

(1978) 04 CAL CK 0072

In the Calcutta High Court

Case No : Criminal Revision Case No. 995 of 1977

Bidyut Kumar Sett and Another

APPELLANT

Vs

Satyesh Chandra Bagchi and Another

RESPONDENT

Date of Decision : 20-04-1978

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 26
Employees State Insurance Act, 1948 — Section 2(17), 85
Factories Act, 1948 — Section 2

Citation : (1979) 49 CompCas 274 : 82 CWN 666 : (1978) 37 FLR 252

Hon'ble Judges : S.C. Majumdar, J;P.C. Borooah, J

Bench : Division Bench

Advocate : Biren Mitra, Public Prosecutor and N.A. Choudhury, Jr. Govt., D.K. Dutta and Debobrata Mukherji, for the Appellant; Debesh Chandra Mukherji, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Borooah, J.—The petitioners are directors of Messrs. P. Sett & Co. Private Ltd. having its registered office and factory at No. 3, Ramakanta Sen Lane, within police station Manicktola, in the city of Calcutta.

2. On June 5, 1976, the opposite party No. 1, Satyesh Chandra Bagchi, an Insurance Inspector under the Employees' State Insurance Corporation, Calcutta, filed a petition of complaint against the two petitioners and another in the court of the Judicial Magistrate at Sealdah alleging commission of offences u/s 85(a) and (g) of the Employees' State Insurance Act, 1948 (hereinafter the Act), read with Section 4(i)(b) of the Employees' State Insurance (Amendment) Act, 1975, for violation of Regulation 26(c) of the Employees' State Insurance (General) Regulations, 1950 (hereinafter the Regulations), for failure to submit the necessary contribution cards for the periods expiring on November 11, 1975, and January 31, 1976, within the statutory period.

3. The learned Magistrate, on the basis of the aforesaid petition of complaint,

took cognizance and issued summons against the two petitioners and another u/s 85(a) and (g) of the Act. In this application, the petitioners have prayed that the proceeding pending" against them in the court of the learned Magistrate, being Case No. C-816 of 1976, be quashed.

4. Mr. D. K. Dutta, learned advocate appearing on behalf of the petitioners, has drawn our attention to paragraph 2 of the petition of complaint filed by the opposite party wherein it has been stated, inter alia, that the accused persons are the directors of Messrs. P. Sett & Co. Private Ltd. and, as such, they are the principal employers, as defined in Section 2(17) of the Act. Mr. Dutta's contention is that the petitioners as directors cannot be deemed to be either owners or occupiers of the factory within the meaning of Section 2(17) of the Act. According to Mr. Dutta, under the said definition, in the case of a company, the company or, if a managing agent has been appointed, the managing agent, or if a manager has been named, the manager, is the owner or occupier of the factory.

5. Mr. Dutta's alternative argument is that even if we hold that a director of a factory is the principal employer, it has nevertheless to be specifically stated in the petition of complaint in order to make a director liable for violation of paragraph 26(c) of the Regulations, that he was in actual physical possession of the contribution cards in respect of which there has been a default.

6. Mr. Debesh Chandra Mukherji, appearing on behalf of the opposite party No. 1, has submitted that in the case of a company whether it be a public limited company or a private limited company, even a shareholder shall be deemed to be the owner or occupier of the factory within the meaning of Section 2(17) of the Act. Mr. Mukherji has also relied on a decision of a Single Bench of this court in the case of B.M. Chatterjee Vs. The State of West Bengal and Another, , wherein it was held that a director of a limited company was the owner within the meaning of Section 2(17) of the Act and if there were several persons in the position of directors, all of them would be liable for contravention of the provisions of the Act and the Regulations.

7. Mr. Biren Mitra, learned Public Prosecutor, appearing on behalf of the State, has to some extent, supported Mr. Dutta and has submitted that a director qua director is not the owner or occupier within the meaning of Section 2(17) of the Act, but the company is the owner or occupier.

8. Section 2(17) of the Act defines " Principal employer " in the following terms:

" (i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named;

(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no

authority is so appointed the head of the department ;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment. "

9. In the instant case, the petitioners being the directors of a factory we need confine ourselves to only sub-cl. (i) of Section 2(17) of the Act.

10. The Act does not define the word "owner " but u/s 2(15) of the Act an " occupier " of a factory is to have the meaning assigned to it under the Factories Act, 1948. Section 2(n) of the Factories Act defines " occupier " of a factory as a person who has ultimate control over the affairs of a factory, and where the such affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory. "

11. In the instant case, admittedly, the petitioners are the directors of P. Sett & Co. Private Ltd. It is also nobody's case that the said company had appointed any managing agent. Therefore, without going into the correctness or otherwise of the decision of K. K. Mitra J. in the case of B.M. Chatterjee Vs. The State of West Bengal and Another, , a director of a company, in our view, can be brought within the meaning of the word " occupier " as mentioned in Section 2(17) of the Act, as according to Section 2(n) of the Factories Act occupier is a person who, like a director, has ultimate control over the affairs of the factory.

12. The next question will, therefore, arise whether in the petition of complaint filed against a director of a factory for violation of any provision of the Act or the Regulations, it has to be specifically pleaded that such director has ultimate control over the affairs of the factory.

13. In our view, some distinction has to be drawn between the present Act where a company has not been made primarily liable for any violation committed under the Act and the Regulations and some other Acts such as the Employees' Provident Funds and Family Pension Fund Act, Prevention of Food Adulteration Act, Essential Commodities Act, etc., where companies have been made primarily liable for offences committed under the said Acts and vicarious liability has been extended only to those directors and other persons who are concerned in the day-to-day running of the business of the companies.

14. Therefore, in our view, in the instant case where no managing agent has been appointed or any manager has been named, occupier is wide enough to bring any director including the present petitioners within the definition of Section 2(17) of the Act.

15. The next question that has to be determined is whether for the purported violation of paragraph 26(c) of the Regulations it has to be specifically pleaded in the petition of complaint that the person being proceeded against was in actual possession of the contribution cards in respect of which there has been a default. In our view, whether a particular person is or is not in actual physical possession of a contribution card is within his special knowledge. Therefore, it is not

necessary to specifically aver in the petition of complaint filed under the provision of the Act and the Regulations that the person, against whom process is being sought, is in actual physical possession of a contribution card. If process is issued against a person as owner or occupier of a factory it is open to him to take up the defence that he is not in possession of any contribution card in respect of any particular employee and, as such, he is not liable for any violation of* paragraph 26(c) of the Regulations.

16. Mr. Dutta has, lastly, submitted that the petitioners were not directors for the entire period for which they have been sought to be made liable. This fact can be brought to the notice of the learned Magistrate.

17. In the premises aforesaid, we must dismiss this application and discharge the rule.

18. Let the records be sent down as quickly as possible.

S.C. Majumdar, J.

I agree.