

(1976) 11 BOM CK 0035

In the Bombay High Court

Case No : First Appeal No. 433 of 1976 with Civil Application No. 2176 of 1976

Boehringer Knoll Ltd.

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 30-11-1976

Acts Referred:

Constitution of India, 1950 — Article 133
Employees State Insurance Act, 1948 — Section 1, 2, 28, 38, 75
Factories Act, 1948 — Section 2

Citation : (1977) 79 BOMLR 207 : (1977) MhLj 389

Hon'ble Judges : Gadgil, J;Chandurkar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Chandurkar, J.—In this appeal filed by M/s. Boehringer Knoll Ltd., which is a company registered under the Indian Companies Act, an important question, which has been raised is whether persons employed in the head office and branch offices of the company and the medical representatives are covered under the Employees" State Insurance Act, 1948, hereinafter referred to as the Act,—a question on which there is some divergence of judicial opinion in some of the High Courts in the country. The company admittedly owns a factory situate at Kolshet Road, Thana where pharmaceutical products are manufactured and about four hundred persons are employed for that purpose. There is No. dispute that the employees working in the factory are covered by the Act and the company has been paying the necessary contribution required under the provisions of the Act. The head office of the company is situate at Bombay and it has branch offices at Madras, Delhi, Lucknow and Calcutta, where these branch office have been duly registered as establishments under the respective statutes dealing with the registration of shops and establishments, The dispute which gave rise to the application made by the company before the Employees" Insurance Court at Bombay arose out of the demands made by the Employees" State Insurance Corporation, hereinafter referred to as the Corporation, demanding contributions

in respect of the employees employed in the head office, the branch offices, the medical representatives in the employment of the company and certain apprentices, who are being paid stipends by the company. According to the Corporation as sum, of Rs. 45,856.55P. was due from the company on account of the employers' contribution and Rs. 30,284.15P. on account of the employees' contribution for the period from April I, 1968 to July 81, 1970. This demand was resisted by the company on the ground that the head; office and the branch offices were not covered under the Act, inasmuch as no notification of contemplated by Section 1(5) of the Act had been issued by any Government and the provisions of Section 38 of the Act would be applicable only in respect of the employees employed in the factory. According to the company the definition of "employee" given in Section 2(9) of the Act by itself would not fasten any liability on the company to pay any contribution in respect of the employees at the head office or at the branch offices, which are distinct units from the factory. With regard to the claim for the contribution in respect of the medical representatives, the case of the company was that the main duties of the medical representatives were to canvass and propagate the company's products and for that purpose they visit doctors, chemists and stockists and that the medical representatives were not engaged either for sale or distribution of the company's products and were, therefore, not employees as defined in Section 2(9) of the Act. In the matter of demand for contributions in respect of the stipends paid to the trainee medical representatives the case of the company was that the stipends were not wages and the company was, therefore, not liable. According to the Corporation the head office was concerned with the work of formulating a plan regarding production, distribution, sales promotion, maintenance of accounts etc. and the said work was incidental to, or preliminary to or connected with the work of the factory. Similarly the branch offices, where the products of the company were stored, were controlled by the head office and the expenses of the factory were borne by the head office and therefore, the head office, the branch offices and the factory were inter-dependent and inter-connected. It appears that the basis of the contributions claimed was the amended definition of "employee" in Section 2(9) of the Act, which became operative on January 28, 1968. This dispute between the Corporation and the company came to be decided by the Employees' State Insurance Court at Bombay u/s 75 of the Act. The company led oral evidence of two witnesses; one was Surendra Pandharinath Parulkar, Special Assistant to the Managing Director of the, company and the other was Sheshadrinathan, who was working as Chief Accountant of the company since 1959. On oral evidence the trial Court found that the company had a propaganda department, sales department and export and import department in the head office and some raw material which was not available in India was imported by the head office. With regard to the arrangement for selling the product manufactured at the factory, it was found that there was an agreement with Rallies India Limited. who were described as sole selling agents. It was found that the branch offices controlled the medical representatives. On the evidence of the Chief Accountant it is found that, the

account" books of the factory were written in the head office, where the accounts were finally consolidated and there was also a sales department in the head office whose duty was to undertake propaganda in respect of the goods manufactured by the factory. The planning department, statistical department, finance department and marketing department in the head office were found to be doing the-work of the factory and the finance department was found to be making payments to the factory workers. On the evidence of the two witnesses the trial Court positively came to the conclusion that the persons working in the head office were doing the Work regarding the purchase of raw material or the distribution or sale of the products manufactured in, the factory. In view of this evidence the trial Court took the view that the person employed in the head Office were employees as defined in the Act. Even with regard to the medical representatives the trial Court found that their work was connected with the sale of products of the factory and since the medical representatives were controlled by the branch offices, the persons employed in the branch offices were in fact controlling the work with regard to the sale of the products of the factory. Having taken this view the trial Court came to the conclusion that the persons employed in the head office and the branch offices of the company were amenable to the provisions of the Act. The trial Court took the same view with regard to the medical representatives because they were found to be connected with the sale of the products of the factory, provided the wages paid to the medical representatives did not exceed Rs. 500 or after the amendment of the definition of "employee" in Clause (9) of Section 2 of the Act the wages did not exceed Rs. 1,000. The trial Court, however, found in favour of the company that the stipends paid to the trainee medical representatives were not "wages" and such trainee medical representatives were, therefore; not employees and the Corporation will not be entitled to make any claim for the contribution in respect of the trainee medical representatives. On proper computation of the employers' and the employees' contributions the trial Court found that Rs. 35,590 and Rs. 23,601,65P, would have to be paid by, the company as employers' and employees contributions respectively. In respect of the overtime payments the liability of the company was determined at Rs. 7,061 and Rs. 4,762.10P. as employers' and employees' contributions respectively. Similarly in respect of the casual workers the liability was determined at Rs. 812 and Rs. 604.10P. Being aggrieved by this decision of the trial Court the company has now filed this appeal u/s 82 of the Act.

2. Mr. Bhatkal appearing on behalf of the appellant-company has strenuously contended that in spite of the amendment in the definition of "employee" in Section 2(9) of the Act the persons employed at the head office and the branch offices would not be employees for the purposes of Section 38 of the Act, which was a charging section according to him. The learned Counsel contended that the head office and the branch offices of the company were "establishments" and inasmuch as no notification has been issued by any Government as required u/s 1(5) of the Act, the provisions of the Act would not be applicable to the

establishments and the applicability must be restricted merely to the factories, to which the provisions of the Act became applicable by force of Section 1(4) of the Act and consequently according to the learned Counsel it is only the factory owned by the company in respect of which the demands for employers' and employees' contributions could validly be made by the Corporation. To quote the argument of the learned Counsel himself "although the employment of the persons in the factory is insurable employment by reason of Section 1(4) read with Section 2(9), 2(12) and 38 of the Act, the employment of the persons working in the head office and the branch offices in the absence of the notification u/s 1(5) of the Act is not insurable employment and in any case the employment of the medical representatives is not insurable employment at all as they are not engaged in connection with the sale or distribution of the products manufactured in the factory". The learned Counsel placed heavy reliance on the two decisions, which undoubtedly support the claim of the company. The first one is the decision of the Calcutta High Court in *Andrew Yule and Co. v. E.S.I. Corporation* (1973) 29 F.L.R. 275; and the second one is the decision of the Madras High Court in *Mettur Beardsell Ltd. v. E.S.I. Corporation* [1974] 1 L.L.J. 39

3. We shall first take up for discussion the first part of the argument that unless a notification was issued u/s 1(5) of the Act the employment of the employees at the head office and the branch offices could not be said to be insurable employment so as to involve a liability on the part of the company to pay employers and employees contributions as required under the Act. In order to appreciate the contention raised it is necessary to refer to a few provisions of the Act. The commencement of the application of the Act is dealt with in Sub-section (1) of Section 1 and the provisions material for the purposes of the present appeal are to be found in Sub-sections (4) and (5) of Section 1 of the Act, which read as follows:

1. (1) ?

(4) It shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories.

(5) The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government, with the approval of the Central Government, after giving six months' notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

Admittedly the learned Counsel for the Corporation is not relying on any notification issued in exercise of the powers u/s 1(5) of the Act. The term "employee" is defined in Section 2(9) of the Act, which reads as follows:

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;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment; but does not include

(a) any member of the Indian naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed five hundred rupees a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed five hundred rupees a month at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;?

The italics portion was introduced by way of amendment by Act 44 of 1966 and the amended definition became effective from January 28, 1968. So far as the present dispute is concerned, the arguments centre around the amended portion because the Corporation does not rely on Clause (i), (ii) and (iii) in the definition. "Factory" is defined u/s 2(12) of the Act as meaning "any premises including the precincts thereof where twenty or more persons are employed or were employed for wages 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 but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed." The only other provision referred to at the hearing was Section 38 of the Act which reads as follows:

38. Subject to the provisions of this Act, all employees in factories, or establishments to which this Act applies shall be insured in the manner provided by this Act.

4. Now the question, which falls for decision in the present appeal is whether having regard to the fact and the finding is not challenged before us-"that the

employees who were working in the head office dealt with the propaganda in respect of the goods manufactured by the factory and from where the payments were made even to the employees of the factory and where the accounts were consolidated, can be said to have been employed on work connected with the administration of the factory or any part, department or branch thereof or with the purchase of raw materials or for distribution or sale of the products of the factory as contemplated by the amendment newly introduced in the definition of "employee". The amendment which was made in the definition of "employee" has used words of widest possible amplitude and if the work in respect of which a person is employed has some nexus with the activity referred to in the definition, it is difficult to see why such an employee will not fall within the inclusive part of the definition of "employee". The test which the Parliament has introduced in Section 2(9) of the Act by covering the original definition of "employee" which was an exclusive definition into an inclusive definition has to be found in the newly added portion.

5. Since it is not disputed that the material portion of definition of "employee" is the one which was introduced by way of amendment, for the purposes of the present appeal, it will have to be found whether the persons working at the head office and the branch offices of the company can be said to be "employed for wages" on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials or for distribution or sale of the products of the factory. If the work done by the person in the head office or the branch office is, therefore, of the nature contemplated by the amended part of the definition, then there cannot be much difficulty in holding that so far as Section 2(9) is concerned, such person will be covered by the definition of "employee" in Section 2(O) of the Act. What is, however, contended is that according to the learned Counsel merely because the persons working in the head office or the branch offices would be "employees" within the meaning of the term in Section 2(9) of the Act, they will not necessarily become insurable employees so far as Section 38 of the Act is concerned. The employees, who are required to be insured in the manner provided by the Act, are u/s 38 "employees in the factory". The learned Counsel contended that the term "factory" is denned in Section 2(12) of the Act and since no amendment has been made by the Legislature in the definition of "factory" in so far as insurable employees are concerned, it must still be determined whether the employees who are working in the head office or the branch offices could be said to be employees in the factories as contemplated by Section 38 of the Act, notwithstanding that they squarely fall within the amended part of the definition of "employee". In other words, the learned Counsel wants to contend that literal construction should be placed on the words "employees in factories" and since by no stretch of imagination, having regard to the definition of "factory" in Section 2(12) of the Act, neither the head office nor the branch office can be said to fall within that definition, the employees working in the head office and the branch offices cannot be said to be entitled to be insured with the further consequence

that neither the employer's contribution nor the employees' contribution could be demanded from the company. It is no doubt true that if the words "employees in factories" had stood by themselves, the literal construction canvassed for on behalf of the company could have been placed on those words. The Legislature, however, has taken care not only to define the term "employee", but has further chosen to amend that definition by Act 44 of 1966. The amendment in the definition was made with a certain purpose, It will be useful to refer to the position of law that obtained prior to the amendment when there was a conflict of judicial opinion on the question as to whether the persons employed in the administrative offices dealing with the factory were included in the definition of "employee". In *Employees' State Insurance, Corporation v. C.H. Raman* [1957] 1 L.L.J. 267, the question which fell before this Court for decision was whether a person employed in the administrative office of the factory, mainly for the purpose of taking dictation from the Manager and other Officers and typing letters could claim the benefit of the Act and it was held that such a person could not answer the description of "employee" as contained in Section 2(9) of the Act for the reason that his duties could not be said to be either incidental to, preliminary to or connected with the work of the factory. Another ground given in support of the view taken by this Court was that the administrative office was concerned with the sale of the products of the factory and the work of the factory ended with the production of those goods and as such the duty of the person employed in the administrative office of the factory was not connected with the purpose of the factory. The Madras High Court had taken the view in *Employees' State Insurance Corporation with its Regional Office at Coimbatore Vs. Ganpathia Pillai and Others*, that a person employed in the Managing Agent's office of a mill which is concerned with the administrative side of the mill and sale of finished products and who is not in any way connected with the manufacturing process or with the work of the factory is not an "employee" within the meaning of Section 2(9)(i) of the Act. The Punjab High Court had taken a view in *Chanan Singh Proprietor Chanan Singh and Sons, Amritsar Vs. Regional Director, Employees' State Insurance Corporation, Amritsar*, had taken the view that the employees of an Electric Supply Company, who were kept in waiting and who go out from time to time when calls were received from the consumers for the purpose of putting things right and whose work was almost entirely done outside the premises, which constituted the factory, will fall within the definition of "employee" in Section 2(9)(i) of the Act; and as such the persons were directly employed by the principal employer and their work was clearly incidental to and connected with the work of the factory. Later, in *K. Thiagarajan Chettiar Vs. Employees' State Insurance Corporation*, the Madras High Court took the view that the gardeners, building workers, office attender, watchmen etc, employed in a textile mill could be "employees" within the meaning of the Act, if the maintenance of a garden would be conducive with the health of the manual workers and would also enhance their efficiency and health. The question whether the benefit of the Act would be restricted to the persons working inside a factory or even outside fell for consideration before the Supreme Court in *Nagpur Electric Lights and Power*

Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc., . The Supreme Court in that case took the view that where the company maintains one establishment for its factory, which does the work of transforming and transmitting electrical energy, all employees clerical or otherwise including administrative staff are employed in connection with the work of the factory and none of them is employed in any separate establishment unconnected with the work of the factory, and all workers of disputed categories, whether they work in the factory or elsewhere were "employees" within the meaning of Section 2(9)(i) of the Act. The categories of workers in respect of whom the dispute arose in that case were those connected with engineering, stores, outdoor work, meter, consumers, and allocation departments and administration. It is in the state of such divergent views with regard to the meaning of the word "employee" that the Parliament intervened and introduced an amendment in the definition of the term "employee" in Section 2(9) of the Act. In the statement of objects and reasons of the Bill which sought to introduce the amendment it was stated as follows:

Experience of the administration of the Act has disclosed certain difficulties in its working. The object of the present bill is to remove such difficulties and to make the administration of the Act simpler.

6. With regard to the clause which contained amendment in the definition, it was stated "existing definition of the term "employee" does not cover administrative staff engaged in the sale, distribution and other allied functions and the definition is being amended to cover such employees". The object of the Legislature was, therefore, clearly to bring in an amendment which would include within the category of insurable employees the members of the administrative staff engaged for sale and distribution and allied functions. If this was the object of amending the definition of "employee" then in our view Section 38 read along with Section 2(9) of the Act must be so construed that the effect is given to the intention of the Legislature. The object of the Legislature to include the members of the administrative staff connected with the administration of the factory or the purchase of raw materials of the distribution or sale of the products of the factory will be clearly defeated if literal construction as canvassed by the learned Counsel for the company is adopted. Indeed such a construction is likely to make the amendment itself redundant and otiose. Intention cannot be attributed to the Parliament to make a redundant amendment. Further the Employees' State Insurance Act is a piece of efficient legislation put on the statute book with a view to provide certain bone fits to employees in case of sickness, maternity and employment injury. The original definition of "employee" was widely construed by certain Courts, it is obvious that since there was some divergence of views, the Legislature has thought it fit to make a positive amendment by widening the operation of the Act, so as to cover a larger number of employees, who did not have the benefit of being insured under the provisions of the Act. The provisions of the Act deal merely with the insurable employees. All the benefits which are contemplated by the Act are available only to those employees who are insured.

Section 28 of the Act refers to the purpose for which the Employees' State Insurance fund has to be expended. If the employee is not insured, under the Act, the benefits under the Act are not available to him. If the object of Parliament was to provide for this bone fit under the Act to a larger number of employees, who were to be called "insured employees", and then if the construction canvassed on behalf of the company is accepted, that object will clearly be defeated because an employee being merely covered by the definition will be of no purpose, if he cannot be insured employee for the purposes of the Act. There could be no purpose in amending Section 2(9) of the Act unless that definition is given effect to for the purposes of Section 38. A liberal construction will, therefore, have to be placed on Section 38 of the Act having regard to the beneficent nature of the legislation. The rule of interpretation in case of beneficent legislation is now well-recognised by Courts. Dealing with this kind of interpretation while construing an entry in Schedule I of the Employees' Provident Funds Act the Supreme Court in *Regional Provident Fund Commissioner Vs. Shibu Metal Works*, has observed as follows (p. 1080):

The object which the Act purports to achieve is to require that appropriate provision should be made for the employees employed in the establishments to which the Act applies; and that means that in construing the material provisions of such an Act, if two views are reasonably possible, the courts should prefer the view which helps the achievement of the object. If the words used in the entry are capable of a narrow or broad construction, each construction being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction." These observations, in our view, apply with all force to a case of the kind with which we are dealing. Dealing with the Factories Act, where the question was whether the time-keepers were workers within the meaning of Section 2(i) of the Factories Act, the Supreme Court in *The Works Manager, Central Railway Workshop, Jhansi Vs. Vishwanath and Others*, observed as follows (P 381):

It is probably true that all legislation in a welfare state is enacted with the object of promoting general welfare; but certain types of enactments are more responsive to some urgent social demands and also have more immediate and visible impact on social vices by operating more directly to achieve social reforms. The enactments with which we are concerned, in our view, belong to this category and, therefore, demand an interpretation liberal enough to achieve the legislative purpose, without doing violence to the language.

The principle of construction of beneficent statute enunciated in the two decisions referred to above must also apply in the case of construction of Section 38 of the Act having regard to the positive intention of the Legislature in making the amendment brought about by Act 44 of 1966 and it will be difficult to hold that in spite of the amended definition only a person who is working in the factory as such will alone be entitled to the benefits under the Act.

7. The view which we have taken finds support from the decision of the Full Bench of the Andhra Pradesh High Court in *Hyd. A.C. Products v. Employees' Insurance Court, Ramkot* [1976] Lab. I.C. 868 F.B. The facts of that case were that the petitioner-company had a factory located at Hyderabad and one of its zonal sales offices was located at Vijayawada. The question was whether the employees of the zonal sales office at Vijayawada could be and to be employees in the factory and covered by the Act. The contention similar to the one which is raised in the instant case by the learned Counsel for the appellant that there was no notification u/s 1(5) of the Act and therefore employees in the zonal office was not covered by the Act was raised. The Full Bench took the view that after the amendment of the definition of "employee" any person employed for wages on any work connected with the distribution or sale of the products of the factory or establishment also becomes an employee and then the Full Bench posed the question for decision as follows (p. 873):

Though the amended definition of "employee" takes in any person employed for wages on any work connected with the sale of the products of the factory can it be said that they are employees in a factory?

Answering this question the Full Bench made the following observations after referring to the amended portion of the definition of "employee" (p. 873):

?The Legislature thought that the amended definition of an "employee" was not of sufficient width or amplitude and the definition had to be enlarged with a view to give effect to the true legislative intendment. As per the amended definition of "employee", any person employed for wages on any work connected with the distribution or sale of the products of the factory was included. In so amending, the legislature must be imputed with the knowledge of the definition of a "factory" as it stood in the Act at the time the definition of an "employee" was enlarged. The very purpose of the enlarged definition is to give effect to the intendment of the Act viz., to provide the benefits to employees in case of sickness, maternity and employment injury. That being the purpose of introducing the enlarged definition, notwithstanding the fact that the definition of a "factory" was not enlarged to take in its fold the category of employees who are included in the amended definition, the Court is bound to give effect to the intendment and the purpose behind the amendment?Section 38 states that "subject to the provisions of this Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act." No doubt the words used "employees in factories" render some apparent sustenance to the argument of the learned Counsel for the petitioner. But it cannot be ignored that Section 38 is made subject to the provisions of the Act. Section 2 containing the definition is also a provision of the Act. The words "employees" and "factory" occurring in Section 38 of the Act must be understood in the light of their definitions in Sections 2(9) and 2(12) of the Act.... We must construe Section 38 of the Act in a manner to give effect to the legislative intendment in amending Section 2(9) of the Act. A Court must avoid any interpretation which

would defeat the purpose of the amendment. The various provisions have to be construed harmoniously with a view to give effect to the legislative intendment evidenced by the amended definition of Section 2(9) of the Act.

These observations of the Full Bench of Andhra Pradesh High Court have our respectful concurrence. The Full Bench, therefore, took the view that the employees in the sales establishment at Vijayawada were the employees of the factory within the meaning of Section 38 of the Act and, therefore, entitled to the benefits of Chapter IV of the Act.

8. The learned Counsel appearing on behalf of the appellant has, apart from the two decisions on which he wanted to rely in support of his proposition, very fairly brought to our notice another decision of the Madras High Court in *Hemalatha Textiles Limited Vs. Employees' State Insurance Corporation*, where the question which fell before the learned Judge who decided that case was whether the employees at the head office at Madras from where the affairs of the factory at Guntur in Andhra Pradesh were directly controlled were governed by the Act. The General Manager in the head office was found to be in over-all charge of the factory manufacturing goods. The learned Judge in that case held that after the amendment of the definition of "employees" in Section 2(9), the inclusive definition would take in the employees in the head office and it could no longer be contended that the employees in the head office were not the persons employed in connection with the work of the factory, to which the provisions of the Act applied.

9. This must now bring us to the decisions which are wholly in favour of the appellant-company, but having regard to the view which we have taken those decisions cannot be of any assistance to the company. The decision of the Calcutta High Court in *Andrew Yule & Co.* case cited in our view, took rather a narrow view, which is not possible for us to accept in view of the object of the amendment which was made in Section 2(9) of the Act. The company in that case had several factories and the work at the head office and the branch offices included the work connected with the sale of the products of the factories belonging to the petitioner and purchase of raw materials for the same and the question was whether the employees of the head office or the branch offices of the petitioner-company fell within the definition of "employee" u/s 2(9) of the Act. The test which the Regional Director of the Employees' State Insurance Corporation had applied in that case in order to examine the coverage of the persons was whether the persons were connected with the administration, sale and/or purchase of the raw materials and whose names appeared on the wage roll and/or whose wages are debited to the factory accounts. The learned Judge found this test to be wrong and the following test was laid by the learned Judge (p. 279):

?Unless a person who is connected with the work of the factory or with its administration or sale or purchase of raw materials is on the Wage Roll of the factory and unless his wages are debited to the factory accounts he cannot be

treated as an employee in the factory. If a person is not subject to the management and control of any of the authorities of any factory and is not even on the Wage Roll of the factory it is difficult to consider him as an employee in the factory in spite of the amendment of the definition of "employee" appearing in Section 2(9) of the Act.

The learned Judge, therefore, took the view that if it was the intention of the Corporation to extend the provisions of the Act to the head office or to the branch offices, it could only be on the footing that they were establishments other than the factory and there was no justification to call upon the company to make its contribution unless the necessary notification was issued u/s 1(5) of the Act. With respect, it is not possible for us to accept the view taken by the learned Judge of the Calcutta High Court. The decision of the Calcutta High Court is mainly based in our view on a literal construction given to the words "all employees in factories" in Section 38 of the Act, a construction which we have already rejected earlier in this judgment. In the other decision in *Mettur Beardsell Ltd.* cited the question involved was whether the employees in the administrative offices of the company situated in the city of Madras and having its factory at a different place in the same city were covered by the Act. The learned Judge took the view that the head office was an establishment in which there were personnel working administratively as its staff and that the only way by which the staff at the head office can be covered was by following the procedure prescribed in Section 1(5) of the Act. The learned Judge took the view that if Sections 1 and 2(9) had to be interpreted together and worked harmoniously, then the contention advanced on behalf of the Corporation that the head office or the branch offices or the sales office being integrally connected with the factory and its work in the offices cannot be dissociated from the other and such integration by itself is sufficient to attract the provisions of the Act, notwithstanding the absence of any notification u/s 1(5) of the Act cannot be accepted. The judgment does not disclose that the provisions of Section 38 were considered by the Court. For the reasons already given we respectfully dissent from the view taken by the learned Judge of the Madras High Court.

10. The only question, which therefore now survives, is whether the persons working in the head office were in any way engaged in the work connected with the administration of the factory or with the purchase of the raw materials or the distribution or sale of the products of the factory. On this we see no reason to differ from the view taken by the trial Court having regard to the evidence of the company's own witnesses, which by itself is quite eloquent. The special assistant to the Managing Director has stated that the office does propaganda for the goods manufactured at the factory. Such an activity which is intended to propagate the information about the products of the factory would obviously be work in connection with the sale of the products of the factory. Similar will be the case where the employee are entrusted with the work of canvassing sales of the products of the factory. There is also an export and import department in the head office and the witness has admitted that the raw materials required for the

factory are imported and the export and import department deals with the import of such raw materials and export of the finished products. One Sheshadrinathan is said to be working in the head office looking after the export and import work of the company. The purchase department also deals with the purchase of the raw materials available in India, though this department was later shifted to the factory premises in 1970. The dispatch department, deals with the sending of propaganda material and other correspondence with regard to the work of Rallies India. The witness deposed that when the orders are received from the foreign countries they are sent to Rallies India and Rallies India sends goods to foreign countries, but the head office gets commission for the goods exported either from Rallies India or from the parties concerned in the foreign countries. Now, it is difficult to see why these activities cannot squarely fall within the extended part of the definition of "employee". The import and purchase of raw materials and export of finished products; distribution of products and canvassing for boosting up the sales of the finished products will obviously be the work in connection with "the purchase of raw materials or for distribution or sale of the products of the factory". The Chief Accountant has deposed that all the expenses incurred for the factory are debited to the factory accounts and the wages of the workmen. The amounts spent for the purchase of articles required for the factory etc. are also debited to the factory account. He has deposed that the purchase department arranges for purchase of raw materials and other things required for the factory and the export and import department situated in the head office looks after the import of the raw materials required for the factory. Even the customers accounts are in the head office as also the accounts of the Suppliers and he has further deposed that the Records of the factory and the head office are compiled together in one account book maintained in the head office; These are again the activities described in the amended part of the definition in Section 2(9) of the Act. The trial Court was; therefore, right in holding that the employees at the head office of the Company were incurable employees under the Act. So far as the medical representatives are concerned, it is true that there is no positive evidence that they actually book any orders for sale of the products of the company, but the functions of the medical representatives are well-known even in the company in question. The evidence shows that they are first employed as trainees and then if they show good results, they are employed as medical representatives. The duty of a medical representative is to propagate information about the, quality and effectiveness of several product Of the company and especially so in the case of a pharmaceutical firm. The evidence shows that the propaganda material and the correspondence are dealt with by the head office. The evidence; also shows that the branch offices established, at far-off places are intended to control the medical representatives. Witness. Parulkar for the company has admitted that the persons working in Calcutta, Delhi and Madras office look after the work of the medical representatives. It is obvious that the material for propaganda must be sent first to the branch offices, so that it could be distributed to the medical representatives and if, this for kept propaganda or propagating information with

regard to the products of the pharmaceutical firm of connected with the sale of the products of the company, in our view even the staff stationed at the Calcutta, Delhi and Madras branch office of the company and the medical representatives will have to be included in the definition of "employee" subject to the qualifying condition with regard to their salary.

11. In the view which we have taken this appeal must fail and is dismissed with The costs.

12. learned Counsel asked, for leave to appeal to the Supreme Court. We are not satisfied that this case involves a substantial question of law of general importance as contemplated by Article 133(1) of the Constitution. We, therefore, reject the application for leave.