(1989) 06 GAU CK 0010

In the Gauhati High Court

Case No : M.A. (F) Case No. 20 of 1977

Employees'' State Insurance Corporation APPELLANT

Vs

Martin and Harris (Pvt.) Ltd. RESPONDENT

Date of Decision : 07-06-1989

Acts Referred:
Employees State Insurance Act, 1948 — Section 1(5), 2(9), 38, 39, 75

Citation : (1990) 1 GLR 30

Hon'ble Judges : S. Haque, J

Bench : Single Bench

Advocate : P.N. Goswami, for the Appellant; P.C. Deka and C.R. De, for the Respondent

Final Decision : Allowed

Judgement

S. Haque, J.—The Respondent M/S. Martin & Harris is a Private Limited Company which has a factory in Bombay and manufactures various products in its factory and sels the products through its sales branch offices at different places including one such Sales Branch Office at Jaswanta Road, Panbazar, Gauhati. The Gauhati branch does the work in connection with the sale and distribution of the products of Respondent''s factory in the North Eastern Region. These are all admitted facts.

2. The factory of the Respondent is covered under the Employees'' State Insurance Act, 1948 (hereinafter called as the ''Act'') and the employees contribution payable in respect of the employees employed in the said factory in Bombay were paid, but the contributions payable in respect of the employees of the branch office at Gauhati were not paid. According to the Appellants, namely, Employees'' State Insurance Corporation, Gauhati and its Regional Director, the contributions under the Act in respect of the employees of the branch office at Gauhati are payable, and so, the Appellants by their letter No. 41-5156-34 dated 9.7.1975 demanded payment of a sum of Rs. 21,666.75 P as Employer''s Special Contribution and on account of Employee''s contribution from the Respondent. But the Respondent instead of payment, preferred an application u/s 75 of the

''Act'' before the Employees'' Insurance Court, Gauhati whereupon the Prosecution Case No. 1 of 1975 began for adjudication of the dispute as to whether the employees of the Respondent in the Branch Office at Gauhati are covered under the Act.

3. The Respondent-Petitioner''s case was that the Gauhati Office of the Petitioner is neither a factory with manufacturing process nor is an establishment to which the Act applies; and the Petitioner company only carries on the business of sales of various products at its Gauhati Office and the State Government of Assam has not issued any notification u/s 1(5) of the Act, so the employees of the company of the Gauhati Branch Office are not covered by the Act and the company is not to pay any contribution as demanded by the Opposite Parties (Appellants) by their letter dated 9-7-1975.

4. Whereas the Appellants-opposite parties contested by stating that the employees of the Respondent in the Branch Office at Gauhati are employed for wages in or in connection with the work of the factory of the Respondent and are employed in the work connected with the sale and distribution of products of the factory of the Respondent and as such they are ''Employees'' within the meaning of Section 2(9) of the Act, and so, the Petitioner-company is liable to pay the contribution as demanded within the provision of the Act ; and that it was not at all necessary for a separate notification by the State Government (Assam) u/s 1(5) of the Act extending the provision of the Act to cover sales and distribution branch office at Gauhati of the Respondent-company.

5. In deciding the controversy, the Employee''s State Insurance Court Gauhati framed 6 issues of which Issue Nos. 2, 3 and 4 are prominent. Deciding these issues, the Court by its judgment dated 15-12-1976 has held that the employees of Gauhati Branch office had no connection with the factory at Bombay while working in connection with the sales and distribution of the products of that factory, and so, it would be necessary for the State Government to declare the Gauhati Branch Office as an establishment u/s 1(5) of the Act and that no such notification bad been issued under the said provision and therefore the Petitioner-company (Respondent) is not liable to make contribution in respect of its employees of the branch office at Gauhati under the provision of the Act.

6. The Appellants have assailed the said judgment dated 15.12.1976. The submissions of learned Counsel Mr. P.N. Goswami for the Appellants carry substance backed by law. Whereas, the submissions of learned Counsel Mr. P. Deka for the Respondent are found to be vague.

7. Upon hearing learned Counsel of both sides, this Court comes to the conclusion that the learned Judge of the Employees'' State Insurance Court, Gauhati committed error. The point in controversy had been answered by the Supreme Court by it''s judgment rendered in Civil Appeal Nos. 652 of 1976 and 1314 and 900 of 1977 repotted in Hyderabad Asbestos Cement Products Ltd. Vs. Employees Insurance Court and Another, It was as follows:

Section 39 provides that the contribution payable under the Act is in respect of an employee. It is not confined only to employees in factories. There is no justification for reading the words ''employees in factories'' in Section 38 as meaning persons employed in factories only. In Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc., the Supreme Court held that any employee who is connected with the work of a factory would be an employee u/s 2(9) whether he works within the factory or outside its premises. The section, after its amendment on January 28, 1968 by Act 44 of 1966 includes any person employed for wages on any work connected with the administration of the factory or any part, department or branch thereof or with the purchase of raw-materials or for the distribution or sale of products of the factory. Thus work connected with the administration of the factory, the purchase of raw-materials and the distribution or sale of products are brought into the scope of the definition. After the amendment, therefore, the plea that an employee employed in connection with the administration of the factory or with the purchase of raw-materials or distribution or sale of products does not fall within the definition cannot be raised. Reading the relevant sections as a whole, the word ''employee'' would, therefore, include not only persons employed in the factory but also persons connected with the work of the factory. The employee may be working within the factory, or outside it, or may be employed for administrative purposes or purchase of raw-materials or for the sale of finished goods and all such employees are included within the definition of employee.

8. The learned E.S.I. Court, Gauhati had very much missed to appreciate the definition of ''employee'' given in Section 2(9), of the Act. ''Employee'' is defined in Section 2(9) of the Act as under:

Section 2(9)-''employee'' means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and-

(i) who is directly employed by the principal employes on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(iii) ...; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose service are so lent or let or hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment of any part, department or branch thereof or with the purchase of raw material for, or the distribution or sale of the products of the factory or establishment;

but does not include-

(a) any member of the Indian naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration fox overtime work) exceed five hundred rupees a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed five hundred rupees a month at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.

The test laid down in the main clause is that the employment should be for wages and, in or in connection with the work of the factory or establishment to which the Act applies, while the Clauses (i) to (iii) in the definition lay down alternative tests. The main clause and Clause (i) to (iii) are disjunctive and therefore, both the elements are not to necessarily exist together. The ambit of this definition has been held to be wider than the definition of the word ''worker'' in Factories Act, and that a non-manual worker may be an employee. Sub-stations of the company are not independent factories being situated elsewhere and consequently their attendants are employees. The works connected with the sale and distribution of the products of the factory are matters incidental to, or preliminary to, or connected with the work of the factory and therefore, the employees of the sales and distribution branch at different places elsewhere are ''employees'' within the definition of Section 2(9) of the Act. The persons working at the branch office Gauhati of the company are employed for wages for the works connected with the administration of the factory in the matter of sales and distribution of the products of the factory and so, they are ''employees'' covered by the Act and the provisions of the Act in the matter of Employer''s Special Contribution and Employee''s Contribution arc fully applicable.

9. For the purpose of the case in hand, it is now made clear that employees of the Branch Office at Gauhati, being employed connected with the sale and distribution of the products of the factory of the Respondent, are ''employees'' within the meaning of Section 2(9) of the Act and as such contribution are payable in respect of them u/s 39 of the Act relied Hyderabad Asbestos Cement Products Ltd. Vs. Employees Insurance Court and Another,

10. The impugned judgment and order dated 15-12-1976 in the Prosecution Case No. 1 of 1975 being erroneous, have been set aside by allowing this appeal. The application of the Respondent u/s 75 of the Employees'' State Insurance Act, 1948 being Prosecution Case No. 1 of 1975 of the Employees'' State Insurance Court at Gauhati is rejected and the letter/notice dated 9-7-1975 by the Appellant demanding payment of Employer''s Special Contribution and Employees'' Contribution is made enforceable.

11. The appeal is allowed with cost of Rs. 500/- (Rupees five hundred only) payable by the Respondent company.

