

(1964) 05 KAR CK 0003

In the Karnataka High Court

Case No : Misc. First Appeal No. 138 of 1962

Employees" State Insurance Corporation

APPELLANT

Vs

M.A.H. Siddique

RESPONDENT

Date of Decision : 25-05-1964

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (12), 3, 40 (1), 75 (2), 82 (2)

Citation : AIR 1965 Kar 71 : (1964) ILR (Kar) 555

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Iyer, J

Bench : Division Bench

Judgement

Somnath Iyer, J.

(1) This is an appeal u/s 82(2) of the Employees" State Insurance Act, 1948. The material facts are these: The respondent before us is a private limited company incorporated under the Companies Act carrying on a tailoring business. The appellant which is the Employees" State Insurance Corporation established under the provisions of Section 3 of the Employees" State Insurance Act, 1948 called upon the respondent to pay contribution u/s 40(1) of the Act to the fund to be created under its provisions. The respondent was called upon to pay a sum of Rs. 300/- for the period between July 31, 1960 and January 28, 1961 on what is described as an ad hoc basis. The only ground on which this demand was resisted by the respondent was that the respondent was not a factory within the meaning of Section 2(12) of the Act. Thereupon the appellant Corporation made an application u/s 75(2) of the Act to the Employees" Insurance Court for a direction that the respondent should make the contribution. The Employees" Insurance Court dismissed, that application and it is from that order that the Corporation appeals.

(2) The view taken by the Employees" State Insurance Court was that the respondent was right in its contention that it was not a factory as defined by Section 2(12) of the Act which reads:

"Factory" means any premises including the precincts thereof whereon twenty or more persons are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on but does not include a mine subject to the operation of the Indian Mines Act, 1923 (or a railway running shed)".

Since one of the essential requirements of this definition is that twenty or more persons should have been working at the relevant point of time on the premises of the respondent, the Insurance Court addressed that the complement of the question whether it is established that the complement of persons was working on the respondent's premises and it came to the conclusion that the number of persons so working was less than twenty. So it was that it refused the direction sought by the Corporation.

(3) The evidence produced before the Insurance Court consisted of that given by 2 witnesses both of whom were examined by the respondent (Appellant?) R.W. 1 is an insurance Inspector working in the Corporation and his evidence was that he inspected the respondent's premises on May 16, 1960 when he found 23 persons working therein, including 9 unpaid apprentices. This is what he said :

"I found on 16-5-1960 that 23 persons were working who included nine unpaid apprentices for whom no attendance had been marked."

The evidence given by R.W. 1 was fully corroborated by the evidence given by R.W. 2 who was one of the managing directors of the respondent company. This is what he stated:

"On 16-5-1960, the Insurance Inspector Sri Chellappan R.W. 1 appeared in the factory and examined the books of accounts etc. There were 23 persons found working in the factory out of which 14 were the paid workmen whose names are given in R. 1(a) and the other 9 were unpaid apprentices whose names I furnished to him as per Ex. A1(a). The Co.'s accounts do not disclose any payments made to the because they were only trainees. They were deputed by some organisation, so that they may learn work".

The argument advanced before the Insurance Court was that the nine unpaid apprentices could not be taken into consideration for the determination of the number of persons working on the respondent's premises for the purpose of S. 2(12) of the act. The contention advanced was that the persons referred to in Section 2(12) are persons who are employed for wages and that since the 9 apprentices did not work for wages but worked only for acquisition of necessary skill and equipment, they could not be regarded as persons working on the premises for the purpose of Section 2(12). This submission appealed to the Insurance Court which reached the conclusion that the number of persons working on the respondent premises was only 14 and not 23 since out of the 23 persons working on the premises the 9 unpaid apprentices should be excluded from consideration.

(4) It is clear from the definition contained in Section 2(12) of the Act that it does not speak of persons working for wages. It makes every premises on which twenty or more persons are working, a "factory", provided the other conditions referred to in that part of the section exist. It is not disputed that those other requirements of the section exist. But what is seriously disputed by Mr. Srikantiah appearing on behalf of the respondent is that the unpaid apprentices are persons working on the premises.

(5) On a proper interpretation of Section 2(12), it appears to me that we should take the view that so long as the number of persons working on the premises is twenty or more, the premises is a factory falling within the definition, it being immaterial whether those persons so working are paid wages or not. That, in my opinion, is the plain interpretation flowing from the language of Section 2(12) which does not admit of any other construction.

(6) In that view of the matter since both the witnesses who gave evidence before the Insurance Court stated in clear language that all the 23 persons who were found on the premises on May 16, 1960 were working on the premises, it was not possible, in my view for the Insurance Court to take the view that the respondent was not a factory within the meaning of the Act. In my opinion it was.

(7) This appeal must therefore succeed. It is accordingly allowed. In supersession of the order of the Insurance Court which is hereby set aside, there will be a direction in favour of the Corporation as prayed for by it.

(8) In the circumstances, there will be no direction as to costs.

Kalagate, J.

(9) I agree.

(10) Appeal allowed.