
(1991) 02 KAR CK 0039
In the Karnataka High Court
Case No : M.F.A. No. 1101 of 1983

Dynamic Electronics (Pvt.) Ltd.

APPELLANT

Vs

Employees' State Insurance Corporation and Another

RESPONDENT

Date of Decision : 07-02-1991

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (9), 75, 82

Citation : (1999) 3 LLJ 158

Hon'ble Judges : M.R. Jois, J;K. Jagannath Shetty, J

Bench : Division Bench

Advocate : K. Kasturi, for the Appellant; R. Gururajan, for the Respondent

Final Decision : Allowed

Judgement

Jagannath Shetty, J.—This appeal is presented u/s 82 of the Employees' State Insurance Act ("the Act" for short) against the order passed by the Employees' State Insurance Court, Bangalore, in Employees' State Insurance Application No. 9 of 1982 dated January 31, 1983, dismissing the application of the appellant filed u/s 75 of the Act.

2. Briefly stated, the facts are : The appellant is a small-scale industry. Prior to December 1980, it engaged less than 20 persons. It was not liable to be covered under the provisions of the Act. However, on the basis of the Inspection Report, a notice was issued to the appellant-company, demanding payment of contribution under the Act. The company resisted the same stating that it had employed only 12 employees and hence the provisions of the Act were not applicable. According to the report of Mr. Bhaskaran, the Insurance Inspector, the appellant had engaged 11 employees, seven trainees, one Director and one watchman and the total was 20, and, therefore, the appellant was covered under the Act with effect from August 1, 1978 and the decision of Employees' State Insurance authority was conveyed to the appellant by its letter dated December 6, 1980. Aggrieved by that, the appellant filed an application before the Employees' Insurance Court. The Court accepting the report of the Insurance Inspector, has held that

the appellant had engaged 20 employees, which included seven trainees and one Director, and dismissed the application. Hence this appeal.

In this appeal two questions arise for consideration, namely :

(1) Whether the Director, who was drawing a salary of more than Rs. 1,600.00 per month, was an "employee" for the purpose of the Act?

(2) Whether the trainees come within the meaning of "employee" as defined u/s 2(9) of the Act?

3. The learned counsel appearing for the appellant has taken us through the order passed by the Employees' Insurance Court. It is clear that the establishment had 11 employees, 7 trainees, 1 watchman and 1 Director. The salary of the Director was Rs. 3,810.15 per month. Since the Director's salary is more than Rs. 1,600 per month, he will not be an "employee" within the meaning of Section 2(9) of the Act. u/s 2(9) of the Act, a person drawing salary more than Rs. 1,600 is not an employee; as such the Director of the appellant company cannot be construed as an employee. As far as trainees are concerned, the matter is covered by the judgment of the Supreme Court in the case of The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another, in which the Supreme Court has held that apprentices (trainees) do not come within the meaning of "employee" u/s 2(9) of the Act. If these persons are excluded, then the total number of employees employed by the appellant was far less than 20. That being so the Act is not attracted for the relevant period that is prior to 1981. It may also be stated here that the employees are not disguised as trainees and as such they are trainees and not "employees" within the meaning of Section 2(9) of the Act.

Accordingly, we make the following order :

(i) The appeal is allowed.

(ii) The order of the Employees' Insurance Court dated January 31, 1983, made in Employees' State Insurance Application No. 9 of 1982, is set aside.