(1994) 10 AHC CK 0005

In the Allahabad High Court

Case No : F.A.F.O. No. 527 of 1990

Director General, E.S.I.C. and Another — APPELLANT

Vs

The Scientific Instrument Co. Ltd. — RESPONDENT

Date of Decision : 24-10-1994

Acts Referred:
Employees State Insurance Act, 1948 — Section 2(9)

Citation : (1995) 70 FLR 184 : (1995) 2 LLJ 122 : (1995) 1 UPLBEC 110

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : B.N. Asthana, for the Appellant; V.R. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

S.R. Singh, J.—This appeal u/s 82 of the Employees State Insurance Act, 1948 (in short the Act) is directed against the order dated July 4,1980 passed u/s 75 of the Act by the City Magistrate/Judge, Employees Insurance Court, Allahabad in case No. 2 of 1980, Scientific Instrument Company v. Director General, Employees State Insurance Corporation and Anr.

2. The application u/s 75 of the Act was moved by the Scientific Instrument Company Ltd. Allahabad, a public Limited Company registered under the provisions of the Companies Act, 1956, which, it is alleged, mainly carries on the business of selling and distributing Scientific instruments of Foreign and Indian Manufacturers. It is alleged that though its registered head office is situated at 6 T.B. Sapru Marg, Allahabad, the company has its branch sales office at Delhi, Bombay, Calcutta and Madras as well as in Allahabad itself and its employees in the above mentioned branch sales offices are mainly and primarily engaged in the sale and distribution of the products manufactured by Foreign Companies and other Indian Manufacturers and further that the percentage of sale of the company''s own products at branch sales offices is only marginal.

3. The learned Judge, Employees'' Insurance Court, Allahabad posed a question

as to whether the employees of the company working outside Allahabad should be covered by the Act or not? and answered the question in negative. The order reads as under :-

"This is an application u/s 75 of the E.S.I. Act on the ground that the workers working outside Allahabad should not be covered under the E.S.I. Act.

The question to decide is whether the employees working outside Allahabad should be covered under the E.S.I. Act or not.

I have heard the learned counsel for the parties and have gone through the records of the case. The Learned Counsel for the applicant argued that the employees of the company are doing the work of sales and distribution of products manufactured by other Indian and Foreign Manufacturers and therefore, they are not covered by the E.S.I. Act.

I agree with the learned counsel for the applicant that the workers dealing in sales and distribution of products of other Indian and Foreign companies'' manufactured goods are not covered by the Employees State Insurance Act. I, therefore, hold that in the present case the employees of the Scientific Instrument Company, Allahabad are not covered under the E.S.I. Act."

4. Sri B.N. Asthana, learned counsel for the appellant, urged that the order under challenge is vitiated due to the reason that the Employees Insurance Court, Allahabad has failed to properly direct itself to the relevant questions of fact and law. The argument of Sri Asthana is that the employees working in the branch sales offices of the Company even if they are found to be mainly and primarily selling and distributing the goods manufactured by the Foreign and other Indian Companies, would be covered by the definition of the word ''employee'' if it is found that they ate selling and distributing such products on behalf of the respondent Company. Sri V.R. Agrawal, learned counsel for the respondent company refuted the submission made by Sri Asthana and urged, relying upon a decision of Kerala High Court in Tata Oil Mills Co. Ltd. Vs. E.S.I.C., , that if the employees of the company are ''principally'' engaged in the sale and distribution of the products of other companies and it is only ''marginally'' that they do the work of the company, then they would not be covered by the definition of the word ''employees'' as given in Section 2(9) of the Act.

5. Section 2(9) of the Act defines the word ''employee'' to mean any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies and is a person (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 or work which is ordinarily pan 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 purchases of raw material for or the distribution or sale of the products of, the factory or establishment.

6. Having given my anxious consideration to the submissions made at the Bar, I am of the considered view that the expression "employed for wages in or in connection with the work of a factory or establishment" is of very wide amplitude and its generality is not in any way prejudiced by the expression "and includes any person employed for wages on any work connected with the administration of the factory or establishment or in connection with sale or distribution of the products of the factory or establishments" which was inserted by Act No. 44 of 1966. The word "includes" in the statutory definition of a term is "generally used to enlarge the meaning of the preceding words and this is by way of extension and not with restriction". It is used "in order to...... the meaning of words or phrases occurring in the body of the statute....." (Regional Director E.S.I.C. v. Highland Coffee Works of PFX Saldanaha and Sons) (1992 I LLJ 287)(SC) that the factory set up by the Scientific Instrument Company Ltd. Allahabad is a factory as defined in Section 2(12) of the Act was not disputed by Sri V.R.Agrawal, learned counsel appearing for the respondent nor was it disputed that various sales offices of the company are ''establishments'' within the meaning of Section 2(9) to which the provisions of the Act have since been extended by means of notification issued u/s 1(5) thereof. The object of the Act is to secure sickness, maternity, disablement and medical benefits to employees of ''factories'' and ''establishments'' and dependent''s benefits to their dependants. The provisions of the Act have, therefore, to be construed liberally and in order to determine whether the employees of the respondent company working at its branch sales offices and carrying on acts of sale and distribution of goods manufactured by the company as well as the goods produced by foreign companies are ''employees'' within the meaning of the term defined in Section 2(9) of the Act, what is pertinent is not whether they are ''principally'' and ''primarily'' engaged in sale and distribution of the products of the respondent company but whether the business of sale and distribution, either ''principally'' or ''marginally'' of the products of the foreign company is being done on behalf of the respondent company. If the main business of the company itself at the branch sales offices, is to sell and distribute products of foreign company and the employees working have been employed by the company basically in connection with this work, it would be difficult to hold that the employees at branch sales offices are not ''employees'' within the meaning of the term defined in Section 2(9) of the Act notwithstanding the fact the sale and distribution of the products of the company at such offices are only ''marginal'' as alleged by the company in its application u/s 75 of the Act. It would depend on the nature of employment

vis-a-vis business or work of the ''factory'' or ''establishment'' or the ''company''. If the employment is in connection with the work of ''factory'' or ''establishment'' of the respondent company, the employees would come within the purview of the term "employees" as defined in Section 2(9) of the Act.

7. In Tata Oil Mills Co. Ltd (supra) a Division Bench of Kerala High Court speaking through Dr. T.K. Thommen, J as his lordship then was, has held as under: (pp. 184-185):

"........ If certain persons are employed principally for the work of a particular factory although they do some other work also, they would nevertheless be attracted by the definition. If for example an employee sells the products of a factory principally, although in the course of his work he sells the products of some other factories also in addition to his principal work, he does not cease to be an employee under the Act in relation to the factory with which he is principally connected. It is, therefore, a question of a degree of his relationship with the factory with which he is sought to be connected for the purposes of the Act, If this relationship is mostly and basically with that factory and not with any other factory, he is an employee of that factory for the purposes of the Act..... If , as alleged, the appellant employs persons in its sales office on the M.G. Raod at Ernakulam, for the purposes of distributing or selling the products of the Tatapuram and other factories, it has to be ascertained whether these employees are principally engaged in the sale of the products of the factory at Tatapuram for the purposes of making them employees of that factory under the Act. If they are not so specifically connected with the Tatapuram factory, but are only employed in connection with the distribution or sale of the products of various factories with none of which they are principally connected, they cannot be treated as employees of any one factory under the Act."

8. The underlined (here italicised) portion in the aforequoated observations of the Kerala High Court were appropriately made with reference to an employee''s relationship vis-a-vis the concerned ''factory''. His relationship vis-a-vis ''establishment'' was not up for consideration there. The branch sales offices here being ''establishment'' within the meaning of the Act opened with a view to promoting company''s business cannot be excluded from the purview of the Act on grounds of sale and distribution of company''s products being only ''marginal'' there.

9. Employees Insurance Court has not recorded categorical finding on the nature of employment vis-a-vis the business of the ''factory'' and/or of the ''establishment'' of the respondent company nor is there any finding as to terms and conditions under which the products of other companies are sold and distributed from the branch sales offices. The order under challenge is liable to be quashed.

10. In the result the appeal succeeds and is allowed. The impugned order dated July 4, 1980 is set aside. The matter is remanded to the Judge, Employees''

Insurance Court, Allahabad to examine the same in accordance with law and in the light of the observations made in the body of the judgment.

