

(2007) 07 JH CK 0034
In the Jharkhand High Court

Bihar Rubber Company Ltd.	Vs	APPELLANT
Employees State Insurance Corporation and Others		RESPONDENT

Date of Decision : 23-07-2007

Acts Referred:

Employees State Insurance Act, 1948 — Section 2

Citation : (2008) 1 LLJ 426 : (2007) 115 FLR 497 : (2007) 4 JCR 163

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Merathia, J.—In this writ petition, petitioner has prayed for quashing the order dated 30.11.1998, passed by respondent No. 3 directing it to pay the contribution under the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act) for the period 1.7.1987 to 31.3.1989 and interest thereon.

2. The only question involved in this writ petition is whether the employees employed by the other units, doing the job work of the petitioner, were covered u/s 2(9) of the said Act.

3. Petitioner's case, in short, is as follows. It is a limited Company. It is engaged in manufacturing rainwear, air pillow, rubber canvas foot wear etc. in its small scale industrial unit. It is covered under the provisions of the Act. Petitioner offloads various works on piece rate basis to other units for stitching button hole fixing, taping, pasting, moulding mixing etc. The charges paid against such job work include the cost of job work and profit of the units who execute such job orders. Such units are independent and they do the job work of the petitioner as well as of others at their own premises. Petitioner has got no connection or control whatsoever on the said units. It has got no supervisory control over day-to-day execution of the work. The said units submit their bills against such work and payments are made by cheque. The said units are also registered units. Respondent No. 3 wrongly proceeded to recover the alleged contribution under

the Act for the said period.

4. In the impugned order, it is, inter alia, held that some of the work at intermediate stage of the manufacturing process is assigned to some of other units on job work basis only. Such units are immediate employers u/s 2(13) of the Act. As the quality control lies in the hands of the petitioner, it implies that it exercises exclusive supervision at all the intermediate stage of manufacturing process which is done by immediate employer and thus the employees employed by these small units are the employees as defined u/s 2(9) of the Act and petitioner is one of the principal employers and it is required to pay contribution on the amount of wages paid to such employees.

5. Similar question arose in the case of C.E.S.C. Limited and Others Vs. Subhash Chandra Bose and Others, . The Calcutta Electric Supply Corporation (CESC) engaged various contractors to carry out different works under written contracts. A notice was issued to CESC by the authorities under the Act saying that the employees of the contractors would fall within the scope of Section 2(9) of the Act. CESC issued notice to the Association of the Contractors for complying with the provisions of the Act, failing which it would deduct certain amount from their bills. The association disputed such obligation and moved Calcutta High Court by way of writ petition. The dispute centered round as to whether the CESC exercised any supervision on the works of the contractors. Learned single Judge held that the ultimate supervision was of the CESC and hence the Act was applicable; that the contractors as supervisors were in the nature of agents of the CESC, the principal employer, as per the agreement between CESC and the contractors; that CESC retained the ultimate power of supervision and in fact did supervise the work executed by the contractors. In the writ appeal, the Division Bench of Calcutta High Court reversed the judgment of learned single Judge. The Division Bench, inter alia, found that there is no dispute that CESC is the principal employer and the contractors were the immediate employers but only dispute was whether there is any supervision on the employees of the contractors by CESC. The authorities under the Act found that the works which were entrusted to the contractors were checked by CESC after the same is completed. The Division Bench was of the view that checking of a work after the same is completed and the supervision of the same while the same is being performed are entirely different. Checking of a work after its completion is always done in every case by the person who ordered the same to be done so that the work can be finally accepted and payment made thereof. After the work is completed, a further checking cannot mean or imply any or any further supervision. The Supreme Court affirming the said view further added as follows:

...In the ordinary dictionary sense "to supervise" means to direct or oversee the performance or operation of an activity and to oversee it, "watch over and direct. It is work under eye and gaze of someone who can immediately direct a corrective and tender advice. In the textual sense "supervision" of the principal employer or his agent is on "work" at the places envisaged and the word "work"

can neither be construed so broadly to be the final act of acceptance or rejection of work, nor so narrowly so as to be supervision at all times and at each and every step of the work. A harmonious construction alone would help carry out the purpose of the Act, which would mean moderating the two extremes. When the employer is put to work under the eye and gaze of the principal employer, or his agent, where he can be watched secretly, accidentally, or occasionally, while the work is in progress, so as to scrutinize the quality thereof and to detect faults therein, as also put to timely remedial measures by directions given, finally leading to the satisfactory completion and acceptance of the work, that would in our view be supervision for the purposes of Section 2(9) of the Act. It is the consistency of vigil, the proverbial "a stitch in time saves nine....

6. In the present case, the impugned order has been passed on the presumption that as the quality control lies in the hands of the petitioner it implies that it exercises exclusive supervision at all the intermediate stage of manufacturing process which is done by the other units. No finding has been recorded on the petitioner's objections. It has not been found as a fact that in carrying out the work, the employees of the other units are under the supervision of the petitioner. In my opinion, the present case is fully covered by the said judgment of Supreme Court.

7. In view of such position and also in view of the fact that this writ petition has remained pending in this Court after it was admitted, in the year 1999, I am not inclined to accept the submission of Mr. S.N. Das, learned Counsel appearing for the respondents, that petitioner should avail the alternative remedy.

8. In the result, the impugned order is set aside and the writ petition is allowed. However, no costs.