

(1989) 06 GAU CK 0023
In the Gauhati High Court
Case No : M. A. (F) No. 11 of 1983

Employees State Insurance Corpn., Guwahati and Another APPELLANT
Vs
Krishna Press, Lakhtokia, Guwahati RESPONDENT

Date of Decision : 09-06-1989

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(5), 1(5), 2(12), 2(12)

Citation : (1990) 1 GLR 87

Hon'ble Judges : B.P.Saraf, J

Bench : Single Bench

Advocate : A.B.Choudhury, D.C.Chakraborty, Md.Sulaiman, P.N.Goswami,
Advocates appearing for Parties

Judgement

1. This appeal filed by the Employees" State Insurance Corporation, Gauhati under Section 82 (2) of the Employees" State Insurance Act, 1948 is directed against the judgment and order dated 17.2.82 passed by the Employees" State Insurance Court, Gaubati.

2. The facts of the case are very brief. The Employees" State Insurance Corporation at Gauhati (hereinafter "the Corporation) demanded contribution from the respondent Shri Krishna Press of Gauhati on the ground that it was covered by the provisions of the Employees" State Insurance Act, 1948 (hereinafter "the Act"). The demand was made for contributions amounting to Rs. 4,730/ and Rs. 1.521/ with interest. The respondent Shri Krishna Press (hereinafter "the Employer") objected to the demand on the ground that its printing press was not covered by the provisions of the Act. The case of the employer was that the provisions of the Act are applicable to a factory only which has been defined in clause (12) of Section 2 of the Act. In order to be a "factory" within the meaning of the said clause, "twenty or more persons" should be employed whereas it employed not more than 10 persons. As such, it was not a "factory" and the provisions of the Act did not apply.

3. The case of the Corporation was that though the Act had been applied at the

first instance to a factory, power has been given to the appropriate government under subsection (5) of Section 1 to apply the provisions of the Act to any other establishment or class of establishments, industrial, commercial agricultural or otherwise, and the Government of Assam by notification made under the said subsection extended the Act. later alia, to establishments engaging ten or more persons. According to the E.S.I. Corporation, the establishment in question was covered by item 1 of the Notification. To properly appreciate the submissions, let us consider subsection (5) of Section, 1 which reads:

"(5). The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government, with the approval of the Central Government, after giving six months" notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them,, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise".

4. In exercise of the powers conferred by the aforesaid subsection, the Government of Assam by Notification No. GLR. 385/74/18 dated 24th December, 1974 (published in the Assam Gazette, January 22, 1975) in consultation with the Employees" State Insurance Corporation and with the approval of the Central Government, gave notice to extend the provisions of the Act to certain classes of establishments specified in the Schedule annexed thereto with effect from 1st August, 1975. The final Notification was thereafter published vide Notification No., GLR. 385/74/55 dated 22.7.1975. By the said Notification dated 22.7.1975 the provisions of the Act were made applicable, inter alia, to the following categories of establishments:

"1. Any premises including the precincts thereof whereon ten or more persons but in any case less then twenty persons are employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of powers but excluding mine subject to the operation of Mines Act, 1952 (35 of 1952) of a Railway running shed or an establishment which is exclusively engaged in one or more of the manufacturing processes specified in clause (12) of Section 2 of the Employee's State Insurance Act, 1948 (34 of 1948)".

5. The case of the Corporation is that the printing press of the employers falls within the description of the establishments given in the aforesaid item 1 of the said notification. The Employees" State Insurance Court at Gauhati held that the Act does not apply to a factory which employs lass than 29 persons and quashed the demand made by the Corporation an that ground. The E. S. I. Corporation has challenged the aforesaid order by filing the present appeal.

6. Heard Mr, P. N. Goswami, learned counsel for the Corporation. Heard also Mr. A.B. Choudhury, learned counsel for the respondent. The submission of Mr. Goswami is that though the Act at the first instance has been made applicable to "factory" defined in subsection (12) of Section 2 of the Act, by Section 1 (5) of

the Act power has been vested in the appropriate Government to extend the Act to any other establishment or class of establishment or classes of establishment. According to Mr. Goswami, the printing press of the employer falls within the definition of the "establishment" given in Item 1 of the notification reproduced above, and, as such, the provisions of the Act are applicable to it.

7. I have carefully considered the submission of Mr. Goswami. It is correct that power has been vested in the appropriate Government to apply the provisions of the Act to any other class or classes of establishment by making a notification in the manner laid down therein. There is also no dispute in the instant case that a notification was made under subsection (5) of Section 1 after complying with all the requirements laid down therein. The only point that falls for determination is whether the printing press of the employer falls within the description of "establishment" given in Item No. 1 of the said notification as contended.

8. Item No. 1 has made the provisions of the Act applicable to any premises including the precincts thereof whereon ten or more persons but in any case less than twenty persons are employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power. From the aforesaid, three categories of establishments have been excluded. These are (1) mine subject to the operation of Mines Act, (2) a railway running shed, and (3) an establishment which is exclusively engaged in one or more of the manufacturing process specified in clause (12) of Section 2 of the Act. For the purpose of determination of the dispute in the present decision, we are to properly appreciate the third exclusion. By this exclusion any establishment engaged in manufacturing process specified in clause (12) of Section 2 has been excluded from the operation of the notification. Relevant portion of clause (12) of Section 2 of the Act is reproduced below:

"(12) "factory" means any premises including the precincts thereof whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed;

The expressions "manufacturing process" and "power" shall have the meaning respectively assigned to them in the Factories Act, 1948 (63 of 1948)".

"Manufacturing process" for the purpose of the aforesaid clause has thus the meaning as given in the Factories Act, 1948. Clause (k) of Section 2 of the Factories Act defines "manufacturing process". The relevant portion of it reads:

"(k) "manufacturing process" means any process for

(iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding : or

9. There is no dispute that the activities carried on by the employer in this case,

i.e., running a printing press, is one of the activities falling within subclause (iv) of clause (k) of section 2 of the Factories Act. In that view of the matter, it is clear that the employer in the instant case is an establishment which is exclusively engaged in one of the manufacturing processes specified in clause (12) of Section 2 of the Act read with clause (k) of Section 2 of the Factories Act. That being the position, the establishment of the petitioner does not fall in the class or classes of establishments to which the provisions of the Act have been extended by the aforesaid Notification. It is specifically and explicitly excluded from the categories of establishments falling under item 1 of the notification.

10. In view of the above legal position, I hold that the Employees' Insurance Court was justified in holding that the provisions of the Act were not applicable to the respondent printing press. For the aforesaid reasons, I do not find any merit in the instant appeal and the same is dismissed.

11. Before parting with the case, it may be observed that the authorities entrusted with the enforcements of laws should make themselves well versed with the relevant provisions of the law and initiate actions only after being satisfied that it is lawful to do so. Arbitrary exercise of power causes uncalled for hardship and inconvenience to the citizens. The officers should not be hasty in initiating actions but should be careful and circumspect. Moreover, once their actions are set aside or held to be not sustainable under the law, they should go through such orders very carefully and only if after such careful reading, they feel aggrieved that they should file appeals. Appeals should not be filed mechanically. In the instant case, it is clear that if the concerned authorities of the E.S.I. Corporation would have cared to read item 1 of the Notification under Section 1 (5) of the Act in full along with the relevant provisions referred therein, they themselves could have found that the provisions of the Act did not apply to the establishment in question. But, none cared to do so despite protest from the employer. On the other hand, when the E.S.I Court quashed the action, appeal was filed before this court in the routine manner. For long 14 years, they have left the damocle's sword hanging over the head of the employer who might have suffered not only inconvenience but financial loss too. All that could have been avoided if the authorities had been serious and if they had slightest concern for the difficulties of the citizens. I hope the authorities will be careful in their future actions.