
(2004) 11 AP CK 0073
In the Andhra Pradesh High Court
Case No : CMA No. 2905 of 2001

Employees" State Insurance Corporation and Others	APPELLANT
Vs	
Chirala Co-operative Spinning Mills Ltd.	RESPONDENT

Date of Decision : 09-11-2004

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(19A)

Citation : (2005) 1 ALD 235 : (2005) 3 ALT 36 : (2005) 105 FLR 430 : (2005) 1 LLJ 1016

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Pushpinder Kaur, for the Appellant; S.A.V. Ratnam, for the Respondent

Judgement

L. Narasimha Reddy, J.—This appeal, u/s 82 of the Employees" State Insurance Act (for short "the Act"), is filed by the Employees State Insurance Corporation, against the order dated 1-6-2001 in E.I.C. No. 76 of 1998 on the file of the E.S.I. Court-cum-Industrial Tribunal-I, Hyderabad (for short the "Trial Court").

2. The respondent is an industry, wherein several categories of workmen are employed. It is covered by the provisions of the Act, and has been making the required contributions. On 21-1-1998, an Inspector of the appellant Corporation visited the premises of the respondent and noticed that, contribution to the tune of Rs. 4,36,600/- was not made, in respect of four categories of workers, viz.,

- (a) Ginning workers - 66
- (b) Mutha Coolies -14
- (c) Canteen Workers - 4, and
- (d) Trainees in various departments -163

3. A demand notice dated 11-2-1998 was issued. This was followed by an order dated 20-4-1998, passed u/s 45 of the Act. The respondent challenged the same

before the Trial Court. Through the order under appeal, the Trial Court found that the demand made by the appellants is not valid.

4. Smt. Pushpinder Kaur, learned Counsel for the appellants submits that the four categories of employees referred to above are covered by the definition of "employee" under Sub-section (9) of Section 2 of the Act, and that the Trial Court erred in treating the respondent as a "seasonal factory" under Sub-section (19A) of Section 2. She submits that the canteen workers are to be treated as part of establishment, in view of the judgment of the Supreme Court in *Royal Talkies v. ESI Corporation* 1978 (37) FLR 128 (SC). She submits that the trainees that were working in the respondent are apprentices, not engaged under the Apprentices Act, and that they too are covered by the provisions of the Act. Similar contention is made as regards Mutha Coolies.

5. Smt. S.A.V. Ratnam, learned Counsel for the respondent submits that the respondent is a seasonal factory, at least from the point of view of the Ginning workers, and as such, no contribution is payable for them. She contends that Mutha Coolies were not at all employed by the respondent, and the appellant demanded contribution only on the ground that they were having shelter in the premises of the respondent.

6. As regards the canteen workers, learned Counsel submits that the respondent did not establish any canteen, and that a person, with his family members, was providing eatables to the factory workers in a make shift eating place nearby the premises, and that the judgment of the Supreme Court in *Royal Talkies* (supra) does not apply to the facts of the case. She submits that the trainees were sponsored by a local I.T.I. under a centrally sponsored scheme, and for that she submits that they cannot be treated either as employees or apprentices of the respondent.

7. The appellant insisted that in addition to the contributions that were made in respect of the various categories of its employees, the respondent shall also make the contribution for the four categories of persons, referred to above. All of them were treated as employees of the respondent, within the meaning of Sub-section (9) of Section 2 of the Act. The Act is applicable to all industrial establishments wherever more than 10 persons are employed. Sub-section (4) of Section 1, exempts the "seasonal factories" from the purview of the Act. The definition of "seasonal factory" was initially contained in Sub-section (12) of Section 2, which defined the term "factory". Through Act No. 29 of 1989, the definition of seasonal factory was dealt with under Sub-section (19A) of Section 2. Except the numbering of the provision, there is no change as to the content. The definition reads as under:

"(19A) Seasonal factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is

incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year-

(a) in any process of blending, packing or repacking of tea or coffee; or

(b) in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify;"

8. A reading of the same discloses that to be a "seasonal factory", a factory must exclusively be engaged in the manufacturing process named therein. The list of activities contained in the definition is exhaustive. There is no scope for treating them as, illustrative. The subsequent portion of the definition, which includes, factories engaged in blending, packing etc., in no way expands the scope, except adding one more item, which is precise and distinct. If any activity referred to above in the definition is not undertaken "exclusively", but is carried on as a subsidiary or ancillary activity, it is not possible to treat the entire factory or that part of it, which is engaged in such an ancillary activity, as seasonal.

9. Learned Counsel for the respondent relied upon a judgment of this Court in *ESI Corporation v. Jayalakshmi Cotton and Oil Products (P) Ltd.* 1980 (41) FLR 358. In that case, it was found that the factory was exclusively established for ginning and pressing and thereby falling within the definition of seasonal factory. It was held that the mere fact that the activity of such a factory was expanded marginally, at a later point of time, does not change its character. In the instant case, the respondent was established as a spinning mill. This activity is not mentioned in the definition of seasonal factory. It may be true that in the process of undertaking spinning, ginning may also become necessary. However, it cannot be treated as seasonal, unless ginning of the cotton was its exclusive and principal activity. Therefore, the respondent is under obligation to make contribution for the 66 ginning workers that were engaged at the relevant point of time.

10. The record discloses that out of the several registered and recognized coolies in the local market committee, some of them were allotted to the respondent, from time to time, depending on the need. There is nothing to indicate that the respondent employed the mutha coolies. The mere fact that it provided a shelter for the mutha coolies, does not by itself, bring about the relationship of employer and employee between the coolies and the respondent. Hence, the respondent cannot be held liable to make any contribution for the mutha coolies. The evidence of PW2 in this regard is relevant and to the point.

11. The appellant contends that four canteen workers were found, operating a canteen, in the process, and that contributions are to be made for them also. In *Royal Talkies v. ESI Corporation* (supra), the Supreme Court held that a canteen is always a part of establishment and the management is under obligation to make contribution for them also. The respondent factory clearly stated that it did not establish any canteen at all. This assertion was not adequately met by the appellants. It is true that the Factories Act requires Manager of a Factory to

establish a canteen for the benefit of its employees. If the respondent failed to comply with that condition, it may have exposed itself for action under the necessary provision. However, such provisions do not empower the appellants herein to demand contribution for canteen workers even where the canteen did not exist. PW-3 who was treated as a canteen employee categorically stated that except providing some vacant space in the mills, the respondent did not extend any facility for the establishment of canteens. He stated that himself and his family members ran it, as a source of livelihood, and not as employees of the respondent.

12. The last category of persons is the trainees. The appellant found that 163 persons were working as trainees in the respondent. The respondent pleaded that the Ministry of Human Resources, launched a scheme of self-employment for I.T.I. students and as a part of it, the local industries were required to impart training for a limited time. PW4 is a Lecturer in Government Polytechnic College, Guntur. He narrated the details of the scheme and stated that except giving training for a limited period, the respondent did not extract any work from the trainees. In one of the cases arising under the similar circumstances, this Court has already taken a view that such trainees cannot be treated as employees of the establishment where they are undergoing training. Therefore, no interference is called for, with the view taken by the Trial Court in this regard.

13. Smt. S.A.V. Ratnam, learned Counsel submits that the respondent has been declared as a sick industry and it would be difficult for it to pay the contribution for ginning workers, that too with interest and fine etc. The liability arising under the Act cannot be defeated simply on account of the financial incapacity of the industry. If the respondent is already declared as sick, the appellants can certainly make claim before the appropriate authority.

14. For the foregoing reasons, the C.M.A. is partly allowed, directing that the respondent shall be under obligation to pay contribution for the ginning workers. In all other respects, the order under appeal shall stand confirmed.

15. Having regard to the fact that the respondent is said to be closed, the amount of contribution for ginning workers shall not carry any interest or fine, and it shall be open to the appellants to make its claim before the competent authority with whom any proceedings are pending, in relation to the respondent. There shall be no order as to costs.