

(1993) 09 GUJ CK 0048
In the Gujarat High Court
Case No : First Appeal No. 547 of 1977

Employees State Insurance Corporation, Ahmedabad and
Another

APPELLANT

Vs

Krishiseva

RESPONDENT

Date of Decision : 10-09-1993

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 75(1), 82

Citation : (1994) 1 GLR 881 : (1995) 1 LLJ 692

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Judgement

1. By this, appeal u/s 82 of the Employees' State Insurance Act, 1948 (E. S. I. Act), the appellants, the Employees State Insurance Corporation and its Regional Director have questioned the legality and validity of a judgment passed in E. S. I. Application No. 53 of 1971, on 31st May, 1976, by the Employees Insurance court, Ahmedabad.

2. In order to appreciate the merits of the appeal and the challenge against it, a few material facts may be narrated at the outset. Respondent herein the original applicant, who preferred an application u/s 75(1)(a) of E. S. I. Act, before the E. S. I. Court, at Ahmedabad requesting the Court to decide as to whether the present appellants (original opponents) are entitled to recover contribution and employer's special contribution from the application like that on 5-11-1971, or any lesser period. The respondent, original applicant, is a registered partnership firm and owns a factory for making agricultural machinery in the industrial estate, at Naroda, which commenced in April, 1966. The respondent-partnership firm, inter alia, contended that, it had never employed 20 or more persons and, therefore, it was never covered under the E. S. I Act and, therefore, it was not liable to pay any contribution. It, however, submitted that, in spite of such a position, the appellants herein, on 22-2-1971, by stating that the respondents factory seems to be covered under the E. S. I. Act, with effect from 5-10-1967,

directed the respondent-firm to comply with the provisions of the Act. This is how the matter went E. S. I. Court.

3. The appellants who are original opponents in the original application, filed a composite written statement contesting the claim of the original applicants. They inter alia contended that the original applicant-firm is definitely covered under the E. S. I. Act, at least from 5-6-1967, as on that day, 20 persons were found working in the firm and, accordingly, the original applicant-firm is bound to pay employees contribution and employers special contribution under the provisions of the E. S. I. Act.

4. The appellants relied on survey report of an Inspector and the monthwise list of maximum persons employed in the respondent, original applicant-firm since January, 1966.

5. The E. S. I. Court, on appreciation of the facts and circumstances and the evidence was pleased to allow the application of the original applicant-partners" firm, directing the appellant-original opponent Corporation to restrain from asking any contribution under the E. S. I. Act, As per the notice. This order was passed on 31st May, 1976. In this appeal, the appellants seek to challenge that order of the E. S. I. Court.

6. On behalf of the appellants, learned advocate, Mr. S. D. Patel, contended that the impugned judgment is erroneous and requires to be quashed. According to his contention, the provisions of Section 2(12) of the E. S. I. Act are attracted, as on that day, 20 persons were found working in the respondent, original applicant-firm. The E. S. I. Court, according to him has committed serious illegality in rejecting this contention, which was raised before it.

7. Firstly, it may be noted that the learned E. S. I. Court Judge has specifically observed in paragraph 4 of his impugned judgment that the record of Muster shows that the applicant firm employed 20 persons on one day like that on 5th October 1967. This positive and unambiguous finding of the learned trial Court Judge ipso facto is sufficient to attract the provisions of Section 2(12) of the E. S. I. Act. Therefore, it would be proper at this juncture, to refer to the provisions of Section 2(12) of the E. S. I. Act, which read as follows :

2(12) factory means any premises including the precincts thereof whereon twenty or more 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 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.

8. It is crystal clear from a plain perusal of the aforesaid provisions of sub-section (12) of Section 2 that, on any day of the preceding twelve months, 20 or more persons are employed or were employed for wages, then in that case, it would mean that the said enterprise or company or firm is governed by the

expression factory mentioned in sub-section (12) of Section 2. Thus, the finding of the learned E. S. I. Court Judge coupled with the plain perusal of the provisions of Section 2, sub-section (12) of the E. S. I. Act makes it very clear that the original applicant-partnership firm was a factory, as on 5-10-1967, 20 persons were employed. This Court is at great loss as to why despite such a specific finding by the E. S. I. Court and clear provision enshrined in Section 2 sub-section (12) of the E. S. I. Act. the applicant-partnership firm was not held to be a factory.

9. Be as it may, one thing is certain and unquestionable that, on 5-10-1967, the applicant-partnership firm was a factory in view of the fact that the E. S. I. Court also recorded a finding that there were 20 persons employed on that day.

10. Obviously, it would lead to the second point, as to what is the nature of liability, the period and the extent of the liability of the original applicant-partnership firm. Both the sides have agreed that this matter requires through investigations into the available record, so as to ascertain the number of persons employed in the subsequent periods like that to consider as to whether the original applicant-partnership firm was continued to be governed or not beyond the period of one year. This joint submission is just and reasonable and it is required to be subscribed to.

11. In the result, the appeal is partly allowed. The respondent herein, original applicant-partnership firm was covered by the expression factory as mentioned in Section 2, Sub-section (12) of the E. S. I. Act, on 5-10-1967 and, therefore, its liability for payment of contribution for one year will obviously arise, like that upto 5th October, 1968. The matter is remanded to the trial Court to ascertain the coverage for subsequent period like that from 4th October, 1968 onwards, i.e. beyond the period from 4th October, 1968, after giving sufficient opportunities to the parties to lead evidence and to decide it in accordance with law.

12. In view of the aforesaid facts and circumstances, this appeal is partly allowed. Having regard to the peculiar circumstances of the case, there shall be no order as to costs.