

(1999) 01 BOM CK 0022

In the Bombay High Court

Case No : Appeal Under E.S.I. Act No. 2 of 1994

Deputy Regional Director

APPELLANT

Vs

Mr. Virgilio Velho

RESPONDENT

Date of Decision : 15-01-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 103
Employees State Insurance Act, 1948 — Section 2(9), 45

Citation : (2000) 1 BomCR 471 : (2000) 2 LLJ 355

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : M.S. Sonak, for the Appellant; G.K. Sardesai, for the Respondent

Judgement

R.M.S. KHANDEPARKAR, J.—This appeal arises from judgment and order dated 27th April 1994, passed in Case No. EIC/9/87 by the Employees Insurance Court at Panaji (hereinafter called as "the Insurance Court"). By the impugned judgment, the Insurance Court has set aside the order of the Deputy Regional Director passed u/s 45-A of the Employees' State Insurance Act, 1948 (hereinafter called as "the said Act") on 17-4-1986. By the said order, the respondent was called upon to contribute an amount of Rs. 8,978.80 for a period from 1-3-1984 to 31-1-1986 plus interest amount of Rs. 1,932.50 along with further interest at the rate of 6% with effect from 1-2-1986 onwards within a period of 15 days from the date of receipt of the said order. The contention of the appellant is that since the respondent refused to comply with the provisions of the said Act and the Rules made thereunder on the purported plea that the establishment of the respondent is not covered by the provisions of the said Act, the appellant was constrained to pass the said order u/s 45-A of the said Act. The Insurance Court, however, has held that all the employees working in the premises of the establishment of the respondent are not the employees of the respondent, but they are the employees of the trading concerns in the said premises and, therefore, the respondent is not liable to make any contribution under the said Act, as demanded by the appellant by its order dated 17-4-1986.

2. The facts, in brief, relevant for the decision are that the premises of the respondent situated at Panaji were inspected on 20th October, 1984 as well as on 30th October 1984 by Shri G.S. Murthy, Inspector of E.S.I. Corporation. On inspection it was found that the establishment of the respondent was a departmental store and there were different counters therein given on contract basis to different trading concerns, under agreement with each of those trading concerns by the respondent. A copy of such contract between those trading concerns and the respondent was also made available to the Inspector. It was found to have in all 24 persons employed in the said establishment including those employed by counter-holders as well as by the respondent. It was also found that whenever customers used to purchase articles, the bills were prepared from the bill-book in the name of the respondent and the bill amount was also collected by the cashier employed by the respondent. It was further found that at the end of the day, after deducting the commission charges of the respondent, the remaining amount was paid to the respective counter-holders. On the basis of information collected, the said order dated 17-4-1986 was passed and being aggrieved, the respondent preferred appeal u/s 75 of the said Act. Before the Insurance Court, the respondent examined Mr. Virgilio Velho, Mrs. Wilma Cabral, Mr. Sitaram Yeshwant Karapurkar, Mr. Suryakant V. Kavlekar and Mr. Vasco Fernandes Pinho, whereas the appellant examined Shri G.S. Murthy, as the witnesses. The respondent produced various documents in the course of deposition including the correspondence with the Inspector of the Corporation, copy of contract with the counter-holders in the premises, the registers, etc.

3. At the outset, Shri G.K. Sardessai, learned Advocate appearing for the respondent, raised a preliminary objection regarding maintainability of the appeal on the ground that there is no substantial question of law arising for consideration in the matter and that the proposed points enumerated in the memo of appeal do not disclose substantial questions of law. Drawing my attention to various decisions including that of the Division Bench of this Court, the learned Advocate submitted that section 82 of the said Act which deals with the appeals under the said Act clearly provides that the appeal can lie only in case of involvement of substantial questions of law and not otherwise. He further submitted that the provisions of Civil Procedure Code, more particularly those which are contained in section 103 of CPC are not attracted in cases of appeals under the said Act and, therefore, the scope of enquiry u/s 82 of the said Act is very limited strictly confined to the substantial questions of law. Unless the party approaching the Court points out a substantial question of law, the appeal is not maintainable. In the instant case no substantial questions of law as such have been pointed out to be arising for consideration. According to the learned Advocate, therefore, the same is liable to be dismissed in limine. He sought to rely upon the judgment of the Division Bench of this Court in the matter of *Dainik Deshdoot and others v. The Employees' State Insurance Corporation and others*, reported in 1995(I) C.L.R. 446 and of the learned Single Judge of this Court in the matter of *Employees' State Insurance Corporation, Bombay v.*

Western India Theatres Ltd. Bombay, reported in 1995(2) C.L.R. 459. He also placed reliance on a judgment of the another learned Single Judge of this Court in the matter of M/s. Bharti Udyog v. Regional Director Employees State Insurance Corporation, reported in 1982 L.I.C. 1644 and of the Division Bench of Calcutta High Court in the matter of Shalimar Rope Works Ltd. and another v. Employees State Insurance Corporation., reported in 1971 L.I.C. 1551. As against this, it is the contention of Shri M.S. Sonak, learned Advocate for the appellant, that the points enumerated in the memo of appeal clearly disclose the substantial questions of law involved in the matter and, therefore, interference by this Court is certainly warranted. According to the learned Advocate, failure on the part of the Insurance Court to consider the provisions contained in the said Act in relation to the expression "employee", "immediate employer" and "principal employer" and incorrect approach on the part of the Insurance Court in the matter of assessment of evidence on record and material irregularities committed by the Insurance Court while arriving at the finding that the respondent is not covered by the provisions of the said Act, clearly give rise to the substantial questions of law as proposed and disclosed in the memo of appeal. Besides, the failure of proper interpretation of the said terms under the said Act and lapse on the part of Insurance Court to take note of the decisions of the Supreme Court on some of the points involved in the matter certainly justify interference of this Court in exercising its powers u/s 82 of the said Act.

4. Section 82 of the said Act provides that save as expressly provided in that section, no appeal shall lie from an order of an Insurance Court and that an appeal can lie to the High Court from an order of the Insurance Court if it involves a substantial question of law. There is no doubt that there is no provision in the said Act on par materia with section 103 of the Code of Civil Procedure. The appeal u/s 82 of the said Act, therefore, has necessarily to be confined to the substantial question of law. The Division Bench of this Court in the matter of Dainik Deshdoot and others v. The "Employees" State Insurance Corporation & others (supra) as well as the learned Single Judge of this Court in the matter of E.S.I.C. Bombay v. Western India Theatres Ltd. Bombay (supra) and in M/s. Bharat Udyog v. Regional Director, E.S.I.C. (supra) have also held that the appeal u/s 82 of the said Act has to be only on substantial questions of law involved in the matter and not otherwise. The Calcutta High Court has also held accordingly in the matter of Shalimar Rope Works Ltd. and another v. E.S.I.C. (supra). It is, therefore, clear that in exercise of powers u/s 82 of the said Act, the interference by the High Court is permissible only in a case where there arises any substantial question of law for consideration in the matter and not otherwise.

5. Undisputed facts in the matter in hand are that the respondent has, under written agreement, offered portions of the premises to various trading parties for utilisation of such portions of the premises for the purpose of business in the said premises which premises are called as "the departmental stores". The respondent, therefore, offered his services to the said trading parties by

providing infrastructure at his own cost and such infrastructure includes cash-counter, packers, sweepers as well as electricity and water facilities and, in exchange, the respondent charges commission on the sales effected by those trading parties at the respective counters in the said premises. The counter-holders employ different persons to conduct the sale at the respective counters. Besides, there are persons employed by the respondent himself, such as cashier, sweeper, packer etc. who work for all those who are having their business concerns in the said premises. In respect of the sales at different counters in the said premises, the bills are prepared at the respective counters from where the goods are purchased but the same are paid at the cash counter. At the end of the day, the counter-holders are paid with the bill amount after deducting therefrom the commission charges of the respondent.

6. The records before me disclose that though the memo of appeal enumerates various points as substantial questions of law, this Court while admitting the appeal, had neither formulated any substantial question of law in the appeal nor had clarified whether the appeal was being admitted on the points enumerated by the appellant to be the substantial questions of law. Moreover, upon perusal of the impugned judgment and on hearing the advocates for the parties, it is evident that the matter gives rise for the following substantial questions of law and, therefore, the matter was accordingly heard on the following substantial questions of law:-

(1) Whether the order of the Insurance Court is perverse inasmuch as that the Insurance Court has arbitrarily ignored the documentary evidence on record, particularly the agreement between the parties?

(2) Whether the persons employed by the counter-holders to work at the counters in the departmental store of the respondent are the employees of the respondent within the meaning of the said expression under the said Act and whether the respondent is the principal employer and the counter-holders are the immediate employers of those employees within the meaning of the said expressions under the said Act?

(3) Whether the activities of the counter-holders in the said premises are incidental or ancillary to the business of the establishment of the departmental store of the respondent?

7. The perusal of the impugned judgment discloses that the Insurance Court has arrived at the following findings:-

(1) The persons working at the different counters in the premises of the departmental store are employed by the counter-holders.

(2) The wages of such persons are paid by the counter-holders and not by the respondent.

(3) The respondent has no supervisory control over such persons.

(4) The counter-holders are neither contractors nor immediate employees of the respondent.

(5) The counters are situated in the premises of the respondent.

(6) The premises belong to the respondent.

8. Before arriving at the said findings, the Insurance Court has tried to summarise the evidence on record. In fact, the testimony of the respondent himself is sought to be summarised in para 9 of the impugned judgment, which reads thus:-

"The applicant in his chief-examination clearly stated that he never employed any contractor and that they are independent owners of different departmental stores. He stated that he offers his premises to various business trading concerns for utilisation of portion of the premises and permits them to operate trading organisation by way of departmental stores. The applicants further rendered service to such trading organisation by providing infrastructure facilities at his own cost such as cash counter with the cashier, packer, sweeper as well as electricity and water. However, such independent trading concerns are charged by way of commission."

Plain reading of the said summary of the testimony of the respondent and the findings arrived at by the Insurance Court, apparently discloses that the findings have been arrived at without proper application of mind and contrary to the materials on record. Similar is the case in respect of the evidence brought on record through other witnesses. Perusal of the materials and the evidence on record, the copies of which are made available along with the memo of appeal, it is apparent that the Insurance Court has avoided to take note of material pieces of evidence on record while arriving at the above quoted findings arrived at by the Insurance Court.

9. The materials on record disclose that apart from the business in the matter of handicraft and television sets, all other business in the said departmental store is that of different parties or concerns, and there are as many as 11 different counters catering to different types of businesses in the said departmental store of the respondent. It further discloses that those counter-holders do not pay wages of cashier, packers and sweeper as well as no charges are paid by them towards electricity consumption. They also do not contribute any amount towards the electricity consumption in the said departmental store. There is only one cash counter and one cashier and on account of sale of any article at any of the counters, the cash is collected by the said cashier alone. Most of the furniture and fixtures in the premises belong to the respondent. A fixed percentage on the sale of goods at all the counters is collected by the respondent though the percentage differs from counter to counter. There is no physical partition between the counters. There is only one sweeper for the premises and the keys of the entrance door are kept with the respondent. If any of the counter-holders desires to change the business or transfer it to any other person, he cannot do

so without the permission of the respondent. The nature of the business to be conducted by each counter-holder is also decided by the respondent. As regards the allotment of counters or establishments of new counters in the premises, the counter-holders have no say in the matter. There is a common advertising expense towards the advertisements and the same is in the name of the respondent. There are no separate Boards for individual counters. The testimonies of all the witnesses disclose that all the above facts have been fully corroborated by each of the witnesses. Moreover, the impugned judgment does not disclose reference to the above material facts on record. Besides, the appellant had produced in the course of evidence, a copy of the agreement between the respondent and the counter-holders. The same is exhibited as Exhibit R.W.1/C. The impugned judgment, however does not even make a reference to the said document. The impugned judgment also does not disclose any analysis of the evidence on record by the Insurance Court. After mere summarization, and that too, in any arbitrary manner, the Insurance Court has jumped to the conclusion that the persons employed at different counters are not the employees of the respondent. The judgment of the Insurance Court is apparently perverse and arbitrary.

10. Perusal of Exhibit R. W. 1 /C discloses the control which the respondent enjoys over the counter-holders and the business to be carried out at such counters by those trading parties. Some of the clauses of the said agreements which are very material for the decision in the matter read thus:-

"7. We will display your products/goods and sell the same in our premises according to our plans and policies and without any interference by you.

... ..

9. As and when the products/goods are sold by us, we shall pay the sale proceeds to you after deducting therefrom our commission and costs, charges and expenses payable by you under this agreement.

.....

14. We shall settle our account with you daily in respect of your products/goods sold by us.

15. In consideration of the aforesaid and services to be rendered by us to you, we will at the end of every day deduct from the sale proceeds by way of commission at the rate of 5% and 3% on sales per day or Rs. 300/- (Rupees three hundred only) per month as minimum Guarantee whichever is higher.

.....

17. The display and sale of your products/goods by us in our showroom shall be in accordance with our Rules & Regulations and subject to our control and our directions from time to time and you shall not be entitled to object to our decision in any respect whatsoever.

18. The keys of the counters or the cupboards or the racks where the products/ goods supplied by you are kept by us shall always remain with us and the legal custody and possession of the products supplied by you to us and the counters, cupboards and racks will always be with us."

The above terms of the agreement read with the evidence on record clearly disclose that the business by the counter-holders is undisputedly within the premises belonging to the respondent and which always remain under the control of the respondent. In the background of all these facts on record it is necessary to find out whether the persons stated to have been employed by the counter-holders but working in the said premises would be the employees within the meaning of section 2(9) of the said Act and whether the counter-holders and the respondent are the immediate employers and the principal employer, respectively, within the meaning of section 2(13) and 2(17) of the said Act.

11. Section 2(9) of the said Act defines the term "employee" to mean any person employed for wages in or in connection with the work of an establishment to which the said Act applies and who is employed by or through an immediate employer on the premises of the establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the establishment or which is preliminary to the work carried on in or incidental to the purpose of the establishment and includes any person employed on wages for any work connected with the work of the establishment or any part, department or branch thereof or with the distribution or sale of the products of the establishment. In other words, if a person is employed in an establishment even through the immediate employer and not directly by the principal employer and if such employee carries out the work even incidental to the purpose of the establishment, then he would fall within the category of "employee" within the meaning of the said expression u/s 2(9) of the said Act Section 2(13) of the said Act defines the term "immediate employer" to mean a person who is undertaking the execution, on the premises of the establishment to which the Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of such establishment and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor. The expression "principal employer" is defined in section 2(17) to mean any person responsible for supervision and control of the establishment. Bearing in mind the provisions of law contained in the said Act in relation to the definition of the terms "employee", "immediate employer" and "principal employer", it will be worthwhile to peruse the various decisions relied upon by the learned advocates and which are relevant for the decision.

12. In *Regional Director, Employees' State Insurance Corpn., Madras Vs. South India Flour Mills (P) Ltd.*, , the Apex Court has held that the said Act is a piece of

social security legislation enacted to provide for certain benefits to employees in cases of sickness, maternity and employment injury and in an enactment of this nature, the endeavour of the Court should be to interpret the provisions liberally in favour of the persons for whose benefit the enactment has been made. The Apex Court has further held that the work of construction of additional buildings required for expansion of a factory must be held to be ancillary, incidental or having some relevance to or link to the object of the factory and it is not correct to say that such work must always have some direct connection with the manufacturing process that is carried on in the factory and that the expression "work of the factory" should also be understood in the sense of any work necessary for expansion of the factory or establishment or for augmenting or increasing the work of the factory or establishment and such work is incidental or preliminary to or connected with the work of factory or the establishment.

13. In the matter of All India Reporter Ltd. Nagpur v. Employees' State Insurance Corporation, Nagpur and another, reported in 1985 L.I.C. 1181, where the Company carrying on the business of printing by letter press and mechanical book binding in its factory had entrusted some of the binding work to an independent contractor and the workers engaged by the contractor were found regularly and habitually working in the factory of the Company using Company's cutting and stapling machines, the learned Single Judge of this Court held that the contractor was the immediate employer in relation to his workers for doing binding work of the Company on the premises of the Company and the company in view of the fact that the binding work was a part of the work of the factory of the Company, was the principal employer and the workers employed by the contractor were the employees of the Company within the meaning of section 2(9)(ii) of the said Act. The learned Single Judge further held that it being an established fact that the employees of the contractor were working in the premises of the Company's factory or establishment, the question whether such employees were working under the supervision and control of the principal employer or agent becomes irrelevant.

14. The Apex Court in the matter of Royal Talkies, Hyderabad and others v. Employees' State Insurance Corporation through its Regional Director, Hill Fort Road, Hyderabad, reported in 1978 L.I.C. 1245, has held that although technically the said Act is a pre-Constitution one, it is a post-Independence measure and shares the passion of the Constitution for social justice. It is a law designed to confer benefits on the weaker segment in situations of distress as is apparent from the Preamble. The Apex Court further held that in view of the complexities of the modern business organization, the principal employer is made primarily liable for payment of contribution in respect of every employee whether directly employed by him or by or through an immediate employer and where the employee is not directly employed by him but through another immediate employer, the principal employer is empowered to recoup the contribution paid by him on behalf of the immediate employer. It has been further held in the said decision that the benefits belong to the employees and are intended to embrace

as extensive a circle as is feasible and in short, the social orientation, protective purpose and human coverage of the Act are important considerations in the statutory construction, more weighty than mere logomachy or grammatical nicety. The point for consideration before the Apex Court in the said case was whether a cinema theatre manager, who had no statutory obligation to run a canteen or to provide a cycle stand but, for the better amenities of his customers and improvement of his business, had entered into an arrangement with another to maintain a canteen and a cycle stand and that another had employed, on his own, workers in connection with the canteen and the cycle stand, can be held liable for contribution as the principal employer of those workmen although they are engaged independently by the owner of the canteen and the cycle stand. After taking into consideration the various provisions of the law contained in the said Act, the Apex Court held that such an employee, if he works (a) on the premises of the establishment, or (b) under the supervision of the principal employer or his agent "on work which is ordinarily part of the work of the establishment or which is preliminary to the work carried on in or incidental to the purpose of the establishment" qualifies u/s 2(9)(ii) of the said Act. The Apex Court further held that the plurality of persons engaged in various activities who are brought into the definitional net is wide and considerable; all that is necessary is that the employee be on the premises or be under the supervision of the principal employer or his agent. All that the statute requires is that the work should not be irrelevant to the purpose of the establishment. It is sufficient if it is incidental to it. A thing is incidental to another if it merely appertains to something else as primary. Surely such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either.

15. In *Regional Director of E.S.I. Corporation v. P.K. Jacob*, reported in 1981 L.I.C. 237, the Division Bench of the Kerala High Court has held that the definition of the term "employee" in section 2(9) of the said Act shows that in the cases of the employees employed through an immediate employer, the requirement of supervision by the principal employer or his agent is not necessary in every case for, it is either such supervision or working by the employee in the premises of the factory or establishment that is the test. In other words, in case of any person employed through an immediate employer, he would be an employee if he is doing 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 the establishment and further if such person is either employed in the premises of the factory or establishment or is working under the supervision of the principal employer or his agent. In the said case before the Kerala High Court, the plea was that the employees were working in the premises of the factory or establishment and in that regard the Division Bench held that if that was satisfied, no question of considering whether the employees were working under the supervision of principal employer or his agent would arise.

16. In *Employees' State Insurance Corporation, Bangalore v. M.B. Nagaraj*,

reported in 1982 L.I.C. 374, the Division Bench of the Karnataka High Court while observing that the said Act is a piece of social security legislation conceived as a means of extinction of the evils of the society named by Lord Beveridge (in his report which inspired this type of legislation in all countries) namely, want, disease, dirt, ignorance and indigence and that the Act confers benefits on the employees against sickness, maternity and other disabilities, held that although the producers manufacture their own film in studio they squarely and fairly fell in the category of "immediate employer" as defined u/s 2(13), since their work was not extraneous or contrary to the purpose of the studio but they also executed the work which was ordinarily part of the work of the studio or, at any rate, their working was not irrelevant to the purpose of the studio but, in fact, their work was the only work for which the studio was constructed. The Division Bench of the Karnataka High Court therein was dealing with a matter wherein the film studio comprised of both movable and immovable properties and fully equipped to produce films for commercial exhibition, the occupier thereof was not manufacturing films but only used to lease out the studio to other film producers on time basis who would shoot their own films and make them ready for use as per their liking.

17. Bearing in mind the provisions of law in the said Act and the decisions quoted above and considering the materials on record in the case in hand, it is evident that the persons employed by the counter-holders carry out the work of sale of goods within the premises of the respondent. The control of the premises is entirely with the respondent. The keys of the premises always remain with the respondent. The electricity supply as well as cleanliness in the premises is also under the control of the respondent. Even the nature of the business to be carried out by the counter-holders is decided exclusively by the respondent. The entire sale proceeds are collected by the respondent and only after deducting the commission, the respective counter-holders are paid with the money due to them in respect of the sales at the respective counter. Certainly it cannot be said by any stretch of imagination that the work carried out by those persons employed by the counter-holders in the said premises of the respondent is not connected with the business or the work of the establishment of the respondent in the said premises. Their work is either incidental or in some way or the other connected with the business of the respondent in the said premises. The respondent is having departmental store in the said premises and the store comprises of different counters where goods of different nature are sold and the sale proceeds thereof are collected by the respondent. Though it is ultimately distributed to the respective counter-holders, such distribution is done only after deduction of the commission charges by the respondent. All these clearly disclose that the persons working at the counters are the employees of the respondent within the meaning of section 2(9)(ii) of the said Act. Undisputedly, the number of such workers exceeds 20 at any given time. Being so, the Act is fully applicable to the establishment and the said persons cannot be denied the benefit they are entitled for in terms of the provisions of the said Act. The counter-holders are,

therefore, immediate employers within the meaning of section 2(13) of the said Act and the respondent is the principal employer within the meaning of section 2(17) of the said Act.

18. Shri G.K. Sardesai did try to submit that in order to attract the provisions of the said Act and, more particularly, section 2(9) it is necessary to have a supervisory control by the owner of the premises and merely because the persons work within the premises belonging to the owner that would not make the respondent the principal employer. In that connection, he sought to rely upon the judgment of the Apex Court in the matter of C.E.S.C. Limited & others v. Subhash Chandra Bose & others, reported in 1992 (I) C.L.R. 932. The Apex Court therein was dealing with a case relating to Calcutta Electric Supply Corporation (India) Ltd. who used to engage various contractors to carry out the work of excavation, conversion of overhead electric lines and laying of underground cables under public roads for repairs and maintenance of the said works. Subhash Chandra Bose and some others were given such contracts, terms and conditions in respect of which were reduced to writing. The sole question for consideration before the Apex Court in the said case was whether in the facts of the said case, the right of the principal employer to reject or accept work on completion, on scrutinizing compliance with job requirements, as accomplished by a contractor, the immediate employer, through his employees, is in itself an effective and meaningful "supervision" as envisaged u/s 2(9) of the said Act. There was no dispute in the said case that the employees of the electrical contractors did not carry out the work either in the premises or the factory or the establishment. It was also not disputed that the work which was carried out by the employees of all the electrical contractors can be stated to be work ordinarily part of the work of the Company or preliminary or incidental to such work and the only dispute was whether there was supervision of the employees of the electrical contractors by the Company or its agent. The records in the said case further disclosed that after the work which was entrusted to the contractors was completed, the same was checked by the Company. In the facts of that case, the Apex Court held that all that had been found was that the work done on its completion was checked by the Company and then accepted. Checking of work after the same is completed and supervision of the work while in progress is not one and the same thing. These have different perceptions. Checking of work on its completion is an activity, the purpose of which is to finally accept or reject the work, on the touchstone of job specifications. Thereafter, if accepted, it has to be paid for. Undisputedly, electrical contractors in the said case had to be paid on acceptance of the work. By the said step, by no means it can be said that supervision was exercised by the Company. Simultaneously, the Apex Court has also observed that if the work by the employee is conducted under the immediate gaze or overseeing of the principal employer, or his agent, subject to other conditions as envisaged being fulfilled, he would be an employee for the purpose of section 2(9) of the said Act. The decision of the Apex Court in no way helps the learned Advocate for the respondent in his submission that it is

necessary to have a supervisory control by the owner of the premises in order to attract the provisions of the said Act and, more particularly, section 2(9) thereof. Besides, the decisions referred to hereinabove certainly speak to the contrary of the submissions by the learned Advocate for the respondent. Considering the facts of the case in hand, it cannot be said that the departmental store of the respondent herein is not covered by the said Act. Undisputedly, there are more than 20 workers employed in the said store and the work by all those persons is being carried out within the premises of the respondent, which is under the full control of the respondent. Hence, the respondent is the "principal employer" within the meaning of section 2(17) of the said Act, whereas the counter-holders are the "immediate employers" within the meaning of section 2(13) of the said Act and those workers are the "employees" within the meaning of section 2(9)(ii) of the said Act. The substantial questions of law are, accordingly, answered in affirmative. The impugned Order, therefore, cannot be sustained and is liable to be quashed and the Order of the appellant dated 17th April 1986 to be confirmed.

19. The appeal, accordingly, succeeds. The impugned judgment and order is hereby quashed and set aside. The order dated 17th April 1986 passed by the appellant is hereby restored and confirmed. The respondent to pay costs of Rs. 2,000/- to the appellant.

20. Appeal allowed.