NEUTRAL CITATION
2026:GUJHC:44136

Reserved On : 24/06/2026
Pronounced On : 16/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 4451 of 2006
With
R/FIRST APPEAL NO. 4452 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI sd/-

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Approved for Reporting	Yes	No
		no

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REGIONAL DIRECTOR
Versus
SHREE MAHILA GRUH UDYOG LIJJATPAPAD

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Appearance:
MR HEMANT S SHAH(756) for the Appellant(s) No. 1
MR KM PATEL SENIOR ADVOCATE WITH MR PS GOGIA(2751) for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

CAV JUDGMENT

1. The captioned appeals involves same facts and points in dispute. Hence with the consent of learned Advocates for both the sides, both the appeals are heard analogously and decided by this common order.

2. The orders passed by the E.S.I Court, Rajkot in E.S.I application nos.32/90 and 29/90 are challenged under Section 82(2) of the Employees State Insurance Act, 1948 (for short, 'the

E.S.I Act') as First Appeal No.4451 of 2006 and First Appeal No.4452 of 2006 respectively at the behest of E.S.I Corporation.

3. Fact is taken from the E.S.I application no.32 of 90. Shree Mahila Gruh Udyog Lijjat Papad is a society registered with the Society Act, 1960 and also as a Bombay Public Trust registered under the BPT Act, 1950. Having its main office at Rajkot, Shree Mahila Gruh Udyog Lijjat Papad is operating throughout India in different branches and approximately 9,000 women are working; a woman who is able to roll at least 3kgs of papads in a day and being a major can be a member of the society. They are not required to invest any amount. Shree Mahila Gruh Udyog Lijjat Papad has been given exemption from paying income tax and sales tax. The work of rolling papad is not under the supervision of anyone. In other words, women who are members of Shree Mahila Gruh Udyog Lijjat Papad are working on their own and Shree Mahila Gruh Udyog Lijjat Papad is mainly working for the upliftment of women from the lower strata of the society.

3.1 It is the further case of Shree Mahila Gruh Udyog Lijjat Papad that whatever profit earned by the society would be divided amongst the members, either in case or in a kind. In a nutshell, it is stated that Shree Mahila Gruh Udyog Lijjat Papad, since does not fall within the definition of industry or so, E.S.I Corporation cannot levy any contribution.

3.2 In line of the aforesaid pleading, Shree Mahila Gruh Udyog Lijjat Papad has challenged two different notices issued by the E.S.I Corporation for levy of contribution, invoking Section 75 of the E.S.I Act by way of aforesaid two E.S.I applications. The E.S.I Court pleased to allow the aforesaid applications and declared that women of Shree Mahila Gruh Udyog Lijjat Papad does not fall within the definition of 'employee' as per Section 2(9) of the E.S.I Act, 1948. Further, that the women working in rolling papads are not paid any wages, which also indicates that they are not the employees and thus, Shree Mahila Gruh Udyog Lijjat Papad does not attract Section 2(12) of the E.S.I Act as E.S.I Corporation failed to prove it as 'establishment'. Ultimately, as stated herein-above, the E.S.I Court has canceled the notice issued by the E.S.I Corporation by declaring it as invalid.

3.3 Being aggrieved, E.S.I Corporation has filed this appeal, raising following substantial question of law:

> *"A. Whether the establishment is covered under the E.S.I Act in view of the report of the insurance inspector?*
>
> *B. Whether the payment made on voucher to the workers are said to be workers and can be considered as employees under the act and for that the act is applicable?"*

4. Heard learned Advocate Mr. Hemant S Shah appearing for the E.S.I Corporation and learned Senior Counsel Mr. KM Patel assisted by learned Advocate Mr. PS Gogia appearing for Shree Mahila Gruh Udyog Lijjat Papad.

5. Learned Advocate Mr. Hemant Shah has referred to the impugned judgment and submitted that the learned E.S.I Court

has committed serious error in believing that women who are working in Shree Mahila Gruh Udyog Lijjat Papad are just members and not the employees. He would further submit that learned E.S.I Court has committed serious error in reading the definition of 'employee' under Section 2(9) and the definition of 'establishment' under Section 2(12) of the E.S.I Act. He would further submit that in the Rajkot Branch where the officer of E.S.I visited and found that more than 600 women were working, they are taking away the raw materials from the branch office of Shree Mahila Gruh Udyog Lijjat Papad to their home, rolling papads and giving it back to Shree Mahila Gruh Udyog Lijjat Papad. He would further submit that papads which are rolled out by the women are sold in the open market under the brand name of "Lijjat Papad", earning profit and under its policy, Shree Mahila Gruh Udyog Lijjat Papad is distributing the entire profit to the women for their upliftment. Thus, it would not exclude Shree Mahila Gruh Udyog Lijjat Papad from the definition of 'industry/establishment' under Section 2(12) of the Act.

5.1 Learned Advocate Mr. Hemant Shah, therefore, submitted that learned E.S.I Court has committed serious error in canceling the two notices issued for recovery of the contribution and extending coverage of the E.S.I Act upon Shree Mahila Gruh Udyog Lijjat Papad.

5.2 Upon above submissions, learned Advocate Mr. Hemant Shah submitted to allow these appeals and to quash and set aside the impugned judgment and to dismiss the applications filed before the learned trial Court.

6. Per contra, learned Senior Counsel Mr. KM Patel relied upon the judgment in case of ***C.E.S.C. Limited and Others vs. Subhash Chandra Bose And Others, reported in 1992 (1) SCC 441*** and submitted that if an employee is employed under the supervision of principal employer or his agent then only he can be treated as an 'employee' and if the number of such employees exceed 10, then the E.S.I Act would apply. He would further submit that the word 'supervision' has been explained by the Hon'ble Supreme Court in the aforesaid judgment holding that the consistency of vigil necessary; mere right of checking of work after its completion and rejection or accepting the work on scrutinizing compliance with the job requirement would not constitute supervision.

6.1 Learned Senior Counsel Mr. KM Patel refers to para 14 of the judgment in case of ***C.E.S.C. Limited and Others vs. Subhash Chandra Bose And Others*** (supra), to buffer his contentions which reads as under:

> *..."14. The case of P.M. Patel & Sons v. Union of India, reported in 1986 (1) SCC 32, can also be no help to interpret the word 'supervision' herein. The word as such is not found employed in Sec-tion 20) of the Employees' Provident Funds and Miscellaneous Provi-sions Act, 1952 but found used in the text of the judgment. It appears to have been used as a means to establish connection between the employer and the employee having regard to the nature of work performed.*

But what has been done in Patel case cannot ipso facto be imported in the instant case since the word 'supervision' in the textual context requires independent construction. In the ordinary dictionary sense "to super-vise" means to direct or oversee the performance or operation of an activity and to oversee it, watch over and direct. It is work under eye and gaze of someone who can immediately direct a corrective and tender advice. In the textual sense 'supervision' of the principal employer or his agent is on 'work' at the places envisaged and the word 'work' can neither be construed so broadly to be the final act of acceptance or rejection of work, nor so narrowly so as to be supervision at all times and at each and every step of the work. A harmonious construction alone would help carry out the purpose of the Act, which would mean moderating the two extremes. When the employee is put to work under the eye and gaze of the principal employer, or his agent, where he can be watched secretly, accidentally, or occasionally, while the work is in progress, so as to scrutinise the quality thereof and to detect faults therein, as also put to timely remedial measures by directions given, finally leading to the satisfactory completion and acceptance of the work, that would in our view be supervision for the purposes of Section 2(9) of the Act. It is the consistency of vigil, the proverbial 'a stich in time saves nine'. The standards of vigil would of course depend on the facts of each case. Now this function, the principal employer, no doubt can delegate to his agent who in the eye of law is his second self, i.e., a substitute of the principal employer. The immediate employer, instantly, the electrical *contractors, can by statutory compulsion never be the agent of the principal employer. If such a relationship is permitted to be established it would not only obliterate the distinction between the two, but would violate the provisions of the Act as well as the contractual principle that a contractor and a contractor cannot be the same person. The ESIC claims establishment of such agency on the terms of the contract, a relationship express or implied. But, as is evident, the creation or deduction of such a relationship throws one towards the statutory scheme of keeping distinct the concept of the principal and immediate employer, because of diverse f and distinct roles. The definition is well drawn in Halsbury's Laws of Eng-land (Hailsham Edition) Vol. I at page 145, para 350 as follows:*

> *"An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and supervision of his master, and is 9 bound to conform to all reasonable orders given to him in the course of his work; an independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control and supervision of the principal."*

> *And this statement of law was used with approval by this Court in Superintendent of Post Offices vs. P.K. Rajamma, reported in 1977 (3) SCC 94."...*

6.2 Taking to the facts of the case, learned Senior Counsel Mr. Patel submits that in the case on hand, Shree Mahila Gruh Udyog Lijjat Papad is working for the social restructuring and upliftment of the women. It is working like cooperatives. All the women are members of the society and they are rolling papads at their home, after obtaining the raw material from the society and after rolling papads at their home, they are giving back papads to Shree Mahila Gruh Udyog Lijjat Papad. Therefore, in absence of consistent vigilance of the society over the working of the women, the society cannot be considered as an establishment attracting the Section 2(12) of the E.S.I Act. He would further submit that though more than 600 women workers are working in a particular branch, they are just members as per the rules and regulations notified by the Charity Commissioner, Maharashtra, which indicates that all the women are members and their memberships can be canceled.

6.3 Thus, learned Senior Counsel Mr. KM Patel submitted that Shree Mahila Gruh Udyog Lijjat Papad cannot be considered as an 'establishment' within Section 2(12) of the Act. Supporting the impugned judgment, learned Senior Counsel submits that no effective strength of more than 10 employees was ever found during the visit. He would further submit that since women are not to be treated as employees within Section 2(9) of the E.S.I Act, the learned E.S.I Court has not committed error in allowing two separate applications to cancel the demand of contribution raised by the E.S.I Corporation on extending cover of the E.S.I Act.

6.4 In line of the aforesaid submissions, learned Senior Counsel Mr. KM Patel submitted to dismiss both the captioned appeals.

7. Having heard learned Senior Counsel and learned Advocates for both the sides and considering the facts and circumstances of the case, the point arises for consideration that whether Shree Mahila Gruh Udyog Lijjat Papad can be treated as 'establishment' under Section 2(12) of the E.S.I Act and women who are members of Shree Mahila Gruh Udyog Lijjat Papad can be treated as 'employees' ?

7.1 There is no cavil. When the officer of the E.S.I visited the branch of Shree Mahila Gruh Udyog Lijjat Papad, in the register, he found more than 600 women are working. It is also undeniable that women are working at their home and not at the branch of Shree Mahila Gruh Udyog Lijjat Papad. Equally, it is an undisputed fact that Shree Mahila Gruh Udyog Lijjat Papad is registered under the Society Act and also under the Public Trust Act, having its own constitution.

7.2 In background of the aforesaid undisputed aspect, let me refer to Section 2(9) and Section 2(12) of the E.S.I Act, which reads as under:

> *..."2.(9) – 'employee' means any person employed for wages in or in connection with the work of a factory or*

> *establishment to which this Act applies and -*
>
> > *(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or*
> >
> > *(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or*
> >
> > *(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service."...*
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> *..."2.(12) "factory" means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952) or a railway running shed;"...*

7.3 Thus, an "employee" means a person employed for wages or in connection with the work of factory or establishment, who is directly employed by the principal employer on any work, or incidentally or preliminary to or connected with the main work of the factory, or an establishment or a person who is employed by or through any immediate employer on the premises of the factory, or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of factory or establishment, or whose service are temporarily lent or let on hire to principal employer by the person with whom the person whose services are so lent or let on higher as entered into the contract of service. It also include a person employed for wages on any work connected with the administration of the factory or establishment or any part thereof, or with the purchase of raw material, or distribution of sale of the products of the factory or establishment.

7.4 The "factory" means any premises including the precincts thereof where ten or more person are employed or employed on any day of the preceding twelve months, and in any part of which manufacturing process has been carried on or is ordinarily carried on. The mining project are not included and simultaneously, railway running shed is also not included in the definition of "factory".

8. At this juncture, let me refer to the judgment of the Hon'ble Supreme Court in case of ***Shri Mahila Griha Udyog Lijjat Papad vs. Union of India and Another, reported in 1999 (6) SCC 38***, while examining the issue arising under the Employees Provident Funds and Miscellaneous Provisions Act, 1952, in regards to a particular branch of Jabalpur, in para nos.1, 2 and

3 of the judgment of the Hon'ble Supreme Court held as under:

> *"1. After this appeal was heard for quite some time, Mr. G.L. Sanghi, learned Senior Counsel appearing for the appellant, fairly stated that he gives up all his contentions in this appeal especially in view of the decision of the Constitution Bench of this Court in Writ Petition No. 86 of 1962 (Basant Lal Jain v. R.P. F. Commr. 1963 SC (Notes) 114) decided on 21-31963 where under the same Entry 24 inserted by notification of 30-4-1962 applying the Act as per the provisions of Section 1(3) Sub-section (b) was held applicable to the facts of the case wherein a manufacturer of sweetmeats was held liable to be covered under the said entry even though he was selling his own manufactured sweetmeats after storing them. That Entry 24 reads as under:*
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> > *"Every trading and commercial establishment engaged in the purchase, sale or storage of any goods, including establishment of exporters, importers, advertisers, commission agents and brokers, and commodity and stock exchanges but not including banks or warehouses established under any Central or State Act."*
>
> *2. Mr. Sanghi is also right when he does not contest the finding of fact recorded by the Regional Provident Fund Commissioner and which is also confirmed by the High Court, that women who were preparing "Lijjat" papad by utilising the raw material supplied by the Jabalpur branch of the appellant, were*

employees of the branch concerned. He, however, submitted that even if this appeal is dismissed, the application of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 may be made prospective in its applicability to Jabalpur branch for the simple reason that under Section 6 of the Act the employer has to deduct, for remitting to the authorities, eight and one-third percent (after amendment 10 per cent) of the basic wages dearness allowance and retaining allowance (if any) from wages of its employees and deposit the same as prescribed under the Act together with its own equal amount of contribution every month for the future statutory benefits of the employees. The employees are women who carried on physical work of preparing papads. Years have rolled by. They are mostly destitute and also in dire economic need for carrying out their livelihood to maintain their families living from hand to mouth. The demand from 1986 to 1991, by way of monthly deductions from their wages, will give rise to immense hardships to all these women and equal hardships to the appellant. During the proceedings before the High Court the demand had remained stayed by the High Court and till today, under the orders of this Court in this appeal, when leave was granted on 6-12-1993 the stay has continued. In these circumstances, if the past demands are revived, it would bring extreme disaster, not only to the appellant concerned, but also to the poor women employees, who were to be financially assisted by giving them economic assistance when work was taken from them of preparing papads and vadis and were paid on the basis of the out-turn of papads and vadis on piece-rate basis

> *related to the weight of the papads and vadis prepared by them.*
>
> *3. The aforesaid submission of Mr. Sanghi deserves to be accepted in the interest of justice and in the light of the peculiar facts of this case. We, therefore, while dismissing this appeal and while holding that the Act applied to the appellant's branch at Jabalpur, direct that the application of the Act to that branch should be with effect from 1-4-1999. It is obvious that the appropriate deductions under Section 6 of the Act from the wages of the employees concerned at Jabalpur branch as well as the matching contribution of the employer for depositing them with the authority will start from 1-5-1999 for the month of April 1999 onwards."...*

8.1 Para 2 in the judgment of ***Shri Mahila Griha Udyog Lijjat Papad vs. Union of India and Another*** (supra), it attracts to the facts of the present case where women of Lijjat Papad, by utilizing the raw materials supplied by the Rajkot Branch and rolling papads at home, sends those papads back to Lijjat Papad for selling purpose. This judgment was not brought to the notice of the E.S.I Court, while passing the impugned judgment.

8.2 Learned Advocate Mr. PS Gogia pointed that in the State of Maharashtra, Shree Mahila Gruh Udyog Lijjat Papad has been given exemption from operation of the E.S.I Act. Simultaneously, one cannot lose sight to the fact that Shree Mahila Gruh Udyog Lijjat Papad has been registered under the Societies Registration Act as well as under the Gujarat Public Trust Act. There is no gainsaying that Shree Mahila Gruh Udyog Lijjat Papad has its own constitution regularity, governing the status of women working to roll papads and how to sell papads in open market. Therefore, all these aspects requires to be re-analyzed. The parties in this regard may lead the necessary evidence and the shift and weight of the evidence is required to be independently carried out.

9. In view of the above, this Court without delving further into merits of the case, finds it that it is a proper to remand back the matter to the E.S.I Court for fresh consideration.

10. In wake of the aforesaid reasons, the impugned judgment in E.S.I Application Nos.32 of 90 and 29 of 90 are hereby quashed and set aside. Proceeding of both the E.S.I applications are restored back to the E.S.I Court for fresh consideration. Liberty is granted to both the parties to lead the fresh evidence, if they are so intended and advised.

11. Learned E.S.I Court shall decide the entire issue afresh as early as possible, preferably within nine months from the receipt of this order. Record and Proceedings is ordered to be sent back. Registry is directed to maintain a copy of this order in both the appeals.

sd/-
(J. C. DOSHI,J)

PARMAR KRISH