
(1994) 10 BOM CK 0044

In the Bombay High Court

Case No : F.A. No. 446 with F.A. No. 806 of 1987

Cemendia Company Ltd.

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 04-10-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 1, 2

Citation : (1995) 2 BomCR 419 : (1995) 71 FLR 160 : (1995) 2 LLJ 519

Hon'ble Judges : R.G. Vaidyanatha, J

Bench : Single Bench

Judgement

R.G. Vaidyanatha, J.—Both these appeals are directed against the order dated 17th February 1987, in application (ESI) No. 33 of 1983 on the file of ESI Court, Bombay. I have heard the learned Counsel appearing for both the parties.

2. The parties are referred to as per their title in the Court below.

M/s. Cemendia Company is a construction company. It has a head office at Bombay. It has a workshop, a Soil Testing Laboratory and a godown at Wadala. It is an engineering and construction company which takes up construction of buildings all over India. It is an admitted fact that the workshop, the laboratory and the godown are covered by the provisions of the Employees" State Insurance Act, 1948, hereinafter referred to as "the ESI Act". The ESI Corporation demanded the company to pay the contribution regarding employees employed in the head office and also at various sites where construction activity is going on. The applicant refuted this claim. Subsequently, the company filed the present application stating that the employees in the head office or the employees" within the meaning of Section 2(9) of the ESI Act and hence they are not coverable under the ESI Act and sought the relief accordingly in the Court below.

The ESI Corporation filed its written statement asserting that the employees in the head office and the employees at the sites are also to be treated as

employees of the workshop and all of them are coverable under the provision of the ESI Act, 1948.

After recording evidence, the learned ESI Court held that the employees of the head office are to be covered under the Act. It rejected the claim of the Corporation regarding the employees working at sites where construction activity is undertaken by the company. Being aggrieved by the order of the Court below regarding the employees at the head office the company has come up with Appeal No. 446 of 1987. The Corporation has come up in appeal in First Appeal No. 806 of 1987 challenging that part of the order under which the ESI Court held that the employees working at the sites are not coverable under the ESI Act.

3. The learned Counsel for the Company contended that employees of the head office are not coverable under the Act and the finding of the trial Court is erroneous. He further supported the finding of the ESI Court that the employees at the work sites are not coverable under the Act. While supporting the order of the trial Court on the question of employees of head office, the learned Counsel for the Corporation contended that even the employees at the work spots are liable to be covered under the ESI Act and the finding to the contrary recorded by the trial Court is not sustainable.

4. In the light of the arguments addressed before me, two points fall for determination viz :-

(1) Whether the employees of the head office of the Company at Bombay are liable to be covered under the ESI Act ?

(2) Whether the employees of the Company working at different work sites are liable to be covered under the ESI Act ?

5. The appeals raise a question of law about interpretation to the definition of an "employee" u/s 2(9) of the ESI Act and its application to employees who are not directly working in the factory.

Admittedly, the workshop, the laboratory and the godown are treated as one unit and they are situated at Wadala and this unit has been treated as a factory and has been registered under the ESI Act. The Court can take judicial notice that Wadala is at a distance of about 10-15 kms. from Bombay proper where the head office is situated. Then the sites where the constructions activity of the Company is going on are spread all over India. Before going to consider the application of the ESI Act to the head office and the work sites, let me consider the question of law about the extended definition of an "employee" u/s 2(9) of the ESI Act which was pressed into service by the learned Counsel appearing for the Corporation and the Company.

6. The learned counsel for the Company invited my attention to Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation, . That was a case where a cinema talkies was registered under the ESI Act. The question was whether the employees of the canteen and the cycle stand should be covered

under the Act. It was held that there is no statutory obligation to provide a canteen and cycle stand, still the canteen and the cycle stand are meant for the use of persons who visit the cinema hall for entertainment. In other words, the cycle stand and the canteen were held to be incidental to or in connection with the work of establishment. It is, therefore, observed that if the work of the employee is ancillary to or, incidental to, or lined with, or has some relevance with the object of the establishment, then he becomes an employee of the establishment for the purpose of coverage under the ESI Act. It, therefore, held that the cycle stand and the canteen were incidental to the main establishment viz., the cinema hall and hence the employees of the canteen are to be covered under the Act.

In *Cemindia Co. Ltd. Vs. Bachubhai N. Raval*, , the question was about the application of the Provident Funds Act with which we are not concerned. That was a case where the present Company. Which is the appellant before me was the appellant before the Supreme Court. In that case, the Supreme Court held that the appellant Company being an Engineering Contractor is having the workshop for its own purpose viz., repairing of its vehicles, and therefore, the workshop is not an independent or separate unit and hence the Company was not liable to be covered by the Provident Funds Act. Since it was a case under the Provident Funds Act, it has no direct bearing on the point under consideration in our case.

7. The learned counsel for the ESI Corporation has invited my attention to some decisions.

In (1979) 55 FJR 307, *Employees" State Insurance Corporation v. Associated Cement Co. Ltd.* the Full Bench of the Karnataka High Court held that the workmen of a hospital attached to and maintained by a factory are to be treated as workmen of the factory within the meaning of Section 2(9) of the ESI Act. It is held that the hospital is meant for the benefit of the employees, and therefore, the hospital is in connection with the factory and hence the employees of the hospital are liable to be covered under the ESI Act.

In 1973 LIC 706, *M/s. Hindustan Lever Ltd. v. Employees" State Insurance Corporation*, the question was whether the employees of the office at Delhi are to be covered under the ESI Act when the factory is situated at Ghaziabad. It was held that though the office and factory are situated at different places, still when the employees of the office and factory are connected with the management of the factory, they are to be covered under the ESI Act.

In 1978 LIC 307, *Hyderabad Asbesto v. Employees" Insurance court*, the question was whether the employees working in zonal and branch offices of a factory are to be covered under the ESI Act or not It was held that the employees concerned with the administrative work or the work of canvassing sale would be covered by the provisions of the Act.

The question whether the employees engaged for construction additional

buildings for the expansion of the factory should be covered by the ESI Act or not was considered by the Apex Court in *Regional Director, Employees' State Insurance Corpn., Madras Vs. South India Flour Mills (P) Ltd.*, and the question was answered in the affirmative. It was held that the expansion of the factory is something incidental to and connected with the main factory, and therefore, the employees employed in the construction activity should be covered by the ESI Act. The Supreme Court posed the question in para 12 of the reported judgment as follows :-

"Therefore, the investigation under the principal question formulated above boils down to this, namely, whether the construction of factory building for the expansion of the existing factories is incidental or preliminary to or connected with the of the factory or not".

As already stated above, the Apex Court observed that the work of additional construction was meant for the expansion of the factory and therefore, it has a direct connection with the factory. Similar view is taken in 1968 32 FJR 263, Nagpur, *Electric Light and Power Co. v. ESIC (SC)*, where it is held that all the employees, clerical or otherwise, who are employed in connection with the work of the factory, they have to be treated as employees of the factory by the extended definition and should be covered.

8. The learned counsel for the Corporation also invited my attention to three unreported judgments of our High Court viz., judgment dated 17th and 21st December, 1981 in First Appeals Nos. 531 and 532 of 1974, judgment dated 10th January, 1986 in First Appeal No. 103 of 1976 and judgment dated 12th August 1994 in First Appeal No. 690 of 1990 where the extended definition was applied to workmen who are connected with the main work of the factory either directly or incidentally and they were held to be covered by the Act.

9. In view of the legal position mentioned above the question is whether the employees of the head office have anything to do or they are connected with the work of the factory at Wadala.

As already stated, it is admitted that the workshop, the laboratory and the godown form one unit and they are covered by the ESI Act.

PW-1 Raghavan is the Manager of the Company. He has stated in evidence that the machinery used by them at the work sites are sent to the workshop for repairs. It is the head office which controls the movement of the machinery and equipment from the workshop to the work sites. Though he has stated that there is supervisory staff in the workshop, he admits that he who is working in head office visits the factory very often whenever there are labour problems or any other administrative matters. He further admits that for all monetary requirements it is the head office which attends to the requirements of the workshop. He clearly admits that the head office controls the activities of the depot in question. He admits that there is one single Union of employees for both the head office and the depot or the workshop. He further admits that the head

office controls the depot on overall policy matters. The Chief Engineer of the depot makes periodical requests to the head office for requirement of cash and the head office sends the cash. Then accounts are submitted by the depot to the head office. It is the head office which sends cash to the depot or the workshop for payment of wages. He further admits that all the accounts of the factory are maintained at the head office.

In view of the above answers we can certainly say that the head office is doing the work of factory regarding overall administration, regarding policy matters, movement of the machinery and payment of salary to labourers etc. Further, the Manager from the head office visits the workshop periodically for administration purposes and to attend to labour problems. To such a case the extended definition of Section 2(9) of the ESI Act applies. As pointed out above in some of the decisions mentioned above if the employees at the head office attend to the administrative work or any work in relation to or incidental to the work of the factory, then the employees of the head office will also be covered under the ESI Act.

10. The learned trial judge has considered the evidence from a proper perspective and has rightly held that the employees of the head office should be covered under the provisions of the ESI Act. I do not find any reason to take a different view. Hence the appeal filed by the Company being First Appeal No. 446 of 1987 has no merit and has to be dismissed.

11. Now coming to the appeal filed by the Corporation, the question is whether there is any connection between the workshop on the one hand and the workmen at the sites of the building activity. We have already seen that the Company is a construction contractor which takes up contract works at different place. The Company by itself cannot be called a "factory" within the meaning of the ESI Act. The Company does not produce or manufacture any products. It only constructs dams or buildings etc., which cannot be called as production as pointed out by the Supreme Court in 70 Taxman - Tax Reports 312.

It is admitted that the depot which contains the workshop, the laboratory and the godown is admittedly registered under the ESI Act. Therefore, the question is whether the employees at the work sites do anything in relation to or in connection with the work at depot. It is true that the depot is connected with the work sites but not vice versa. The depot is engaged in repairing the machinery which are sent back from the work sites and after repairs the machinery are sent back to the work sites. Similarly, the materials in the godown are sent to the work sites. The results from the laboratory regarding testing of soils are sent to the work sites. But we are concerned with the question as to whether the workmen at the sites do any work of the depot. The answer is certainly in the negative. The workmen at the are engaged for construction activities. They do not do anything in relation to workshop or incidental to workshop though the workshop does something for the benefit of the work at sites. In other words, workshop does some work in relation to or in connection with the construction

activity at sites but not vice versa. In some of the decisions mentioned above the law laid down is about the test as to workmen of a particular unit do anything in connection with or incidental to the other unit. Since in this case the evidence on record clearly shows that the workmen at sites do not do any work in connection with the workshop, they cannot be treated as employees of the workshop to attract the provisions of the ESI Act. The learned trial Judge has considered this point in detail and has rightly come to the conclusion that the ESI Act cannot be applied to the employee who work at different work sites. If the work site itself could be treated as a factory, then the matter would be different. But in this case admittedly the employees at the sites are not manufacturing anything and therefore, their activity cannot be called as manufacturing activity to attract the definition of a "factory". There is no notification u/s 1(5) of the Act to apply the provisions of the Act to this particular establishment at the work sites. Hence in the circumstances the finding of the trial Court is fully justified and does not call for interference by this Court. The appeal filed by the Corporation being First Appeal No. 806 of 1987 is liable to be dismissed.

12. In the result, both the appeal, being First Appeals Nos. 446 and 806 of 1987, are dismissed. In the circumstances of the case, there will be no order as to costs.

13. Appeal dismissed.