
(1996) 02 BOM CK 0036
In the Bombay High Court
Case No : E.S.I.A. No. 1 of 1990

Agarwal G.N.

APPELLANT

Vs

Regional Director, E.S.I. Corporation, Bombay

RESPONDENT

Date of Decision : 05-02-1996

Acts Referred:

Citation : (1997) 3 LLJ 819

Hon'ble Judges : J.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : M.S. Usgaonkar, for the Appellant; Ms. A.A. Agni, for the Respondent

Judgement

1. The only question posed in this appeal is whether the appellant's establishment is liable under the Employees' State Insurance Act, hereinafter called the "said Act", and whether the Head Office of the appellant, from where runs mining industry, which is exempted under the provisions of the said Act, can be treated as a "shop" and thus liable under the said Act, in pursuance of the Notification dated June 21, 1977 issued by the Government of Goa Daman and Diu.

2. The Court below rejected the contention of the appellant claiming exemption relating to its Head Office under the provisions of the said Act. By the impugned Judgment dated December 18, 1989, the Court below had held that though the mining industry is exempted under the E.S.I. Act, the Head Office of the appellant cannot be treated as a mine as it can only be treated as a "shop" and, therefore the appellant is liable for contribution.

3. The short facts for the purpose of this appeal can be stated, thus :

The Regional Director, E.S.I. had conducted inspection of the establishment of the appellant on January 11, 1983, and in pursuance of the said inspection, a notice dated September 22, 1983 was issued along with calculation sheets whereby an amount of Rs. 20,790/- towards contribution for a period from June 1, 1980 to July 31, 1983. As per letter dated October 4, 1983, the appellant

responded to the notice and contended that the appellant's establishment was registered as a commercial establishment and as per the said Notification, the offices under the appellant, are not covered. In spite of this reply, the respondent, by its order dated March 8, 1984, purported to be issued u/s 45A of the said Act, directed the appellant to pay a sum of Rs. 20,790/- and interest thereon towards the contribution for the aforesaid period on the basis of the records available in the office of the opponent. Aforesaid order has clearly spelt out that the appellant's establishment is a "shop", coming under the purview of the Notification. An attempt was made by the appellant, before the Lower Court that the materials relied upon by the respondent was not sufficient and relevant for the respondent to assess the contribution demanded. Rejecting all the contentions of the appellant, the Court below has found that the appellant's establishment is a "shop" and, therefore, covered by the E.S.I. Act. The Court rejected the contention of the appellant that the appellant's Head Office is doing a purely administrative work which related to and connected with the activities of the mine which is exempted under the provisions of the said Act.

4. More or less the similar arguments have been addressed by the appellant before me in this appeal. Mr. Usgaonkar, Sr. Counsel for the appellant submits that the appellant's establishment cannot be treated as a "shop" because the entire operation of mine has been exempted under a provision of the said Act, though the Head Office being run a little far away from the place where actual mining operation is going on. The place where such operations are controlled, regulated and managed, cannot be separated from the main activities of mine and therefore, the appellant is not liable for any contribution.

5. Mr. Usgaonkar, has strongly relied upon a decision of the Supreme Court in the case of *The Ballarpur Collieries Co. Vs. State Industrial Court, Nagpur and Others*, in support of his proposition. It is a case where Notification issued by State Government u/s 1(3) of Central Provinces and Berar Industrial Disputes Settlement Act, 1947 exempted all industries except "Mines" from the operation of the Act and in context of question being arisen whether the word "mine" meant only mine where actual mining operations were carried on or whether it meant mining industry, which included the Head Office also. Where, it has been held at P. 428 :

"Therefore, when the industry of mines or the mining industry was exempted from the operation of the Act, the exemption applied not only to that part of the industry which consisted of raising coal at the colliery, but also to that part of it which, consisted in the sale of coal and its supply to customers and would thus include the head office also."

In elaborating his arguments, Learned Counsel Mr. Usgaonkar has contended that under the Notification of the State Government dated June 21, 1977, it has been stated in Schedule attached to the Notification as Item No. 2 therein that :

"Any premises including the precincts thereof whereon twenty or more persons

are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily as carried on; but excluding a Mine, subject to the operation of the Mines Act, 1952"

He contended that Mining Industry has been clearly excluded, but what Ms. Agni, Learned Counsel for the respondent contended is that what has been excluded in the Mining Act is "mining" and not "mining industry" or "industry of mining." She, therefore, submits that the aforesaid decision of the Supreme Court which dealt with the Mining Industry or the Industry of Mines, will not be applicable to the facts of this case. She further submits that "mine" cannot be treated as a Mining Industry or Industry of Mine. She submits that the mine has been defined under the Mines Act, 1952. Section 2(j) of the Mines Act, 1952 reads as follows :-

"'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on."

No doubt, the definition includes borings, bore holes, oil wells, shafts. It also includes levels and inclined planes in the course of being driven, open cast workings, conveyors or aerial ropeways, adits, levels planes, machinery works, railways, tramways, and sidings, in or adjacent to and belonging to a mine, all workshops, situated within the precincts of a mine, power station for supplying electricity solely for the purpose of working the mine, any premises for the time being used for depositing refuse from a mine or in which any operation in connection with such refuse is being carried on. Going by definition 2(j)(i) to (ix) as mentioned above, it is very difficult to come to the conclusion that a premises or a head office of a mine, where sale transactions are regulated, controlled and conducted, will not be included in a "Mine". In support of her contentions, Ms. Agni has cited a decision of the Supreme Court in the case of Serajuddin and Co. Vs. Their Workmen, . In this case, a dispute arose whether a person employed in a Mine, who works under appointment by or with the order of the Manager, in the Head Office of the Mine, is workman under the Industrial Disputes Act, which extends its operation to the Mine. In that case, the Supreme Court held thus at P. 453 :

"It is obvious that the persons employed in Head Office wherever it may be situated cannot be said to do the Mining Operation within the first part of the definition. In our opinion, they cannot be said to be ordinarily engaged in any other kind of work which is incidental to or connected with Mining Operations either. The work which is incidental to or connected with mining operations must have some connection or relation to the mining operations themselves. The work that is carried on in the Head Office which consists principally of the sale operations really begins after the minerals are ready and all operations incidental to or connected with them are over. This position is not disputed. Therefore, there can be no doubt that under the Mines Act office of the Mine though situated at the surface of the Mine, is not necessarily a Mine and the employees in the said office cannot necessarily be said to be persons employed in a Mine and so

the regulatory provisions of the Mines Act would not necessarily apply to the office and would not govern the conditions of service of the employees in the said office."

6. Applying the said principle, the Learned Counsel for the respondent argues that in order to get benefits of exemption afforded by the E.S.I. Act to mines, the work that is being carried out should be connected or related to any of the activities mentioned in the definition under the "Mines" in the Mines Act. Of course, to counter this argument, Learned Counsel for the appellants has drawn my attention to para 10 of the decision of the Supreme Court in *The Ballarpur Collieries Co. Vs. State Industrial Court, Nagpur and Others*, . The said para read, thus at 429 :

"The next case to which reference is made is *Serajuddin and Co. Vs. Their Workmen*, . In that case dispute relating to the Head Office of a Mining Company was referred by the Government of West Bengal to the Industrial Tribunal and a question arose whether the Government of West Bengal was the appropriate Government within the meaning of Section 2(a)(i) of the Central Act No. 14 of 1947. It was held that the West Bengal Government was the appropriate Government and the decision turned on the interpretation of Section 2(a)(i) of the said Act which defined "appropriate Government". The words which came in for interpretation were "in relation to an industrial dispute concerning a Banking or an Insurance Company, a Mine, an Oil-Field or a Major Port." It was held that the word "Mine" as used in Section 2(a)(i) of the Central Act No. 14 of 1947 referred to as a Mine as defined in the Mines Act and that a dispute with reference to the Head Office of a Mine was not a dispute concerning the Mine which must mean a Mine defined in the Mines Act. That case also is of no help to the respondents for here we are not concerned with the word "Mine"; what we are concerned with is whether the exemption clause in the notification which exempts the industry of Mines or the Mining Industry will take in the Head Office. The words, therefore, in the present notification, are different and the decision in that case is of no help. We have no doubt that when the notification exempts the Industry of Mines or the Mining Industry which in our opinion means the same thing, the exemption includes the Head Office also which must be treated as an integral part of the Mining Industry, for it deals with the subsequent steps taken to dispose of in this case, the coal raised from the colliery."

The aforesaid paragraph in *Ballarpur Collieries*" case (supra), however, cannot be used as a shield for the appellant in the facts of the case, in as much as, the said para makes it abundantly clear that the exemption afforded under the Act will be available only to Mines and not Mining Industry. In *Ballarpur Collieries*" case (supra) the question was whether the word occurring in the Central Provinces and Berar Industrial Disputes Settlement Act, which exempts the mining industries, except Mines from the operation of the Act and in that context, whether the word "Mine" meant only Mine where actual mining operations are carried on or whether it can be treated as a mining industry, which includes Head

Office also. As we are going by the Notification of 1977, referred to above, we are dealing with a "Mine" and not mining industry and what is exempted under the Notification is only "Mines". In order to avail the exemption to the Head Office of Mine, there must be something to be done, connected with mining operations and not trading activities. Admittedly, there is no material before us that in the Head Office any work is being carried out in connection with or in relation to any of the activities defined in the Mines Act. Therefore, the argument of the Learned Counsel for the appellant that they are entitled to the exemption which is available to the Mine to its Head Office where the activities in relation to the sale transactions and the managerial activities are carried on in the Head Office, is also entitled to the exemption, under the E.S.I. Act, is not sustainable. In view of the discussions, I do not find any merit in the contention of the appellant.

7. That apart, the notification of the State Government, made applicable to the "shops" as contended by the Counsel for the respondent that the Head Office of Mine where the activities unconnected with the mining operations are carried on, can very well be brought in the ambit of the definition of "shop". "Shop" had been defined by the Supreme Court where any commercial or saleable activities are carried in respect of an establishment, is called a "shop". In the case of *M/s. International Ore and Fertilizers (India) Pvt. Ltd. Vs. Employees' State Insurance Corporation*, , it has been held at pp. 237-238 :

"The evidence produced in the case shows that the petitioner is carrying on its business at its business premises in Secunderabad. At that place the petitioner carried on the commercial activity facilitating the emergence of contracts of sale of goods between foreign principals and the State Trading Corporation. Minerals and Metals Trading Corporation of India arranges for the unloading of the goods under supervision and for the survey of the goods despatched by its foreign principals at the ports on behalf of its foreign principals and on the goods be delivered to the Central Government it collects price payable by Government and remits it to foreign principals. All these activities are directed and controlled from its premises at Secunderabad. It is thus clear that the activities carried on by the petitioner constitute trading activities although the goods imported from abroad are not actually brought to the said premises and delivered to the purchaser there. In our opinion, it is not actually necessary that the delivery of the goods to the purchaser should take place at the premises in which the business of buying or selling is carried on to constitute the said premises into a "shop". The delivery of the goods sold to the purchaser is only one aspect of trading activities. Negotiation of the term of sale, carrying on of the survey of the goods imported arranging for the delivery of the goods sold collection of the price of the goods sold, etc. are all trading activities. The premises where business is carried on by the petitioner is undoubtedly a shop, as the activities that are carried on there, relate only to the sale of goods which are imported into India."

The description and the nature of the activities that can normally be carried out

in a "shop" has been stated by the Supreme Court in the aforesaid para. The said parameter is amply applicable to the present case. It is the case of the appellant himself that all the business and trading activities are done in the Head Office of the appellant. Therefore, at any stretch of imagination or reasoning, it cannot be said that the Head Office of the appellant is not a "shop". As I pointed out earlier, since exemption afforded by the said Ac is not applicable to the Head Office of the Mine, under Notification of 1977, the finding of the E.S.I. Court that the Administrative Office of the appellant is a "shop", which is covered under the E.S.I. Act, warrants no interference.

8. In the result, I find no merits in this appeal and the appeal is dismissed.

9. In the circumstances of the case, there shall be no order as to costs.