.e. on purchase of the tickets.

I have no hesitancy to hold that the nature of activities conducted by the Board are commercial in nature and hence, covered under the term 'shop' for the purpose of ESI Act and notification issued thereunder.

37 The learned counsel for the appellant had stressfully placed reliance on the decision of the Employees State Insurance Court at Mumbai, in case of the Mumbai Cricket Association Vs. Regional Director, ESIC, and urged that by judgment dated 10/2/2015, it has been held that the decision of the ESIC to cover the said association is arbitrary, legal and bad in law and the Association is not liable to pay any contribution to the ESI Corporation.

38 I have carefully perused the said judgment delivered by the Learned Judge, presiding the said Court and on perusal of an elaborate judgment, it can be seen that the learned Judge has

*Tilak*



miserably failed to consider the decision of the Apex Court in case of Bangalore Turf Club (supra) and instead, referred to various authorities cited before it in the backdrop of the fact that the Bombay Cricket Association is the Association of various cricket clubs and/or sports club formed for the purpose of promoting, organizing and controlling the game of cricket in Mumbai, Navi Mumbai & Thane district, having its office at Wankhede Stadium, Mumbai. The Association argued that it do not provide any entertainment facilities or catering facilities nor does it involve itself in preparation or manufacturing of any food items and therefore, the provisions of ESI Act are not applicable. In contrast, the Corporation claimed that the said establishment is a shop within the meaning of Section 1(5) of ESI Act and the Association is managing and controlling the game of cricket and having large number of individual members as well as membership of different clubs and the association sell tickets whenever cricket matches are played through members of various clubs. The ESIC specifically objected the application by submitting that the members of the club and their guests are entitled to use the various facilities which are part of the entire complex of Wankhede Stadium, Garware Club, permit room, etc, and various commercial activities are also carried out in the premises and when the cricket match is played, association permit its members as well as general public to watch the cricket on payment of fees by selling tickets. Though the decision of the

*Tilak*

Apex Court in case of ESIC Vs. Hyderabad Race Club, was cited before the learned Judge, he reached at a conclusion that the Bombay Cricket Association is not a 'shop' as the term 'shop' cannot be given a wider meaning and scope, than what has been mentioned in the notification, and if the State wanted to include a Society and/or within its ambit, it would have specifically provided so.

39 The above finding is exactly contradictory to the observation of the Hon'ble Apex Court in Bangalore Turf Club, and hence I am not ready to accept the submission of learned counsel that the said judgment would bind the subsequent Judge and if a subsequent Judge of the same Court was not in agreement, he should have made a reference to a larger Bench. Though it is a well accepted proposition that when the Bench of the same strength of a particular Court do not agree with a coordinate Bench of the same strength, the matter need a reference to a larger Bench. However, when the earlier Bench has ignored a binding precedent, and has decided the issue without making reference to the earlier decision delivered by the Apex Court in case of Bombay Turf Club (supra), I do not think that the impugned judgment suffer from any illegality on account of not making a reference or following the earlier decision in Bombay Cricket Association.

40 The ESI Court after referring the documents on record, and on appreciating the evidence that has come before it,

*Tilak*

has held that the ESI Act, 1948 is applicable to the Appellant Board, since it is covered under the definition of 'shop' under Section 1(5) of the Act. The Corporation as well as the Court has noticed a systematic commercial profit making activity on behalf of the Board and I, concur with the said finding. The Board has its source of income on different counts like holding of international tours, income from IPL, selling rights of broadcasting the cricket matches, sponsorship, sale of tickets, etc. From the ballot sheet, the source of earning of the board has come before the Court and this is not disputed by the Court. The Board is admittedly involved in entertaining and from the Memorandum of Association, an inference can be drawn that the Board is carrying out systematic commercial activity and is engaged in providing services to public at large by engaging its employees, organizing events, promoting cricket as a source of entertainment and thereby collecting funds. It is also engaged in acquisition or purchase of movable or immovable assets, tangible or intangible and authorized to sale or transfer the same for achieving its objectives. It also make available the facility of canteen, lay out cricket ground and provide amenities for the convenience and benefits of the members, players and cricket fans, etc.

Clause (e), (f) (k), (m), (n), (o), (p), (r), (s) of the Memorandum of Association, is clearly indicative of its activities being commercial in nature and it can be inferred that the Board

*Tilak*

is engaged in profit making activities.

41 The impugned judgment therefore, cannot be said to be suffering from any flaw/legal or factual illegality.

Considering the inspection note survey report, 15 employees were found to be employed for wages in the month of January 2007, out of which 12 were drawing salary for Rs.10,000/- coupled with engagement of 2 contractors i.e. M/s.Property Guards Security Services and M/s.Rahul House Keeping Services, which had also engaged five and three coverable employees in the premises of BCCI, it was held by the ESI Court that in the month of January 2006, there are 20 coverable employees working in the premises of the Board. To prove the report, Smt. Sadhana Pangare, ESI Inspector had stepped into the witness box and proved the survey note.

Having once held that the appellant Board is covered by the provisions of ESIC Act, it was recorded that the Board has never paid ESI Contribution on the wages paid to any employee, nor any evidence was produced to show whether the two contractors have paid outstanding ESI contribution on the wages paid to it's 8 employees. Before fixing up liability of payment of ESI Contribution on the Board, the ESI Court deem it necessary to ascertain whether the two contractors have paid esi contribution and therefore, remanded the matter back to the authority/ESI Corporation for considering the aid aspect. The

*Tilak*

two contractors are directed to be impleaded before the determining authority and the matter is directed to be decided on merits within one year from the date of the order.

I do not find any justiceability in disturbing the said direction issued by the ESIC, Mumbai on 9/9/2021.

42 Limiting the remand, only to the aforesaid purpose, by upholding the finding of the Employee Insurance Court that the Appellant, Board of Control for Cricket in India is covered under the notification dated 18/9/1978 issued under the provision of Section 1(5) of the ESI Act, the Appeal is dismissed.

In view of the dismissal of Appeal, IA No.1026/22 do not survive and is disposed off.

43 On pronouncement of the judgment, learned counsel for the appellant seeks stay of the judgment for a period of six weeks.

Prayer granted.

The above judgment shall remain stayed for a period of six weeks so as to enable the appellant to approach the Hon'ble Apex Court.

**(SMT.BHARATI DANGRE, J)**