

(1987) 08 CAL CK 0003
In the Calcutta High Court
Case No : F.M.A. No. 1265 of 1978

Employees" State Insurance Corporation	APPELLANT
Vs	
M/s. Ashok Plastics (P) Ltd.	RESPONDENT

Date of Decision : 03-08-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Companies Act, 1956 — Section 2(17), 2(22), 2(24), 2(26), 2(9)
Evidence Act, 1872 — Section 45, 45(2), 45(3), 74, 81

Citation : 92 CWN 410

Hon'ble Judges : Sukumar Chakravarty, J;Gobinda Chandra Chatterjee, J

Bench : Division Bench

Advocate : Devesh Ch. Mukherjee and Joyanti Mukherjee, for the Appellant;Tarun Chatterjee and Dinabandhu Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

Sukumar Chakravarty, J.—This appeal is directed against the judgment and order passed by Shri T.K. Banerjee, the learned Judge, Employees" Insurance Court, in the Case No. 39 of 1973 whereby the learned Judge allowed the application u/s 75 of the Employees State Insurance Act (hereinafter referred to as the Act). M/ s. Ashok Plasties Pvt. Ltd. (hereinafter referred to as the Company) filed the application u/s 75 of the Act disputing the demand made by the Employees" State Insurance Corporation (hereinafter referred to as the E.S.I. Corporation) for payment of employer"s special contribution and employees" contribution on the allowance paid to Shri Sohanlal Gupta as a Director of the Company, and praying for the declaration that Shri Sohanlal Gupta, a Director of the Company was not the employee within the meaning of Section 2(9) of the Act, that the monthly allowance paid to Shri Gupta was not the "wages" within the meaning of Section 2(22) of the Act and that the company was not liable to pay the employer"s special contribution on the allowance paid to Shri Sohanlal Gupta as a Director of the Company and for injunction.

2. The case of the company in brief was as follows:-

The Company used to carry on business of manufacturing and sale of plastic products and it had its factory at 13/1, Dharmatala Road, Belurmath, Howrah. The Company was liable to pay employees' contribution and also employer's special contribution in respect of the wages paid or payable to its employees. Shri Sohanlal Gupta was a Director of the Company and he was being paid the sum of Rs. 300/-per month by way of special allowance. Shri Gupta was not an employee of the Company and there was no relationship of master and servant between the Company and Shri Gupta. Shri Gupta was receiving Rs. 300/-per month as special allowance in his capacity as a Director and not as "wages" within the meaning of Section 2(22) of the Act. As a Director he was entrusted with some works of the factory but he, was not an employee within the meaning of Section 2(9) of the Act. The monthly allowance paid to Shri Gupta being not the wages did not come under the coverage of the Act. The Company accordingly was not liable to pay the employer's special contribution and Shri Gupta was also not liable to pay any contribution on the allowance received by him under the Act. The E.S.I. Corporation, however, demanded payment of employer's special contribution in respect of the allowance paid to Shri Gupta for the quarters ended on 1.10.68 to 31.3.72 and also employees' contribution for the said quarters. The Company informed the E.S. I. Corporation that the monthly allowance paid to Shri Gupta as a Director did not come under the coverage of the Act and accordingly the Company was not liable to make any payment of such contributions. The Company was intimated that Shri Gupta was not an employee of the Company and that the allowance was being paid to him as a Director of the Company. The E.S.I. Corporation, however, did not accept the contention of the Company but took necessary steps for realisation of the amount of the aforesaid contributions with the help of the Revenue Recovery Act and the Bengal Public Demand Recovery Act. The Company accordingly filed the application in question for the relief as already indicated.

3. The opposite party E.S.I. Corporation contested the said application by filing the written statement. Accordingly to the E.S.I. Corporation, the remuneration that was being paid to Shri Gupta as a special allowance with effect from 28th January, 1968 was the "wages" within the meaning of Section 2(22) of the Act. It was further contended that Shri Gupta by the very nature of the job entrusted to him by the Company was an employee within the meaning of Section 2(9) of the Act and, accordingly, the remuneration or special allowance, as the case may be, which was being paid to Shri Gupta per month for the performance of his such job, came within the coverage of the Act. It was further contended that Shri Gupta received such remuneration in the capacity of an employee and not in the capacity of a Director as Shri Gupta rendered special service in connection with the administration of the factory and in connection- with the purchase of raw materials and distribution and sale of the products. So, according to the E.S. 1. Corporation the Company was not entitled to get any relief as claimed.

4. The learned Judge allowed the Company's application and gave the relief as claimed by the Company on the findings that Shri Gupta was not the employee within the meaning of Section 2(9) of the Act and that there was no relationship of master and servant between the Company and Shri Gupta and that the monthly amount which was being paid to Shri Gupta was not the "wages" within the meaning of Section 2(22) of the Act. and that the Company was not liable to pay any employer's special contribution on the monthly amount paid to Shri Gupta as a Director of the Company, while observing inter alia that "it can hardly be conceived that a Director of the Company can at the same time be an employee of the same Company within the meaning of Section 2(9) of the E.S.I. Act."

5. The E.S.I. Corporation being dissatisfied with the judgment and order of the learned judge has preferred this appeal.

6. Mr. Mukherjee appearing for the appellant E.S.I. Corporation has submitted that the observation of the learned Judge in the impugned judgment to the effect "it can hardly be conceived that a Director of the Company can at the same time be an employee of the same Company within the meaning of Section 2(9) of the E.S.I. Act" is absolutely erroneous and based on misconception and that the impugned order passed by the learned Judge with his mind being influenced by such wrong observation is not sustainable. Mr. Mukherjee has further submitted that a Director of the Company can be legally employed as an employee in terms of the agreement between the said Director and the Company, if they so desire, and that, accordingly, the said Director may have dual capacity, namely, a Director of the Company in one capacity and an employee of the Company in another capacity, and that in such a case the person in his capacity as a Director would get the allowance and share of profits according to the Memorandum and Articles of Association and in his capacity as an employee of the Company would get the wages as fixed by the Company. Mr. Mukherjee at the time of his submission has also drawn our attention to the definition of "Manager and Managing Director" as defined in Section 2(24) and Section 2(26) respectively of the Companies Act, 1936. Mr. Mukherjee has also drawn our attention to the definition of the principal employer as defined in Section 2(17) of the Act. On drawing our attention to the aforesaid provisions Mr. Mukherjee has submitted that on the basis of the materials in the record Shri Gupta is both a Director and an employee of the Company, in support of his submission, Mr. Mukherjee has relied on the decisions in the case of Non-Ferrous Rolling Mills (P) Ltd. v. Regional Director, Employees' State Insurance Corporation, Madras reported in 1977 Lab I.C. 1706, in the case of Ram Pershad Vs. The Commissioner of Income Tax, New Delhi, and in the case of Regional Director, Employees' State Insurance Corporation v. M/s. Margarine and Refined Oils Co. (P) Ltd. reported in 1984 Lab.I.C. 844.

7. Mr. Mukherjee has further submitted that the nature of the duties as entrusted to Shri Gupta for his performance after appointing him as a Whole-time Director

and the description of the monthly amount to be paid to Shri Gupta as his remuneration in the document Ext. I whereby Shri Gupta was appointed as the Whole time Director and amount of Rs. 300/- was directed to be paid to Shri Gupta per month as remuneration, establish that Shri Gupta is also an employee of the Company within the meaning of Section 2(9) of the Act and that the said remuneration which was being received by Shri Gupta are his "eages" within the meaning of Section 2(22) of the Act. According to Mr. Mukherjee there should be liberal interpretation of the Social Security legislation like the Employees" State Insurance Act and he has relied on the decision an the case of Employees" State Insurance Corporation, Hyderabad v. M/s. Jaylakshmi Cotton and Oil Products (P) Ltd. reported in 1980 L.I.C. 1078.

8. Mr. Chatterjee, appearing for the respondent Company has submitted that he does not dispute the principle of law that a Director of the Company may also be appointed as the employee of the Company in terms of the agreement to that effect between the director and Company and in that case the director might have the dual capacity but accordingly to Mr. Chatterjee, the facts and circumstances of the present case do not establish that Shri Gupta, who is admittedly the director of the Company, has been employed as an employee of the Company to attract the provisions of Section 2(9) of the Act and that the monthly amount which was being paid to Shri Gupta as whole time Director of the Company is the "wages" within the meaning of Section 2(22) of the Act. Mr. Chatterjee has further submitted that a director without remaining as a sleeping director may be a working director and allowance is paid to such working director for his work in connection with the affairs of administration with the affairs of administration, purchase of raw materials and distribution and sale of products, the director will be the employee of the Company unless the terms of any agreement between the company and the director establish the relationship of employer and employee or master and servant between them. According to Mr. Chatterjee, the liberal interpretation of the Social Security legislation is resorted to in the cases which come under the coverage of the scheme of such legislation, and as the present case does not come under the coverage of the Act, there is no scope for liberal interpretation of the said social security legislation. In support of such submission, Mr. Chatterjee has relied on the decision in the case of Regional Director, Employees" State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, .

9. Before we go into the discussion of the principle of law as laid down in the cases referred to by the learned Advocates on both sides let us see how the "manager" has been defined in Section 2(24) of the Companies Act. "Manager" as defined in Section 2(24) of the Companies Act means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a Company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not. "Managing Director" as defined in Section 2(26)of the Companies Act means

a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of Directors or by virtue of its Memorandum and Articles of Association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a Managing Director, by whatever name called. The second proviso to Section 2(26) defining the Managing Director provides Managing Director of a Company shall exercise his powers subject to the superintendence, control and direction of its Board of Directors. The underlines in the aforesaid definitions are ours. I have deliberately omitted the contention of the first proviso to Section 2(26) of the Companies Act defining the Managing Director as the same will not be necessary for our purpose although the definition of Managing Director is subject to the first proviso as well. From our definition of the "Manager" as defined in Section 2(24) of the Companies Act it is clear that the individual or even the director occupying the position of a Manager shall be subject to the superintendence, control and direction of the Board of Directors. The definition of the word Managing Director as defined in Section 2(26) of the Companies Act also requires the said ingredients.

10. The reference to the definition of principal employer as defined in Section 2(17) of the Employees' State Insurance Act as made by Mr. Mukherjee actually does not say anything about the definition of the Manager or Managing Director of the Company. The "principal employer" as defined in Section 2(17) of the Act means--

(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;

(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the Department;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment.

From the aforesaid definition of the "principal employer" it appears that in a Factory the owner or occupier of the factory and even the managing agent of such owner and occupier and any person named as the manager of the factory may be the principal employer. The said definition does not help us in determining whether any director or the Board of Directors of the Company being the principal employer can also be the employee of the Company. The said definition throws light on the topic that even the manager of a factory if so named can be the principal employer.

11. Let us now come to the discussion about the principle of law as enunciated in the cases referred to by Mr. Mukherjee with regard to the fact whether a Director

of the Company can be also an employee of the company.

12. In the case reported in 1977 Lab. I.C. 1706, one Vilal Chand Golada who was a director of the company namely Non-Ferrous Rolling Mills (P) Ltd., was in charge of the factory of the company and was named as Manager of the factory. The Regional Director of the Employees' State Insurance Corporation at Madras, took the view that the said Director being a Manager of the factory was an employee under the Act and demanded the employer's and employees' contribution on the remuneration paid to Mr. Golada by the Company. The E.S.I. court agreed with the view of E.S.I. Corporation. On appeal the Madras High Court placing reliance on the principle of law as enunciated in Privy Council case of Lee v. Lee's Air Farming Ltd., reported in 1961 SC 12, upheld the decision of the E.S.I. court.

13. The case reported in 1977 Lab.I.C. 1706, therefore, establishes the principle of law that a director of the company if placed in charge of the factory of the company with the designation of Manager for some remuneration because of that charge becomes an employee of the Company within the meaning of Section 2(9) of the Act and his such remuneration becomes the "wages" within the meaning of Section 2(22) of the Act.

14. In the case reported in Ram Pershad Vs. The Commissioner of Income Tax, New Delhi, involving the assessment of income tax with regard to the assessee who was appointed a Managing Director of the Company, the Supreme Court held as follows : "It is again true that a director of a company is not a servant but an agent inasmuch as the company can not act in its own person but has only "to act through directors who qua the company have the relationship of an agent to its principal. A Managing Director may have a dual capacity. He may both be a Director as well as employee. It is, therefore, evident that in the capacity of Managing Director he may be regarded as having not only the capacity as person of a director but also as the person of an employee, or an agent depending upon the nature of his work and the terms of his employment.....The nature of his employment may be determined by the Articles of Association of a company and/or the agreement if any, under which a contractual relationship between the Director and the Company has been brought about, whereunder the Director is constituted an employee of the company; if such be the case, remuneration will be assessable as salary u/s 7."

15. The decision in the case also enunciating the principle establishes that a director of a company may also be the employer of the company in terms of the agreement between them or in terms of the Articles of Association having such provision as the case may be.

16. The same principle of law as enunciated in the aforesaid decisions has been followed in the case reported in 1984 Lab.I.C. 844.

17. In the present case before us, the learned Judge, therefore, has not been justified in making the observation in the impugned judgment to the effect that "it can hardly be conceived that a director of a company can at the same time be

an employee of the company within the meaning of Section 2(9) of the E.S.I. Act".

18. Keeping in view the above principle of law, enunciated in the aforesaid decisions and also the definition of Manager and Managing Director as given in the Companies Act, let us now see whether in the facts and circumstances of the present case before us as revealed by the materials in the record, Shri Gupta in both a director and an employee of the Company. Ext. 1 is the report sent to the Registrar of the Companies by the Company, and the same contains a resolution which was duly passed at the meeting of the Directors of the Company. The resolution runs as follows:-

Resolved that Shri Sohanlal Gupta, the newly elected director appointed whole-time director of the company from this date who will be empowered to do all works of the company according to the provisions of the memorandum and articles of association of the company and in accordance with the Indian Companies Act. As regards fixing up his remuneration it was unanimously resolved that a sum of Rs. 300/- per month will be paid to Shri Sohanlal Gupta from the month of October, 1968.

19. The above resolution is clear enough to indicate that Shri Gupta, the newly elected director was appointed whole time director to do all the works of the company according to the Memorandum and Articles of Association and his monthly remuneration was fixed at Rs. 300/-. There is nothing in the resolution to indicate that Shri Gupta was employed as a manager or as an employee of the company or that a relationship of master and servant was created between the company and Shri Gupta and that the company retained any power or superintendence or control over Shri Gupta in connection with his performance of all the works according to Memorandum and Articles of Association. Mention may be made here that the Memorandum and Articles of Association have not been produced and marked as exhibit in the instant case.

20. Although the word "remuneration" has been used in the resolution the Company has alleged in the application u/s 75 of the Act, that Shri Gupta as a director was being paid Rs. 300/- as the special allowance. The E.S.I. Corporation has rather admitted this allegation by making the averment of "No comment" in the written statement as against such allegation.

21. P.W. 2 Shri Sohanlal Gupta himself has admitted in this case. He has stated in his evidence that he was appointed as a Director in the place of the director Jayantilal Gupta on his retirement and that as a director, he has to look after sales, purchase, factory products and labour administration by way of special arrangement and that he used to get Rs. 300/- as remuneration previously and now he get Rs. 500/- as remuneration in addition to the shares of profits which each of the director is entitled to get. A willing and working director may do several functions in connection with the affairs of the company without keeping himself as a sleeping director and for the performance of such functions, the said director may get some special allowance under the description of remuneration

per month as in the instant case, but unless such director is employed by the company as his employer or master under some agreement between the parties, such director by performing those functions and by getting the allowance in the name of remuneration, will not be the employee under the company in terms of Section 2(9) of the Act. The facts of the present case are quite different from the facts of the cases as already discussed and relied on by Mr. Mukherjee. Shri Gupta is not named or designated as Manager or Managing Director of the Company.

22. Here Mr. Mukherjee has tried to draw our attention to one typed copy of the inspection report at page 56 of the paper book and submitted that the original inspection report as prepared by the Inspector of the E.S.I. Corporation is in the lower court record. Mr. Mukherjee submits that in the said report Shri Gupta, a Director of the Company has been described as the Manager of the factory under the Factories Act. Curiously enough the said inspection report lying in the lower court record was not brought in evidence as an exhibited document according to law. Mr. Mukherjee has submitted that the said inspection report prepared by the Public Officer like the Inspector of the E.S.I. Corporation is the Public document and accordingly this court may take into consideration the said report by admitting it in evidence and marking it as exhibit. "Public documents" have been defined in Section 74 of the Indian Evidence Act, 1872. u/s 74 of the Indian Evidence Act the following documents are public documents:

1. Documents forming the acts or records of the acts-----

(i) of the Sovereign authority,

(ii) of official bodies and the tribunals, and

(iii) of public officers, legislative, judicial and executive of any part of India or of the Commonwealth, or of foreign country;

2. Public records kept in any State of Private documents.

Mr. Mukherjee submits that the inspection report has formed the act of the Inspector of E.S.I. Corporation who is a Public Officer being the executive officer. The question arises whether the inspection report forms the act or record of the act of such Public officer under the law. Mr. Mukherjee being conscious of the same has drawn our attention to Section 45 of the E.S.I. Act and has submitted that under the provisions of Section 45 of the Act the Inspector of the E.S.I. Corporation has prepared the inspection report and accordingly the said document forms the act or record of the act of the Public officer. With respect to Mr. Mukherjee, we cannot agree to his such view. The scope of Section 45 of the Act is different. Under the said Section the E.S.I. Corporation may appoint such person as inspector as it thinks fit for the purpose of the act within such local limits as it may assign to them. Section 45(2) deals with the powers to be exercised by such inspector. Nowhere in Section 45(2) the Inspector has been authorised under the law to prepare the inspection report as in the instant case.

Of course Section 45(3) empowers the Inspector to exercise such function and perform such duties as may be authorised by the Corporation or as may be specified in the regulation. Under clause (d) of Section 45(2) of the Act the Inspector may make copies of or take extracts from any register, account book or other document maintained in such a factory, establishment, office or other premises. Such copies and extracts made under clause (d) of Section 45(2) by the Inspector may be the Public document forming the act of such Inspector as public officer under the provisions of the appropriate law. The Inspection report prepared by the Inspector, however, is not so and it does not appear to be the copy or extract made from any register or any document maintained in the factory of the company. Accordingly the said inspection report which has not been sought to be brought in evidence in the Insurance court cannot be taken into consideration by this appellate court. It may be mentioned here that no application under Order 41 Rule 27 of the Code of Civil Procedure has been filed by the E.S.I. Corporation in this appellate court and for accepting the said inspection report as additional evidence in terms of the provisions of Order 41 Rule 27 of the Code of Civil Procedure. Furthermore the said Inspector does not appear to have been examined as a witness in the Employees' State Insurance court. No attempt also appears to have been made by the E.S.I. Corporation for calling for the necessary document and bringing the same evidence to show that in the document of the Company Shri Gupta has been described as Manager or Managing Director. The evidence of P.W. 2 Shri Gupta shows that he was Manager and the Head Office of the factory of the company for two years before he was elected as a Director of the Company. There is nothing however in the evidence to show that after his election as a Director he continued to be the Manager of the factory and the Head Office. In view of what has been stated above, we are of the view that we cannot take into consideration the said inspection report as the other side will not be getting any opportunity to make any submission in his respect by not getting the opportunity of cross-examining the said Inspector who had prepared the said inspection report when the E.S.I. Corporation has not expressed any intention of examining the said Inspector as a witness.

23. We therefore cannot agree with Mr. Mukherjee to take into consideration the said inspection report which in the facts and circumstances of the case does not appear to be required to enable this court to pronounce the judgment.

24. Mr. Mukherjee has also drawn out attention to the provisions of Section 81 of the Indian Evidence Act and submits that this court shall presume the genuineness of the inspection report purporting to be a document direct by any law to be kept by any person. It has already been stated that we cannot look into the said document as it has not been brought in evidence. So the question of legal presumption as enjoined in Section 81 of the Indian Evidence Act does not arise in this case. Further it has already been indicated that if could not be shown that under the mandate of the law the Inspector prepared such inspection report.

25. The materials in the record as available according to law do not establish that

Shri Gupta an elected Director of the Company, was employed by the Company as an employee for doing certain jobs on monthly remuneration by creating a relationship of master and servant or employer and employee between the Company and Shri Gupta.

26. It is true that "wages" as defined in Section 2(22) of the Act means all remuneration paid or payable in cash to an employee, if the terms of the contract or employment express or implied were fulfilled and includes..... " For taking the character of "wages" as defined in the above Section, "remuneration" must be paid or payable in cash to an employee. All remuneration will not take the character of "wages" within the meaning of Section 2(22) of the Act. The special allowance of Rs. 300/- or Rs. 500/- as the case may be, which is being paid to the Director, Shri Gupta under the description of remuneration in the instant case is therefore not the "wages" within the meaning of Section 2(22) of the Act.

27. The term "employee" has been defined in Section 2(9) of the Act to mean "any person employed for wages in or in connection with the work of a factory or establishment in which the Act applies and....." There is nexus between "employee" and "wages".

28. In the case of Regional Director, Employees" State Insurance Corporation, Trichur v. Ramanuja Match Industries, reported in (1985) 1 SCR 218, involving a question whether a partner of a firm drawing remuneration was an employee of the firm, the Supreme Court while discussing the scope of "employee" and "wages" as defined in Section 2(9) and 2(22) of the Act respectively, observed as follows:-

The position of a partner qua the firm is thus not that of master and a servant or employer and employee which concept involves an element of subordination but that of equality. The partnership business belongs to the parties and each one of them is an owner thereof. In common parlance the status of a partner qua the "firm is thus different from employees working under the firm, it may be that a partner is being paid some remuneration for any special attention which he devotes but that would not involve any change of status and bring him within the definition of employee.

29. We are conscious of the fact that the instant case is not based on the question of partners." The instant case relates to the business of the Company and not of any partnership firm. Mr. Mukherjee has also submitted that we should not rely upon the decision in Regional Director, Employees" State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, to arrive at any decision on the question of the principle of law as involved in the instant case. 11 has already been stated that aforesaid case relates to a partner and involves the question whether a partner can be also the employee. In the case before us the question is whether a Director of the Company can also be the employee of the Company and if a Director gets any allowance or remuneration whether the receiving of such remuneration will make the Director also an employee of the

Company. We can look into the decision in Regional Director, Employees" State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, for the limited purpose that mere getting the remuneration by a Director will not make the Director an employee of the Company as in the aforesaid case the receipt of the remuneration by a partner did not make him the employee of the partnership firm. Getting support from the aforesaid decision although relating to a partner of a firm, we are, therefore of the view that a Director of a Company may be paid some remuneration for any special attention which he devotes in the affairs of the Company but that would not involve any change of the status of the Director and bring him within the definition of "employee" under the Act.

30. Mr. Mukherjee's last submission is that the Director Shri Gupta should be treated as an employee of the Company within the meaning of Section 2(9) of the Act and the monthly remuneration or allowance as the case may be, which was being paid to Shri Gupta should come under the Coverage of the Act, by giving liberal interpretation of the Social Security legislation like the Employees" State Insurance Act, in accordance with the decision in 1980 Lab.I.C. 1078, is not sustainable in the facts and circumstances of the present case. The principle of law that the Social Security legislation like the Employees" State Insurance Act demands liberal interpretation for its application with a view to ameliorating the various risks and contingencies which the employees coming under the scheme of such legislation, face while-serving in a factory or establishment is undisputed. The decision in 1980 Lab.I.C. 1078 also postulates so. We get also support in this respect from the decision in Regional Director, Employees" State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, wherein the Supreme Court has observed as follows:-

We do not doubt that beneficial legislation should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.

31. In view of what has been discussed above and in view of the fact that it could not be proved that the Director Shri Gupta is also an "employee" within the meaning of Section 2(9) of the Act. The learned Judge therefore rightly allowed the application u/s 75 of the Act and gave the relief.

32. In the result, the appeal is dismissed and the judgment and order of the learned Judge subject to our observation in the body of the judgment are confirmed. We make no order as to costs. On submission by Mr. Mukherjee, the learned Advocate "for the appellant, the operation of this judgment do remain in abeyance for one month from the date and during that period the appellant shall not proceed to recover the contributions in question.

Preparation of the formal decree be dispensed with.

Gobinda Chandra Chatterjee, J.

I agree.