**(1989) 03 CAL CK 0088**

**In the Calcutta High Court**

**Case No :** C.R. No. 7588 (W) of 1976

Bata India Ltd. APPELLANT

Vs

E.S.I. Corporation RESPONDENT

**Date of Decision :** 17-03-1989

**Acts Referred:**
Employees State Insurance Act, 1948 — Section 2(12), 2(9), 38, 39

**Citation :** (1989) 2 CALLT 375

**Hon'ble Judges :** Susanta Chatterji, J

**Bench :** Single Bench

**Advocate :** P.P. Jinwalla, S.K. Deb and S.B. Sinha Roy, for the Appellant;Devesh Ch. Mukherjee and Jogmaya Sengupta, for the Respondent

## Judgement

Susanta Chatterji, J.—The present Rule was issued on 7-6-76 at the instance of the Bata India Limited praying inter alia, to issue a Writ of Mandamus commanding the respondents to forbear from giving effect and/ or taking any steps pursuant to and/or from applying or enforcing the provisions of the Employees'' State Insurance Act, 1948 to the petitioner in respect of its registered and head office at No. 30, Shakespeare Sarani, Calcutta and branch offices and sales shops and sales depots situated in the different States of India and for other consequential reliefs as thereunder stated.

2. It is alleged that the Head Office of the Company is situated at No. 30 Shakespeare Sarani, Calcutta and Sales Office/Sales Organisation is situated at No. 6A, S. N. Banerjee Road, Calcutta. The factories, Head Offices and Sales Organisations are completely distinct separate organisations under the organisational set-up of the company. Bata India Limited, an existing Company has three factories at Batanagar, Batagunge and Faridabad. Said three factories have their respective separate administrations. It is stated further that the said three factories of the petitioner are registered under the Factories Act, 1948 they are completely distinct and independent establishments from the registered and/ or sales depot and/or sales offices. According to the petitioner, the said

Employees State Insurance Act, 1948 as amended in the year 1966 and the statements of objectives and reasons of the said Act as would appear from the Act itself and by reason of the provisions of Section 1(4) of the said Act, the said Act is to apply in the first instance to all factories including the factories pertaining and belonging to the Government other than seasonal factories. The main factory of the petitioner is situated at Batanagar which is a non-implemented area and the petitioner has two other branch factories, at Batagunge and Faridabad. The administrative offices of the said factories are also situated in the said factories of the petitioner. Under the provisions of Section 1(5) of the said Act, the appropriate Government may in consultation with the E.S.I. Corporation, the respondent No. 1 herein, set up under the said Act and where the appropriate Government is the State Government, with the approval of the Central Government, after giving 6 months'' notice of its intention of so doing, by a Notification in the Official Gazette, extend the provisions of the said Act or any of them to any other establishment or class of establishment, industrial, commercial, agricultural or otherwise, The petitioner has laid emphasis upon the fact that the provisions of the said Act cannot be made applicable to any establishment other than a factory as defined in the said Act unless an appropriate Notification is issued u/s 1(5) of the said Act by the appropriate Government extending the application of. the provisions of the said Act to such establishment. Stating all these facts in details, the writ petition has been filed on the ground that the provisions of the said Employees State Insurance Act did not apply to the petitioner in respect of any person employed in its institution and said registered and Head Office at Calcutta and Sales Offices/Sales Shop/ Sales depot situated in the different States of India inasmuch as the said provisions only apply to a Factory or to an Establishment to which they have been extended but the said Head Office and Sales Offices are neither as such. The provisions of the said Act have not been extended to the main factory of the petitioner situated at Batanagar and the persons to be insured under the said Act are persons employed in the factories of the establishment to which the said Act applies and none of the persons employed at the Head, Branch Offices, Sales Shops and Sales Depot/Office fall within such category.

3. Mr. Ginwalla, learned counsel appearing for the petitioner company has strongly argued that the operation of the said Employees State Insurance Act as indicated u/s 1 thereof, could not be and was not altered by the amendment of the definition of the word "employee" as contained in Section 2(9) of the said Act and the employees of the said Head Office, Sales Office, Sales Shops/Depot are not employees in the said factories who are required to be insured under the charging Section 38 of the said Act.

4. Upon proper reading of the Act and the Scheme framed thereunder, it will be clear that the Act and the Scheme framed thereunder had no application to the establishments, namely, the Head Office, Sales Office, Sales Shops and Depot and as such the purported decisions are illegal and without jurisdiction and the same may be struck down.

 

5. The Rule is contested by the respondents. On behalf of the respondents it is disclosed, inter alia, that the employees of the petitioner Company''s establishment are covered u/s 2(9) of the Act as they are employed in jobs of administration, purchase of raw materials and sale or distribution of the products of the petitioner''s factories at Bata showrooms, in factories and sales office and other offices and accordingly they are definitely covered by Section 2(9) of the said Act and consequently the petitioner is liable for payment of the dues as required under the said E.S.I. Act.

6. Mr. Ginwalla, learned Counsel for the petitioner has further submitted that steps to recover the E.S.I, dues were taken by the E.S.I, authorities without determination by the E.S.I., authorities under the Act. Besides, the Batanagar factory was not covered by the E.S.I. Act, and so all the employees cannot be brought in to the ambit of the said Act.

7. In support of his contention, learned Counsel for the petitioner has drawn the attention of the Court to various provisions of the E.S.I. Act and he has drawn the Court''s attention to the reported decisions of AIR 1983 SC Page 27 and Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, . According to learned Counsel, there are decisions where the Head Office is not covered by the E.S.I. Act, the case can be considered if the factory is covered by the said Act. But, in the instant case, the factories being situated in the non-implemented area, the employees in the Head Office/Sales Office and/or Sales Depot cannot come within the mischief of the provisions of the said Act.

8. Mr. Mukherjee, learned Advocate appearing for the contesting respondents has drawn the attention of the Court to various decisions, reported in Sen-Raleigh Ltd. Vs. Employees'' State Insurance Corporation and Others, .

9. After hearing the learned Advocates for the parties for both sides at length and perusing the materials on record, the question that appears for this Court''s consideration is that whether the petitioner is liable to pay E.S.I. contribution. The issue has been squarely answered in the reported decision of Hyderabad Asbestos Cement Products Ltd. Vs. Employees Insurance Court and Another, . The principle as enunciated in the said decision is set down below :

An employee may be working within the factory or outside the factory or may be employed for purchase of raw materials or for sale of the finished goods, all such employees are included within the definition of ''employees'' in Section 2(9) of the Act. Therefore the persons employed in the Zonal Offices and Branch Offices of a factory and concerned with the administrative work or the work of canvassing Sale would be covered by the provisions of the Act.

After the amendment to Section 2(9) introducing the inclusive definition of the word ''employees'' enacted by Act 44 of 1966 which came into force on 28-1-1968, work connected with the administration of the factory, the purchase of raw material and the distribution or sale of products are brought within the scope of the definition. After the amendment therefore the plea that employment in connection with the administration of the factory or with the purchase of raw materials or distribution or sale of products cannot be contended to be as not falling within the definition.

10. The provisions of Sections 2(9), 2(12), 38 and 39 do not warrant the restricted interpretation that in order to bring an employee within the scope of the Act, he should not only be an employee within the meaning of Section 2(9) of the Act but also that he should be an employee of a factory as defined in Section 2(12) of the Act. u/s 39 of the Act the contribution is payable in respect of an employee and is not confined only to employees actually working in factories. So also the words ''employed in factories'' in Section 38 do not mean the persons employed in factories only but also include persons employed in connection with the work of the factory. The employees that are required to be insured under the Act are not restricted only to those employed in factories defined u/s 2(12) of the Act.

11. There cannot be any doubt that the points raised by Mr. Ginwalla, learned Counsel are well covered by the said judgment and it cannot be now argued that the petitioner company is not liable to pay the E.S.I. dues as claimed. In fact, there is no merit in the writ petition. In the result the Rule is discharged. Interim order, if any, is vacated.

12. There will be no order for costs.