

(1964) 01 BOM CK 0003
In the Bombay High Court
Case No : First Appeal No. 19 of 1962

Bank Silver Company

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 30-01-1964

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(4), 2(12), 2(14), 2(21), 2(22)
Factories Act, 1948 — Section 2(m)

Citation : (1964) 9 FLR 411

Hon'ble Judges : Y.V. Chandrachud, J

Bench : Single Bench

Advocate : Y.S. Chitale, for the Appellant; M.V. Jayakar, instructed by M.V. Jayakar and Co., for the Respondent

Judgement

1. This is an appeal under S. 82 of the Employees' State Insurance Act (Act XXXIV of 1948), from an order passed by the Employees' Insurance Court, Bombay. The question which arises in the appeal is whether the appellants, Bank Silver Company, are a "factory" within the meaning of S. 2, Clause (12), of the Act. The appellants filed an application in the Employees' Insurance Court for a declaration that they were not covered by the Employees' State Insurance Act and that the partners of the appellant-firm were not "employees" within the meaning of S. 2, Clause (9), of the Act. The application has been dismissed and this appeal is directed against that order.

2. The facts which are necessary for the decision of the question raised on this appeal are admitted. The appellants are a partnership firm owning an establishment in which articles of silver are manufactured. The firm employs eighteen workers in its establishment and, in addition, four of the six partners of the firm also work in the establishment. The respondents, the Employees' State Insurance Corporation, contended that the workers working in the establishment of the appellants were covered by the Employees' State Insurance Act, and called upon the appellants to make the employees' contribution under the Act.

The appellants, on the other hand, contended that they employed less than twenty persons and that, therefore, the Act was not applicable to them. They, therefore, filed the application in the Employees' Insurance Court for a decision of the disputed question.

3. Section 1, Clause (4), of the Employees' State Insurance Act provides that the Act shall apply in the first instance to all factories including factories belonging to the Government, other than seasonal factories. Section 2, Clause (12), of the Act defines a "factory" in so far as is material, to mean any premises including the precincts thereof whereon twenty or more persons are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on. It is not disputed that a manufacturing process is carried on with the aid of power in the establishment of the appellants. The narrow question which arises is whether "twenty or more persons are working" in the establishment. On this aspect also it is common ground that, in fact, more than 20 persons work in the establishment. The contention of the appellants, however, is that the word "persons" which occurs in Clause (12) of S. 2 of the Act must be construed to mean "employees" and cannot cover persons who, being proprietors of a concern, work therein. In other words, the contention of the appellants is that for the purposes of determining whether their establishment is a factory within the meaning of S. 2, Clause (12), of the Act, the partners of the firm who work in the establishment must be excluded from consideration and only those persons can be taken into account who work in the establishment as employees of the appellants.

4. I am unable to accept the contention advanced by Sri Chitale on behalf of the appellants. Section 2, Clause (12), defines a "factory" not by reference to the number of "employees" who work in the factory but by reference to "persons" who work in the factory. If Sri Chitale were right, nothing would have been easier for the legislature than to use in S. 2, Clause (12), of the Act language similar to that used in S. 2, Clause (m), of the Factories Act (Act LXIII of 1948). Section 2, Clause (m), of the Factories Act defines a "factory" not by reference to the "persons" who work in an establishment but by reference to the number of "workers" who work therein. It provides in so far as is material, that a "factory" means premises wherein a certain number of "workers" are working and in any part of which a manufacturing process is carried on. "Worker" is defined in S. 2, Clause (I), of the Factories Act to mean a person "employed" in a manufacturing process, or in certain other processes.

5. It is contended by Sri Chitale that the two Acts are not in pari materia and that, therefore, it would be wrong to construe the Act with which I am concerned in this appeal by reference to the provisions contained in the Factories Act. Reliance is placed in this behalf on the decision of the High Court of Madras in Employees State Insurance Corporation, Madras Vs. S.M. Sriramulu Naidu, in which it was held that the Factories Act and the Employees' State Insurance Act

are not analogous legislations though they were enacted in the same year and though both of them are intended to benefit the wage-earners. Now, it is undoubtedly true that the object of the Employees' State Insurance Act is different from the object of the Factories Act. The object of the former Act, as stated in the preamble, is :

"... to provide for certain benefits to employees in case of sickness, maternity and employment injury ..."

6. The object of the Factories Act, on the other hand, is to take measures for the health and safety of the workers who work in the factory. Sri Chitale may be right that the object of the two Acts being different, the language used in one should not be permitted to control or influence the language of the other. It is, however, wrong to say that in the construction of a statute one cannot have regard to the circumstance that when a particular meaning was intended to be conveyed, the legislature had used a different expression in another statute. It would be certainly legitimate to say that if Sri Chitale were right that the word "persons" in S. 2(12) would have the same Meaning as the word "workers" in the Factories Act, the legislature would have used language similar to that used in the Factories Act.

7. Sri Chitale has drawn my attention to various provisions of the Employees' State Insurance Act which, according to him, show that the dominant object of the Act is to provide social insurance to the employees. The argument is that if that be the dominant object, the word "persons" occurring in S. 2(12) must be construed to mean "employees" so that the object of the Act can be effectively furthered. Section 2, Clause (4), of the Act defines "contribution" to mean the sum of money payable to the Corporation by the principal employer in respect of an employee, or any amount payable by or on behalf of the employee. Clause (8) of S. 2 defines an "employment injury" to mean a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment in the factory, which injury or occupational disease would entitle the employee to compensation under the Workmen's Compensation Act, 1923, if he were a workman within the meaning of that Act. Clause (9) of S. 2 contains the definition of the word "employee" from which it is clear that it means a person who is employed in connexion with the work of a factory or an establishment to which the Act applies. Clause (14) of S. 2 defines an "insured person" to mean a person who is or was an employee in respect of whom contributions are or were payable under the Act and who is by reason thereof entitled to the benefits provided by the Act. Clause (21) of S. 2 provides that "temporary disablement" means a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of work. Clause (22) of S. 2 defines "wages" to mean all remuneration paid or payable in cash to an employee. Section 38 of the Act provides that all employees in factories or establishments to which the Act applies must be insured in the manner provided by the Act. Section 39 which

deals with contributions provides that the contribution payable under the Act in respect of an employee shall comprise contribution payable by the employer and the contribution payable by the employee. The provisions contained in Ss. 40, 41, 42 and 44 contain provisions for the payment of certain benefits to the employees. Section 46 on which Sri Chitale relies strongly provides that the insured person shall be entitled to the benefits mentioned in that section. Sections 47; 50, 51, 52, 56, 58 and 59 provide for the payment of different benefits like the sickness benefit, the maternity benefit, the disablement benefit, the dependents' benefit and the medical benefit to the employees. Lastly, S. 75 which defines the jurisdiction of the Employees' Insurance Court shows that the jurisdiction of the Court which is specially created under the Act is restricted to a decision of disputes between the employer and the employee and the disputes with regard to the right of an employee to receive a particular benefit.

8. There can be no doubt that the provisions on which Sri Chitale relies show that the Act is meant for the benefit of the "employees." The argument of the learned counsel is that if the several benefits like the sickness, maternity and disablement benefits can be availed of only by the employees, it would be absurd to apply the Act to an establishment in which the work is done partly by the proprietors or the partners of a firm who, if excluded, would reduce the number of workers to less than twenty. I find it difficult to accept the submission of Sri Chitale that such a procedure involves any contradiction or absurdity. The language used in S. 2, Clause (12), of the Act shown that the sole test which must be applied for determining whether an establishment is a factory or not, is whether twenty or more "persons" are working in the factory and whether a manufacturing process is being carried on with the aid of power in any part of the establishment. If these two tests are satisfied, the establishment must answer the description of a factory under the Employees' State Insurance Act and it is immaterial that some of the persons who work in the factory are either the proprietors of the establishment or are partners in the firm which owns the establishment. It is also immaterial that if such proprietors or partners are excluded, the number of the remaining workers would fall below twenty.

9. If twenty or more persons work in an establishment and if a manufacturing process is being carried on in any part thereof, the place would be a factory. The further question which would then arise is whether the benefits conferred by the Act can be availed of by all the persons who work in the factory. In order to determine that question it would be necessary to consider each one of the provisions relating to the various benefits. If the benefits can be availed of only by the employees properly so called, the proprietors of the establishment or the partners of the firm which owns the establishment would not be entitled to the benefits, because they are not "employees." That is, however, no reason why the benefits conferred by the Act cannot be given to employees who work in the establishment in which twenty or more persons are, in fact, working. In other words, the mere circumstance that the Act applies to an establishment would not necessarily mean that all the benefits conferred by the Act could be given to each

and every person working in that establishment. The Act would apply to an establishment because twenty or more persons work therein and yet the benefits conferred by the Act could be given to only such persons who are employees within the meaning of the Act.

10. I am unable to appreciate the contention of Sri Chitale that to apply the Act to an establishment and not to give the benefit thereof to all persons who work therein is a procedure devoid of meaning and substance. It would be possible to test the validity of this argument by reference to a specific provision in the Act. Section 2. Clause (9), of the Act defines the word "employee." It provides that the word "employee" shall not include a person who is employed on a remuneration exceeding in the aggregate four hundred rupees per month. If in any establishment twenty or more employees are working, the Act would admittedly apply, according to the argument of Sri Chitale himself, regardless of the salary drawn by them or by any of them. It is, however, clear that those drawing a salary exceeding Rs. 400 per month will not be entitled to claim the benefits conferred by the Act. The particular provision to which I have drawn attention would show that no absurdity or contradiction is involved in applying the Act to an establishment but not extending the various benefits conferred by the Act to each one of the persons working in the establishment.

11. Sri Chitale has taken a hypothetical case to demonstrate that the view which I am inclined to take may result in an absurd consequence. He takes an instance of a firm consisting of twenty partners all of whom, and who alone, work in the establishment. The difficulty of Sri Chitale in that in such a case, applying the Act would be wholly meaningless, for none of the persons could possibly get any benefit under the Act. I cannot appreciate this difficulty, because if the policy of law is to confer special benefits on "employees" only, those who work in the establishment but are not "employees" as defined by the Act will not be entitled to claim the benefits. To accept Sri Chitale's argument would be to hold that the Act cannot apply to an establishment in which twenty persons, each drawing a monthly salary exceeding Rs. 400, are working. Such a construction seems to me to be against the plain meaning of S. 2(12) of the Act.

12. As it is common ground that more than twenty persons are working in the establishment of the appellants and a manufacturing process is being carried on in a part of the establishment, the establishment must be held to be a factory within the meaning of S. 2, Clause (12), of the Employees' State Insurance Act. The application of the Act, however, cannot mean that the several benefits provided for in the Act could be availed of by the partners of the firm who are also working in the establishment. In determining the question whether a person working in the factory is entitled to any particular benefit, regard must be had to the language of the section which confers that benefit and if the language shows that the benefit can be given only to "employees," the benefit cannot be availed of by the partners.

13. The order passed by the learned Judge is, therefore, confirmed and the

appeal is dismissed with costs.