

(2002) 04 CAL CK 0037
In the Calcutta High Court
Case No : F.M.A. No. 411 of 1991

Bata India Limited

APPELLANT

Vs

Employees' State Insurance Corporation and Others

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9)

Citation : (2003) 3 LLJ 716

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Jayanta Kumar Biswas, J

Bench : Division Bench

Advocate : Aninda Mitra, Satyen De, S.K. Deb, U. Dasgupta and S.B. Sinha Roy, for the Appellant; S. Moitra, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against an order passed by the learned single Judge dated March 17, 1989, whereby the learned single Judge dismissed the writ petition and held that the petitioner was covered by the provisions of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act of 1948).

2. Brief facts, which are necessary for disposal, are that the appellant/petitioner filed a writ petition challenging the order dated June 7, 1976, and sought for a writ of mandamus against the respondents to forbear from giving effect to the aforesaid order or implementing the same. It is alleged that the Head Office of the appellant-petitioner is situated at No 30, Shakespeare Sarani, Calcutta, and its sales organisation is situated at No. 6A, S.N. Banerjee Road, Calcutta. The factories' Head Office and Sales Organisations are completely distinct and separate organisations under the organisation set up of the Company. Bata India Limited has three factories at Batanagar, Batagunge and Faridabad respectively. All these three factories of the appellant-petitioner have their respective separate administrations. It is alleged that all these three factories are registered under the Factories Act, 1948, and they are completely distinct and independent

establishments. So far as the present factory is concerned, it is situated at Batanagar, South 24-Parganas, being a non-implemented area. We are only concerned with the factory, which is in the State of West Bengal. The appellant-petitioner has two other branch factories at Batagunge and Faridabad, The administrative offices of the said two factories are also situated in the said factory of the appellant- petitioner in Calcutta, and they have their sales organisations in Calcutta. The controversy is, in the present case, with regard to the employees, who are in the Sales Department in Calcutta. The question is as to whether these sales depots/sales offices of Bata factory are covered by the Act of 1948 or not. The learned single Judge, after relying on the decision of the Apex Court in the case of Hyderabad Asbestos Cement Products Ltd. Vs. Employees Insurance Court and Another, , held that they were covered by the Act of 1948, and, therefore, the learned single Judge dismissed the writ petition.

3. Mr. Moitra, the learned counsel, for the E.S.I, authorities, submits that the aforesaid Act of 1948 seeks to cover all the outlets of Bata Factory in Calcutta though the same is not governed by the provisions of the Act of 1948.

4. The learned counsel, for the appellant, further submits that since the Act of 1948 has not been implemented in case of present Bata factory in South 24-Parganas, therefore, all the employees, who are working at different shops/outlets in Calcutta selling the products of Bata Factory cannot be covered u/s 2(9) of the Act of 1948. Even after the amendment of the definition of the word "employee", which has been brought about in 1968, they are not entitled to subscribe under the provisions of the Employees" State Insurance Act.

5. As against this, learned counsel for ESI authorities, submits that this question is no more res Integra as the Special Bench of this Court had already taken in view in a same and similar circumstances that notwithstanding the fact that the main factory is not governed by the Act, still the employees, who are working in the factory at Calcutta are covered by the definition of the word "employee" under the provisions of Section 2(9) of the Act. In this context, our attention was drawn to two decisions of The India Jute Company Ltd. Vs. The Regional Director, West Bengal, Region, Employees" State Insurance Corporation and Another, and Sen-Raleigh Ltd. Vs. Employees" State Insurance Corporation and Others, .

6. Mr. Moitra, learned counsel, for the appellant has submitted that a Division Bench of Delhi High Court held that if the Act had not been made applicable to the factories, then it would not be applicable to their establishments and also sales establishment in other parts of the country which is reported in Indian Cable Co. Ltd. and Anr. v. Union of India and Ors. 1992 LLR 573.

7. The short submission of the learned counsel, for the appellant, is that as per the provisions of the Act, it is not extended to the establishments set up and maintained u/s 59 of the Act. Therefore, the employees, who are working in Bata Factory, and other employees, who are selling the products of these respective Bata factories, either in Calcutta or in other parts "of the country, cannot be

covered by the definition of the word "employee" as defined in Section 2(9) of the Act of 1948. He has emphasised that Section 2(9) says that any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies, then those employees are only governed by the Act of 1948.

8. The learned counsel, for the appellant, submits that when the Act has not been applied to the factory and the establishment, then these employees, who are not connected with this factory, cannot be governed by the definition. Section 2(9) of the Act of 1948 reads as follows:

Section 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.

9. The submission of the learned counsel for the appellant- petitioner, appears to have been weighed (sic) when the main part of the Sub-section (9) of Section 2 says in respect of any person employed for wages in or in connection with the work of a factory or establishment. When the main factory or establishment was not covered by the said part of the definition, then the employees, who are working at the sales outlet of this factory, cannot be covered in the extended definition of the word "employee". We would have accepted the contention of the learned counsel, for the appellant, which is supported by a decision of the Division Bench of Delhi High Court in the case of Indian Cable Limited (supra). But in view of the Special Bench judgment delivered by this Court in an identical situation, we do not feel persuaded to accept the contention of the learned counsel, for the appellant. A contrary view was taken in the case of Sen Raleigh Ltd. (supra) wherein it was observed that when the Head Office and factory were situated at different places, the employees in the Head Office, who were engaged in any type of work specified in Section 2(9) of the Employees' State Insurance Act, 1948, as it now stands, are "employees" within the meaning of the Act. It was further observed that even if the Head Office was in Calcutta, where the

provisions of the Act were applicable, and the factory was at Asansol, the employees in Head Office would be the "employees" within the meaning of Section 2(9) of the Act. The reason given by the Special Bench of this Court was that Chapter V-A came into operation in the whole of India except Jammu & Kashmir on November 24, 1951. Therefore, their Lordships observed that notwithstanding the fact that the main factory at Asansol was not covered by the Act of 1948, but the employees under Chapter IV, who were working at Calcutta, would be treated to be employees under the inclusive definition of "employee" in Section 2(9) of the Act, 1948. It was observed by the Special Bench of this Court in the case of *Sen-Raleigh Ltd. v. Employees' State Insurance Corpn. & Ors.* (supra) as follows:

"Where the Head Office and the factory are situate at different places the employees in the head office who are engaged in any type of work specified in Section 2(9) of Employees' State Insurance Act, 1948, as it now stands, are "employees" within the meaning of the Act. Even where the head office is at Calcutta where the provisions of the Act are applicable and the factory is at Asansol the employees in head office will be "employees" within the meaning of Section 2(9) of the Act. Chapter V-A came into operation in the whole of India except Jammu and Kashmir on November 24, 1951."

10. In view of the interpretation given by the Special Bench of this Court, there remains hardly anything for us to decide as the fate of this case is fully covered by the Special Bench Judgment of this Court. However, the Division Bench of Delhi High Court had taken a different view in the matter. The Special Bench of this Court had already held in an identical situation notwithstanding the fact that the factory was not covered by the Act of 1948, still the employees, who were working inside the factory premises and connected with the factory, and Chapter IV having come into operation, they would be covered by the Act of 1948.

11. In that view of the matter, we are of the opinion that the view taken by the learned single Judge is correct and it does not call for any interference by this Court and, consequently, this appeal is dismissed without any order as to costs.

12. We have decided the matter on the basis of the judgment delivered by the Special Bench of this Court. Request for stay, as made by the learned counsel, for the appellant is considered and rejected.

13. Urgent xerox certified copies of this order, if applied for by the parties, be delivered to them.