

(1993) 04 RAJ CK 0017
In the Rajasthan High Court
Case No : C. M.A. No. 189 of 1980

Employees' State Insurance Corporation	APPELLANT
Vs	
Jaipur Enterprises	RESPONDENT

Date of Decision : 06-04-1993

Acts Referred:

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

Citation : (1999) 3 LLJ 208

Hon'ble Judges : Mohini Kapur, J

Bench : Single Bench

Advocate : J.B. Gupta, for the Appellant;

Final Decision : Allowed

Judgement

Mohini Kapur, J.—The dispute in this appeal relates to the payment of contribution under the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act"), in respect of casual employees engaged for purposes of loading and unloading. The respondent-Company is engaged in the work of export of garments, which is a partnership-firm. The appellant-Corporation demanded contribution in respect of three items and the same was challenged before the Employees' Insurance Court, Jaipur in respect of two items and now it is confined to contribution payable on Rs. 62,929 on account of loading and unloading charges. The learned Judge of the Employees' State Insurance Court has arrived at the conclusion that this sum of Rs. 62,929 was paid for purposes of loading and unloading but it was not paid to persons employed by the firm and on account of payment made to casual or stray workers contribution under the Act is not payable.

2. Against this decision dated February 19, 1980 the Corporation has preferred this appeal Mr. J. K. Daswani, who was the manager of the respondent at Jaipur gave his affidavit and was cross examined on the same and according to him the loading and unloading charges were paid to various truck owners or contractors or their nominees and for this purpose they had not employed any staff.

According to him, the payment varied according to load and it could not be said that there were persons on the roll for purposes of this job. However, in cross-examination he has admitted that mostly loading and unloading was done at the factory itself and it was only on rare occasions that goods were collected from the office of the textile company.

3. The Corporation determined the contribution u/s 45A of the Act on April 23, 1986, along with interest and this relates to the period of April, 1976 to August, 1977. The appeal before this Court is preferred u/s 82 of the Act and Sub-clause (2) of this says that appeal shall lie to the High Court from an order of the Employees' Insurance Court if it involves a substantial question of law. Learned counsel for the appellant has placed reliance on *Andhra Pradesh State Electricity Board Vs. Employees' State Insurance Corporation*, , and *Regional Director, E.S.I.C., Bangalore Vs. Davangere Cotton Mills*,

4. Section 2(9) of the Act defines "employee" and according to this definition "employee" has been defined as any person employed for wages on any work connected with the administration of the factory or establishment to which this Act applies. The person directly employed by the principal employer and persons employed through immediate employer have been included in the term "employee". This definition came up for interpretation in several cases and some of them may be looked into. In *Andhra Pradesh State Electricity Board v. Employees' State Insurance Corporation*, (supra) it was held that Section 2(9) includes casual labourers also. In *Shakti Enterprises v. Employees' State Insurance Corporation* 1985 RLR 577, it was held that casual labourers employed for construction work of part of building or for remodelling or additions and alterations of building fall within the definition of "employee" u/s 2(9) of the Act and such workers are entitled for benefit of the Act. To the same effect is Full Bench decision of *ESI Corporation, Chandigarh v. Oswal Woollen Mills*, 1980 (41) FLR 232 (FB) . The most important case in this respect is *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, wherein the employees of cycle stand and canteen in a cinema run by the contractors were included in the definition of "employee" and the cinema owner was liable as principal owner for their contribution. The canteen and the cycle stand were leased out to contractors under the instruments of lease and the contractors employed their own servants to run the canteen and the cycle stand, it was observed that keeping a cycle stand and running a canteen are necessary for the purpose of theatre and the persons employed in the canteen and cycle stand were held to be in connection with the work of the establishment, which had nexus and connection with the establishment.

In *Regional Director, ESIC v. Davangere Cotton Mills*, (supra) the question was whether the contribution was payable in respect of wages paid to the apprentices and casual employees, it was held that such employees were covered by the Act and contribution in respect of them was payable.

In *Regional Director, ESI Corporation v. S. I. Flour Mills (P.) Ltd.* 1986 (52) FLR

682 (SC), the workers employed for the construction work of the additional buildings for the expansion of the factories were held to be employees within the meaning of Section 2(9) of the Act and contribution in their respect was payable. This has been followed by this Court in *ESI Corporation v. Jaipur Enterprises* 1988 56 FLR 207.

5. Loading and unloading of goods is a regular feature in the factory of the respondent. Every week this process is followed at least two or three times if not more. The question whether the persons doing this work are brought by the contractors or just called from the neighbourhood is not relevant. When the work done by these employees is in connection with the work of establishment and it is the establishment which is paying for the service rendered by them then they stand on a better footing than the casual and stray labourers who are employed merely for the purposes of making some construction, which is a temporary work. The persons engaged in the work of loading and unloading are doing the job regularly and getting payment for the same, which may not be on per day basis but may be on the job done each day. When these employees are doing the work regularly (either directly under the principal employer or under the contractor) they become employees under the Act and contribution in respect of them becomes payable. The fact that the payment was made to the contractor or to the workers is not relevant, therefore, the contribution on loading and unloading charges paid to the labourers is payable under the Act.

6. In view of this the appeal is allowed and the respondent is directed to pay contribution on the sum of Rs. 62,929.64 as claimed by the appellant.