
(1997) 03 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 1198 of 1985

Employees' State Insurance Corpn.	Vs	APPELLANT
Kelvinator of India Ltd.		RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(22), 75

Citation : (1998) 2 LLJ 770 : (1997) 116 PLR 495

Hon'ble Judges : Sarojnei Saksena, J

Bench : Single Bench

Advocate : Vinod Suri, for the Appellant; Abha Rathore, for the Respondent

Final Decision : Allowed

Judgement

Sarojnei Saksena, J.—The Employees' State Insurance Corporation has filed this appeal against the judgment dated September 6, 1985, of Shri P.L. Goyal, Insurance Judge, whereby he has allowed respondent-company's petition tiled u/s 75 of the Employees' State Insurance Act, 1948 (in short the "Act").

2. Undisputedly the respondent company is covered under the Act and was paying contributions under the provisions of the Act to the Corporation. On April 30, 1976, the respondent-company floated a production incentive scheme for its employees, which became effective from May 1, 1976. This Scheme was extended till June 30, 1978. From July 1, 1978, another such production incentive scheme was floated by the respondent-company. The second scheme is different from the earlier scheme on two counts. The second scheme provided that the incentive would be calculated on quarterly basis and would be paid at the end of each quarter, It also provided different rates of payment. The respondent-company paid Rs. 10,33,232.57. paise under this incentive scheme to its employees from May 1976 to April 1977. Since the company was under no obligation to pay any contributions to the appellant- corporation in respect of these payments" no deposit was made. An. Inspector of the Corporation visited the office of the respondent-company in June 1977. Books of accounts were

shown to the Inspector. The appellant-Corporation gave notice dated July 11, 1977, informing the respondent-company that it has not made payment of contribution on certain amounts paid to its employees. This amount also included the payment of incentive bonus of Rs. 10,33,232.57 paise on which amount of Rs. 72,336.25 paise was claimed as contribution. The respondent-company resisted the demand and filed a petition u/s 75 of the Act. Its petition was allowed. The Corporation has preferred an appeal against that order, which is pending in the High Court.

3. In the meanwhile, the respondent-company introduced a new scheme which came into effect from April 1, 1979, in supersession of its earlier incentive schemes. The appellant-Corporation gave a notice on January 17, 1983, to the respondent-Company u/s 45-A of the Act requiring it to pay a sum of Rs. 7,73,167.70 paise by way of contributions and a sum of Rs. 46,642/- by way of interest thereon accrued till December 31, 1983. This amount was claimed on the amount of incentive bonus paid by the respondent-company to its employees during the period March 1981 to March 1982. The company alleged that even if this incentive amount is treated as wages, the proper method to compute the amount of contribution thereon was to add the amount of incentive to the wages of each insured employee and then assess amount of contribution if any payable in respect of the individual employee and claim the aggregate of the difference between the contributions actually paid and found payable in respect of each such employee. Thus, according to the respondent-company in this process it was liable to pay only Rs. 2,46,610/- with appropriate deduction in the amount of interest.

4. The appellant-Corporation denied the allegations and averred that the amount paid to its insured employees under the production incentive scheme was nothing but wages; therefore, the company was liable to deduct and deposit contributions thereon. Before the Insurance Judge the company's learned Counsel submitted that even if the amount paid under production incentive scheme is to be treated as wages, the company is liable to pay only Rs. 2,40,764.50 paise. The appellant Corporation's learned counsel conceded to that legal position.

5. The company's learned counsel contended that the aforementioned amount cannot be claimed by the Corporation as the amount paid to its insured workers under the production incentive scheme cannot be termed as wages as defined in Section 2(22) of the Act. He made a distinction that this incentive payment was to be made on quarterly basis. Thus, according to him, the third clause of the term "wages" u/s 2(22) clearly distinguishes the payments made under this scheme from falling within the ambit of * wages".

6. The Insurance Judge held that so far as payments made under incentive scheme is concerned, they fall within the definition of "wages" u/s 2(22) of the Act, as is held by the Supreme Court in Harihar Polyfibres Vs. Regional Director, ESI Corporation, but the Insurance Judge agreed with the second submission of

the company's learned counsel that since under the last scheme payment was to be made on quarterly basis, this distinguishes this payment and precisely because of this clause these payments cannot be said to be wages under third clause of Section 2(22) of the Act and thus the company's petition was allowed.

7. The main question for decision in this appeal is whether payments made by the respondent-company to its insured employees under the relevant production incentive scheme fall within the ambit of "wages" as defined in Section 2(22) of the Act, and, if so, whether this clause in the said scheme would make any difference if these payments were to be made quarterly.

8. Some authorities are required to be discussed in detail before deciding this complicated question of law.

9. A Full Bench of Andhra Pradesh High Court in Employees' State Insurance Corporation, Hyderabad Vs. Andhra Pradesh Paper Mills Ltd., Rajahmundry, has held that incentive bonus can be termed wages. But in that case also it was held that if this additional remuneration is paid at intervals not exceeding two months, it becomes wages by virtue of the third part of the definition of "wages". The same question of payments made at periodical intervals not exceeding two months was considered in N.G.E.F. Ltd. v. Deputy Regional Director, E.S.I. Ct Bangalore 1980 LAB I.C.431.

10. In Wellman (India) Pvt. Ltd. Vs. Employees' State Insurance Corporation, the scope of Section 2(22) of the Act is considered by the Apex Court. It is held at P 550:

"The expression "other additional remuneration if any, paid...." in the second part of definition of wages given in Section 2(22) implies that the said remuneration is not payable under any contract of employment express or implied. This is so because while the first part of the definition refers to remuneration under the contract of employments, the second part does not refer to remuneration under any such contract. Secondly, the definition is inclusive and includes only such payments outside the contract as are mentioned in its second part and none other. Thirdly, the expression "if any, paid" after the words "other additional remuneration will be inconsistent if the remuneration is payable under the contract of employment since such payment is not dependent on the will of the employer but on the fulfilment of the terms of the contract. Lastly, the second part of the definition includes only such contractual payments as are specifically mentioned therein. Hence the expression "other additional remuneration, if any, paid" not only does not refer to remuneration payable under any contract but refers to such remuneration which is payable at the will of the employer. Every remuneration that is payable under the contract would, therefore, fall under the first part of the definition."

11. So far as this condition of payment within two months is concerned, this point was considered by the Apex Court in Modella Woollens Limited v. Employees' State Insurance Corporation and another 1995 (3) SCC 580. In that

case such amount was payable at the end of each quarter. The Apex Court held:

"It cannot be disputed that the production bonus is nothing, but remuneration for the additional production which the employees have contributed. Under the agreement the bonus in question is to be paid at the end of each quarter. There is also a provision in the agreement that the employees can claim advance against such bouns and the finding recorded by the Insurance Court shows that every employee has received such advance. The mere term in the agreement that the payment of bonus would be made at the end of the quarter, therefore, does not make the bonus, a payment other than remuneration for the labour put in during the said quarter. Hence the stipulation in the agreement that the payment of the bonus would be made at the end of the quarter is not material for deciding the question whether the payments would be covered by the first part of the definition or not. What the Court has to look into is the nature of the payment. The term production bonus itself shows that it is a payment connected with or relatable to the production over a period. Hence it cannot be a payment other than wages within the meaning of the said definition."

12. Thus, it is obvious that this addition of new clause in the last scheme that payment under the production incentive scheme will be made after each quarter is deliberately added by the respondent-company to avoid deduction deposit under the Act. Thus in my considered view, the Insurance Judge fell into an error in allowing the respondent-company's petition filed u/s 75 of the Act.

13. Before the Insurance Judge both the sides conceded that if the amount to be paid under the production incentive scheme is termed as "wages" then as per correct calculations the company would be liable to pay Rs. 2,41,610/-

14. In this case the contribution was demanded on the amount of production incentive paid to the employees of the company till December 1,1983. This was the period when the third scheme of the company floated from April 1, 1979, was in force. But, in my considered view, even this will not make any difference. This Act is a piece of social legislation enacted for the welfare of the employees. After the first scheme the mode of payment of production incentive was postponed by the company deliberately with a view so that neither the company nor the employees would be liable to pay deposit insurance contribution on such payments. Thus, it is obvious that taking advantage of the words used in the last clause of the definition of "wages" in para in the second scheme, the company deliberately postponed the payment of production incentive to its employees and made it payable quarterly ,but, in fact, it was calculated on monthly basis and was paid also on the basis of that calculation. During arguments, the company's learned counsel has placed on record company's circular dated November 6, 1979, where in it is specifically mentioned that its employees have gained additional earnings to the extent of Rs. 527- to Rs. 70/- per month, which went on increasing with the increase in production and in course of time every worker got the minimum incentive of Rs. 200/- to a maximum of Rs. 305/-per month.

15. This clearly shows that production incentive was calculated on the basis of extra work done by the workers in each month but to avoid contribution under the Act, this payment was postponed and was made payable quarterly.

16. Further, in the second scheme, which was made applicable from July 1, 1978, its Clause (14) provides that if any worker has taken any advance which is outstanding, the company may adjust the same against the incentive payment to be made under the scheme. This clause also reveals that the payment of production incentive was nothing but a part of wages.

17. The appeal is hereby allowed with costs, which are quantified at Rs. 2000/-. The respondent company is hereby given one month's time to deposit the aforesaid amount in the requisite account.