
(1997) 03 P&H CK 0114
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 564 of 1980

Employees' State Insurance Corporation	APPELLANT
Vs	
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 438 : (1997) 116 PLR 499

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.—This appeal hinges around the encompass of the definition of "wages" as defined in Section 2(22) of the Employees' State Insurance Act, 1948 (in short, the Act).

2. Skeleton facts of the case are that the respondent owns and runs two factories under the same name at New Industrial Toxvn, Faridahad and Mathura Road, Ballabgharh, and are subject to the provisions of the Act. The respondent-company on an average employs in the abovesaid two factories about 1500 employees and they are to be considered as "insured employees" within the ambit of the provisions of the Act and is liable to deduct employees' contributions from their insured employees' wages and together with the employer's special contribution, deposit the same in the State Bank of India, Faridabad in the appropriate account of the respondent. The respondent was regularly de- ducting employees' contributions from its insured employees' wages together with employer's special contribution and was depositing the same as per provisions of the Act. The respondent-company introduced a production incentive scheme for its employees" vide its circular No. PERS/ GEN/91/77 dated April 30, 1976. The scheme was introduced by the respondent-company on a purely voluntary basis and of its own free will and volition. The

amount paid in pursuance of this production incentive scheme was not "wages" as defined in Section 2(22) of the Act. The respondent-company neither deducted employees' contributions from the insured employees nor paid special contributions on the said payment. Appellant's Inspector visited the premises of the Company in the month of June, 1977 and after looking into all the accounts of the Company he found that a sum of Rs. 10,33,232.57 paise is entered therein as having been paid under the said production incentive scheme to the insured employees. Copy of the incentive scheme was also given to the Inspector and it was explained to him that the amount paid under the scheme does not fall within the ambit of "wages" as defined in the Act. Despite this the appellant-Corporation accepting the report of the Inspector ignored the respondent's plea and gave a notice for payment of Rs. 72,326.25 paise as contribution on the amount paid in terms of the said incentive scheme. Such a notice was given by the appellant to the respondent on July 11, 1977. The Corporation also demanded interest on the said amount at the rate of 6% per annum. A total amount of Rs. 5000/- was claimed on account of interest. The respondent company filed a petition u/s 75 of the Act before the Insurance Judge, Ballabgarh. The appellant-Corporation contested the petition and averred that the amount paid to the insured employees under the production incentive scheme falls within the definition of "wages" and, therefore, the company is liable to pay contribution thereon.

3. The learned Insurance Judge referred to various judicial pronouncements and relying on *Braithwaite and Co. (India) Ltd. Vs. The Employees' State Insurance Corporation*, held that the payment made under the production incentive scheme to the employees of the company does not fall within the definition of "wages" under the Act and, therefore, the Company is not liable to pay/deposit contribution thereon. Thus, the petition was allowed. The Corporation has filed this appeal against the said judgment. The various clauses of the said production incentive scheme are mentioned in para No. 4, which clearly reveal that for increasing their production this incentive was given to the workers to work more for the company. No doubt, this scheme is unilateral but the point is whether payment made under it can be said to be "wages" within the meaning of Section 2(22) of the Act.

4. Section 2(22) of the Act defines "wages" as under:-

"22 "Wages" means all remuneration paid or payable in case to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes (any payment to an employee in respect of any period of authorised leave, lock out, strike which is not illegal, or lay off and) other additional remuneration, if any (paid at intervals not exceeding two months) but does not include-

(a) any contribution paid by the employee to any pension fund or provident fund, or under this Act;

- (b) any travelling allowance of the value of any travelling concession;
- (c) any sum paid to person employed to defray special expenses entailed on him by the nature of his employment; or
- (d) any gratuity payable on discharge;

5. In *M/s Braithwaite and Co. (India) Ltd.* 's case (supra) the Apex Court considered whether payment made under the Inam Scheme can be considered to be wages u/s 2(22) of the Act. Their Lordships held at P 554:

"The mere fact that a reward for good work offered by the employer was accepted by the employee after he had successfully satisfied the requirement laid down by the employer for earning reward could not mean that this payment became a part of contract of employment. In fact, in the case, there was no question of offer by the appellant and acceptance by the employees as a condition of their service. The employees were already working in accordance with the terms of their contract of employment when the employer decided to make this extra payment if the employees did successfully what they were already expected to do under that contract. It cannot, therefore, be held that this payment of Inam ever became even an implied term of the contract of employment of the employees of the appellant."

Their Lordships further held that the "payment of Inam," though remuneration, could not be said to have become a term of the contract of employment within the meaning of the definition of "wages" as given in Section 2(22).

6. In *The Regional Director, Employees' State Insurance Corporation Vs. The Vazir Sultan Tobacco Co. Ltd.*, , a Division Bench of Andhra Pradesh High Court held that bonus paid by the company to its employees under the terms of settlement is not "wages" within the meaning of Section 2(22) of the Act.

7. A Full Bench of Andhra Pradesh High Court in *Employees' State Insurance Corporation, Hyderabad Vs. Andhra Pradesh Paper Mills Ltd., Rajahmundry*, also considered whether incentive bonus can be termed "wages". It was held at pp 476-477:

"...however, the incentive bonus could be wages within the third part of wages u/s 2(22) of the Act. In no event incentive bonus can fall within any of Clauses (a) to (d), which are excluded from the definition of "wages" u/s 2(22) of the Act. The word "other" appearing at the commencement of the third part of the definition of wages u/s 2(22) indicates that it must be remuneration or additional remuneration other than the remuneration which is referred to in the earlier part of the definition viz. all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied were fulfilled and incentive bonus in the present scheme is certainly additional remuneration. It must be emphasised that under the third part of the definition of "wages" it is actual factum of payment which counts because the word used is "paid" as distinguished from "paid or payable". The moment you get any additional

remuneration other than the remuneration payable under the contract of employment and 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" .

8. A Full Bench of Karnataka High Court in *N.G.E.F.Ltd., v. Deputy Regional Director, E.S.I.C., Bangalore*, 1980 LAB. I.C. 431 held that the amount paid by way of incentive under the scheme referred to in the settlement entered into between the management and its workmen falls within the definition of "wages" as defined in Section 2(22) of the Act. It was further held:

"The definition of wages in Section 2(22) could be conveniently divided into three parts: The first part deals with all remuneration paid or payable in cash to an employee under the terms of the contract of employment. The second part is the inclusive part of the definition. It covers any payment in respect of any period of authorised leave, lock out, strike which is not illegal or lay off and other additional remuneration, if any, paid at intervals not exceeding two months. The third part excludes from the definition certain types of payment provided under Clauses (a), (b), (c) and (d) of Section 2(22).

The second part of the definition is quite distinct and different from the first part. All the types of payments referred to in the second part apparently cannot have any reference to the terms of the contract of employment of any employee. But nonetheless they are also termed as wages because they are included in that definition. Therefore, clear implication of the second part of the definition is that any additional remuneration paid otherwise than under the terms of the contract should also be treated as wages for purposes of the Act, provided that payment is made by way of remuneration i.e. a recompense for service rendered and not any *ex gratia* payment and paid at periodical intervals not exceeding two months. If any additional remuneration paid satisfied these two conditions, Section 2(22) declares it to be "wages" though paid *de hors* the terms of the contract."

"The words "other additional remuneration" in the second part must receive the meaning of payments described by the preceding items, when the preceding items are required to be paid *de hors* the terms of the contract, express or implied, it cannot reasonably be said that "other additional remuneration" which follows those items must be paid under the terms of employment. It is not correct to place such an interpretation having regard to the well settled principles of construction applicable to an inclusive definition."

9. In *Employees' State Insurance Corporation, Madras Vs. Amalgamations Repco Limited, Madras*, a single Judge of Madras High Court considered whether incentive bonus amounts to wages u/s 2(22) of the Act. The learned Judge held that incentive bonus was payable in this case to all the workmen in pursuance of a scheme arrived at as a result of bilateral agreement entered into between the management and the workers. Under the Scheme, if there be a change in the

terms of the scheme and having received payments on that basis, payments became a part of the contract of employment. If there would be a change in the method of production or addition to the plant and equipment, the incentive scheme was to be modified suitably in consultation with the Unions. Any eligible workman who would turn out more work over and above the norms fixed as per agreement was entitled to the incentive bonus. The management was bound by the agreement. It was held that incentive bonus payable to the workmen would amount to "wages" within the definition of Section 2(22) of the Act.

10. In *Harihar Polyfibres Vs. Regional Director, ESI Corporation*, the Supreme Court considered the term "wages" as defined in Section 2(22) and held that the term "wages" as used in the Act would include house rent allowance, night shift allowance, heat, gas and dust allowance and incentive allowance.

11. A Division Bench of Karnataka High Court also considered the term "wages" as defined in Section 2(22) of the Act in *Hind Art Press, Mangalore Vs. E.S.I. Corporation and Another*. It was held that the special allowance as well as midday meal allowance, are in the nature of incentive allowance and they being payments made in terms of Settlement entered into between the workmen and the employer, they constitute wages and fall within the first part of the definition u/s 2(22) of the Act, for purpose of computing contribution under the Act.

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

"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 employment, 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 definition."

13. The Apex Court considered the definition of wages in Section 2(22) of the Act in *Modella Woollens Limited v. Employees State Insurance Corporation* also. The point for consideration was whether the amount payable at the end of each

quarter would constitute wages or not. 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 bonus 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 payment other than "wages" within the meaning of the said definition."

14. Thus, the Apex Court has by now clearly held that if additional remuneration is paid to the employees, it is to be treated as "wages" u/s 2(22) of the Act. So far as the point of interval not exceeding two months is concerned, the Apex Court in *Modella Woollens Limited's* case (supra) has further held that the mere terms 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. 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.

15. In this appeal contributions were demanded by the Corporation for the period commencing from May 1976 to April 1977. Since during this period production incentive was paid by the company to its employees under the first scheme wherein such production incentive was to be paid in each succeeding month, it definitely falls within the definition of "wages" u/s 2(22) of the Act as it was paid within a period of two months.

16. Consequently, the appeal is allowed with costs quantified at Rs. 2000/-. The Insurance Court's judgment is set aside. The respondent-company is given two months' time to make the payment as per the demand notice.