

(1996) 02 GAU CK 0023
In the Gauhati High Court
Case No : Misc Appeal (First) No. 72 of 1991

Employees State Insurance Corporation	APPELLANT
Vs	
National Printers and Another	RESPONDENT

Date of Decision : 16-02-1996

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 2(12)

Citation : (1996) 1 GLJ 358 : (1996) 1 GLT 269

Hon'ble Judges : V.Dutta Gyani, J

Bench : Single Bench

Advocate : S.Nath , B.R.Dey, Advocates appearing for Parties

Judgement

1. This is an appeal under section 82 of the Employees" State Insurance Act, 1948 (hereinafter referred to as "die Act"), preferred by the Corporation. Despite service of notices the respondents have not entered appearance.
2. Short facts leading to the presentation of this appeal are "hat an application under section 75 of the Act was filed by the M/s National Printers, the respondent No.1 against the appellant Corporation challenging the applicability of the Act to the printing press and further contending that the press was not covered by the provisions of the Act. On facts it was submitted that the press did not employ 10 or more employees while the Corporation, on preliminary inquiry/inspection report, had found that the number of employees employed by the respondentprinting press was more that ten.
3. The Insurance Court placing reliance on a judgment of this Court as reported in (1990) 1 GLR 87, ESI Corporation, Guwahati vs. Krishna Press, held that the respondent printing press was not covered under the ESI Act and therefore not liable to pay contribution as demanded by the Corporation.
4. Although the learned counsel appearing for the appellants at the very outset submitted that in Krishna Press (supra) it was found as a fact that the number of employees employed by the press was less that ten, thus the case turned on its

own facts which has been wrongly relied upon by the Insurance Court, applied to the present case. Going through the judgment in Krishna Press (supra) it would appear that it is not on the basis of number of employees, but on interpretation of the term "factory" and "establishment" as contained in this Act and the Factories Act, 1948, that a learned Single Judge on this Court having posed the following question to himself.

"The only point that falls for determination is whether the printing press of the employer falls within the description of "establishment" given in Item No.1 of the said notification as contended." has answered as follows :

"There is no dispute that the activities carried on by the employer in this case, ie running a printing press, is one of the activities falling within subclause (iv) of clause (k) of section 2 of the Factories Act. In that view of the matter, it is clear that the employer in the instant case is an establishment which is exclusively engaged in one of the manufacturing process specified in clause (12) of section 2 of the Factories Act. That being the position, the establishment of the petitioner does not fall in the class or classes of establishments to which the provisions of the Act have been extended by the aforesaid notification. It is specifically and explicitly excluded, from the categories of establishment falling under Item No.1 of the notification."

5. Learned counsel for the appellant placing reliance on a judgment of the Supreme Court as reported In Osmania University vs. Regional Director, ESI Corporation, Andhra Pradesh, AIR 1986 SC 466, argued that the above referred judgment of this Court can not be applied in fact of the Apex Court's judgment. The Supreme Court referring to its earlier judgment in Civil Appeal No.204 of 1973, as reported in 1986 Lab 1C 103, has held as follows :

"10. In the cases before us there cannot be any doubt that the establishments namely, the Departments of Publications and Press are "factories" as defined in clause (g) of section 2 of the Act. Under the said definition factory means any premises in any part of which any manufacturing process is being carried on. The printing of test books, journals, registers, forms and various items of stationery clearly constitute "manufacture" within the meaning of section 2 of the Act. That printing is one of the industries specified in the Schedule is not in dispute. It is also not disputed that many more than 20 persons are employed in the concerned establishments of the two Universities Thus all the requirements of clause (3) (a) of section of the Act are fully satisfied in these cases and hence the conclusion recorded by the High Court that the establishments in question are liable for coverage under the Act is perfectly correct and justified."

6. In the same judgment the Supreme Court has also indicated the true test to be applied in such case is whether there is an establishment which is a factory engaged in any of the schedule industries and whether twenty or more persons are employed in the said establishment. If the answer is in the affirmative, the provisions of the Act are clearly attracted.

7. Another moot point that arises for consideration, relates to the extent and scope of seeking external aid from other statutes for construction of terms already defined under the Act. As has been observed by the Privy Council in *Nippon Yusen Kaisha vs. Ramjirain Serowagee*, AIR 1938 PC 152, it is not a sound principle of construction to interpret expressions used in one Act with reference of their use in another Act, which has been followed by the Supreme Court in several decisions beginning with *Ramnarain vs. State of Uttar Pradesh*, AIR 1957 SC 18 and the latest being *Gwalior Rayons vs. Custodian of Vested Forests*, AIR 1990 SC 1747.

8. The judgment in *Krishna Press*, (1990) 1 GLR 87, does not take into account the *Osmania University* case (supra). Such a decision is a decision per incuriam and would be in law. (See *Commissioner for Hindu Religious and Endowments & another vs. C. Lakshminarasimhaiah*, 1990 (Supp) SCC 164). Following the *Osmania University* case and applying the test as indicated therein, the impugned order cannot be allowed to stand, it is liable to be quashed and accordingly quashed. The appeal stands allowed with no order as to costs.