
(1996) 02 AP CK 0032
In the Andhra Pradesh High Court
Case No : A.A.O. No. 126 of 1992

Andhra Mechanical and Electrical Industries Ltd.	APPELLANT
Vs	
Asst. Regional Director, E.S.I. Corpn.	RESPONDENT

Date of Decision : 02-02-1996

Acts Referred:

Employees State Insurance Act, 1948 — Section 75

Citation : (1996) 3 ALT 91 : (1998) 3 LLJ 882

Hon'ble Judges : P. Venkatarama Reddi, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : Y. Jaganmohan, for the Appellant; V. Venkateswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

G. Bikshapathy, J.—The present appeal is filed assailing the orders of the Employees' Insurance Court, Hyderabad, in E.I. Case No. 59/1987, dated November 13, 1991.

2. The appellant is having a Factory at Gachibowli. It is also having an administrative establishment dealing with sales and service of the products manufactured by it, at Secunderabad. The respondent-E.S.I. Authority issued a notice dated February 23, 1987 covering the establishment at Secunderabad and called upon the appellant-employer to pay the contribution in respect of the employees working in the establishment of the administrative office at Secunderabad. Aggrieved by the said demand notice, the appellant herein filed E.I. Case No.59 of 1987 u/s 75 of the Employees' State Insurance Act, 1948, seeking declaration that the E.S.I.Act. 1948, (for short the "Act") is not applicable to employees employed in the administrative office at Secunderabad. The Employees Insurance Court, Hyderabad, by its order dated November 13, 1991 dismissed the case holding that the Act is applicable to the employees working in the administrative office of the appellant. Aggrieved by the said order, the present appeal has been filed.

3. The learned counsel for the appellant submits that the factory is situated at Gachibowli, which area is not notified under the Act and, therefore, when once the factory is not notified, the connected office, irrespective of its place of existence would not be covered under the Act. Therefore, making applicability of the Act to the administrative office of the appellant situated at Secunderabad is illegal and contrary to the provisions of the Act. He further contended that even assuming that the Act is applicable, the establishment is not having 20 employees, who are drawing wages above (sic. below) Rs. 1600/-per month. Though it may be having 20 persons, including six persons who are drawing more than Rs. 1600/- yet, for the purpose of applicability of the Act, the authorities are required to take only the persons who are drawing wages below Rs. 1600/-. He also submits that the notification issued by the Government of Andhra Pradesh Notification No. 102, dated March 26, 1975. is not applicable to the administrative office, inasmuch as it is not a shop as contemplated in the said notification.

4. With regard to the first contention, the learned counsel for the appellant, himself, before the Court below, conceded that he did not press this issue. The only issue that was contended was that the number of persons working at the administrative office drawing less than Rs. 1600/- as wages are only 14 and, therefore, unless there are 20 or more employees drawing less than Rs. 1600/-, the Act is not applicable. During the course of arguments, before the E.I. Court, it was conceded by the appellant that the establishment employed more than 20 persons and submitted that the persons drawing less than Rs. 1600/- only should be taken into account for the purpose of applicability of the Act and, therefore, if this is taken into consideration, there are only 14 persons, who were drawing below Rs. 1600/-. Therefore, the Act is not applicable.

5. A similar issue was dealt with by this Court : in A.P. State Electricity Board Vs. E.S.I.C., . The question that fell for consideration in that case was, whether the number of employees working in a particular establishment is to be taken into consideration or number of persons. This Court held that the word "Person" is only relevant for the purpose of ascertaining the strength of the unit and not employees. The coverage under the Act will, however, apply only to the employees who are actually drawing Rs. 1600-00 and less. Even in the notification issued by the Government dated September 25, 1974, it is specifically mentioned that the establishments where twenty or more persons are employed in a particular establishment are covered by the provisions of the Act. Therefore the word "person" is relevant for the purpose of ascertaining number of employees. In the case referred to above it was a factory premises where manufacturing process was being carried on. Therefore, for the limited extent, the number of persons working in the factory is to be taken for the purpose of deciding the applicability. Though the decision in APSEB v. ESI Corporation (supra) was rendered in connection with the definition of the factory, yet, the principle remains the same viz the persons employed in factory / establishment have to be taken into consideration. Therefore, we hold that since the

establishment is having more than 20 persons, including those who are drawing more than Rs. 1600/-, the establishment is covered by the provisions of the Act and the appellant is liable to pay contribution in accordance with the provisions of the Act.

6. It is also contended by the learned counsel for the appellant that the administrative office is not a shop as contained in Sub-clause 3(iii) of the notification dated September 25, 1974. Therefore, the said notification is not applicable to the appellant. We are afraid, we cannot accept this contention. Even according to the appellant, its administrative office has been dealing with sales and service of the products manufactured by the factory, as had been pointed out by the Court below at Para 8 of its Judgment. The learned counsel for the appellant submits that since the word "shop" has not been defined under the Act, assistance may be sought only from the definition of "Shop" as made in the A.P. Shops and Establishments Act, 1988. In this Act, shop is defined as follows :

"shop" means any premises where any trade or business is carried on or where services are rendered to customers and includes a shop run by a Cooperative Society, an office, a store room, godown, ware house or work place, whether in the same premises or otherwise, used in connection with such trade or business and such other establishments as the Government may, by notification, declare to be a shop for the purposes of this Act, but does not include a commercial establishment"

From this, the learned counsel submits that the administrative office has not engaged itself in any trade or business and therefore it cannot be regarded as a "shop" for the purpose of coverage under the E.S.I. Act. As can be seen from the definition, any premises where trade or business is carried or where services are rendered or even an office, work place or store room etc., situate in the premises will also come under the definition of the term "shop". Since it is the admitted case of the appellant that the administrative office is engaged in sales and service, we are of the view that the establishment is covered under the notification, being a "shop" either going by the definition under the said Act or according to its ordinary connotation. Hence, we find no merits in the contention raised by the learned counsel for the appellant.

7. Accordingly, the appeal is dismissed. There shall be no order as to costs. However, it is made clear that the E.S.I. Corporation is entitled to collect the E.S.I. contribution only in respect of the employees, who are drawing Rs. 1,600/- and below and it shall not cover the employees drawing more than Rs. 1,600/- per month as wages.