

(2010) 11 P&H CK 0269
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 520 of 1983

Employees State Insurance Corporation	APPELLANT
Vs	
Nirankari Bus Service (Regd.)	RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 2(9), 75, 82(2)

Citation : (2011) 162 PLR 213

Hon'ble Judges : T.P.S. Mann, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.P.S. Mann, J.—Instant appeal filed u/s 82(2) of the Employees' State Insurance Act, 1948 (for short "the Act") is directed against the judgment passed by Employees' Insurance Court, Chandigarh on 10.3.1983, whereby application filed by the Respondent u/s 75 of the Act was accepted and order dated 29.6.1979 claiming contribution amounting to Rs. 26,605.70p. from the Respondent was quashed.

2. In its application filed u/s 75 of the Act, the Respondent had averred that it was a registered firm and its partner Karamjit Singh was competent to maintain the said application. It was alleged that the Respondent-firm was not covered under the Act as it never employed 20 or more persons. The buses owned by the Respondent were driven by the partners themselves and the partners did not fall within the definition of "employee", as contained in Section 2(9) of the Act. Therefore, the demand made by the Appellant vide order dated 29.6.1979 claiming contribution amount to Rs. 26,605.70p. from the Respondent-firm was illegal and liable to be set aside.

3. The Appellant had contested the application on the grounds that the Respondent-firm stood legally covered under the Act; the order dated 29.6.1979 was passed in accordance with law; and, as per the survey report, the

Respondent-firm had employed 22 persons for wages as on 1.4.1976. Accordingly, it was prayed that the application be dismissed with costs.

4. On the basis of the pleadings of the parties, the following issues were framed:

1. Whether the order dated 29.6.1979 passed by the Respondent claiming contribution amounting to Rs. 26,605.70p. on ad hoc basis is illegal as claimed? OPD.

2. Relief.

5. After hearing learned Counsel for the parties and going through the material available on the file, the Employees' Insurance Court, Chandigarh held that the Respondent-firm was an association of many persons and all the persons had employed their own employees separately and income tax returns were being submitted separately. Thus, the employees of all the persons could not be said to be the employees of the Respondent-firm. It was also held that if all the persons working for the Respondent-firm were considered as its employees, then the said firm had 20 or more employees and covered under the ESI Act but the employees of each person were not to be considered together and, therefore, the number of employees did not exceed 20 nor it came to 20 and, therefore, the Respondent-firm could not be said to be covered under the Act. Accordingly, the application was accepted and the demand raised by the Appellant vide order dated 29.6.1979 claiming contribution amounting to Rs. 26,605.70p. from the Respondent-firm was quashed.

6. The appeal was admitted on 23.9.1983. Upon being served, the Respondent was represented by Mr. R.L. Chopra, Advocate. The appeal was set down for hearing for 22.7.2008. However, none appeared for the Respondent on that date. Accordingly, the hearing was adjourned to 24.9.2008 with a direction to the office to inform the counsel for the Respondent. On 24.9.2008, the Court noticed that Mr. R.L. Chopra, Advocate, who had earlier represented the Respondent had unfortunately expired. Accordingly, notice was issued to the Respondent for 18.11.2008 so as to enable it to make alternative arrangements for its representation in the appeal. On 18.11.2008, the Court perused the office report, as per which notice issued to the Respondent had been received back unserved with the request that it be supplied a copy of the appeal as it had no knowledge regarding the case. Accordingly, fresh notice was issued to the Respondent for 8.1.2009 and the office was directed to attach a copy of the opening sheet, grounds of appeal and the impugned order with the notice. The appeal, however, could not be taken up for hearing on 8.1.2009. However, the notice issued for that date was received back with the remarks that Respondent had refused to accept the same. The refusal on the part of the Respondent to accept the notice amounted to due service. Despite the same, on 13.1.2010, 23.4.2010 and 26.4.2010, none appeared on behalf of the Respondent. On 26.4.2010, the Court requested Mr. Harsh Bunker, Advocate to assist it on behalf of the Respondent as the point involved in the appeal was of importance. Registry was directed to

supply complete paper-book of the case to Mr. Harsh Bunker, Advocate. The appeal was finally heard on 12.7.2010 when the judgment was reserved.

7. The sole question which arises for determination in the appeal is as to whether the employees kept by the partners of the firm have to be considered as employees of the Respondent-firm or of the respective partners themselves. If they are treated as employees of the firm, then their number exceeded 20 and, therefore, the Respondent-firm stood covered under the Act. On the other hand, if the employees were considered as that of the partners themselves then in that situation the firm would not be covered under the Act as the number of the partners was less than 20 and not more than 20 employees had been employed by each of the partners.

8. While deposing before the lower Court, RW1 Sat Pal Singh, Manager, Local Office, Patiala, who had been working as an Insurance Inspector at Patiala in the year 1978, stated that he conducted the survey of the Respondent-firm on 16.9.1978 and gave his report Ex.R-1 which had been signed by him and was in his hand. He also proved letter Ex.R-2 issued by the Corporation and in reply thereto, letter Ex.R-3 was received from the firm. In cross-examination he stated that he checked the records of five persons, namely, Santokh Singh, Sadhu Singh and sons, Joginder Singh, Garja Singh and Bal Krishan. All the five firms were maintaining their separate records and registers. They were having their separate buses. The persons, whose records he checked, had not employed 20 or more persons individually.

9. As per the survey report Ex.R-1 made by RW1 Sat Pal Singh, the Respondent-firm had employed 22 persons as on 1.4.1967, as mentioned in its records. Accordingly, it was covered under the Act from 10.4.1976. Alongwith the survey report, RW1 Sat Pal Singh made noting Ex.R-1/A stating therein that the Respondent-firm consisted of seven partners and every partner had its own buses. All the partners had no concern with each other and maintained their separate accounts. They all maintained an office in Rajpura Colony for the purpose of passenger tax only. All the partners had got no concern with each other regarding profit or loss. They got their buses registered under the name and style of M/s Nirankari Bus Service (Regd.), Patiala i.e. the Respondent-firm. On the basis of survey report Ex.R-1, letter Ex.R-2 was issued by the Employees State Insurance Corporation on 12.12.1978 to the Respondent-firm to the effect that as it fell within the purview of Section 2(12) of the Act, it stood covered under the Act w.e.f. 10.4.1976. Ultimately, on 29.6.1979, Regional Director of the Corporation passed an order raising a demand of Rs. 26,605.70p. from the Respondent-firm.

10. While appearing as PW1, Karamjit Singh, partner of the firm, deposed that Sadhu Singh and sons, Santokh Singh, Joginder Singh, Garja Singh, Bal Krishan, Jagir Singh and Charan Singh were partners of the Respondent-firm. According to him, every partner was having his own buses and maintaining separate accounts of his buses. Every person was incurring expenses and earning profits

separately from other partners. Every partner had kept his own separate employees. Each partner had been submitting income tax returns separately. At the time of visit of the Insurance Inspector, it was made clear that each partner had his own buses and had no concern with other partners. The office was set up in the name of Sadhu Singh and sons. Even the telephone was in the name of Sadhu Singh. The buses were individually purchased by each partner and financed by them. The Respondent-firm had never furnished accounts of all the partners together in any office. In cross-examination he denied knowledge about maintaining a register wherein the receipt of wages received by the employees had been shown. He then stated that one Kulwant Singh, who had come with him, knew all about the said fact and also as to whether attendance register has been maintained or not. Similarly, according to him, only Kulwant Singh could state as to whether the strength of the employees shown in the annexure to survey report Ex.R-1 was incorrect or not. He stated that at page 223 of the ledger, an amount of Rs. 1,314/- had been shown as pay to temporary staff but could not state about the number of employees who had been paid the said amount. He went on to state that the number of employees employed by all the partners of the Respondent-firm was less than 20 in aggregate. However, he feigned ignorance about the number of employees kept by Joginder Singh, Garja Singh and Bal Krishan, although Santokh Singh had only four employees.

11. Similarly, PW2 Joginder Singh, whose bus also stood attached with the Respondent-firm, deposed that the said bus was his personal property. He had employed one driver on the bus and he himself was doing the job of conductor. He had no connection either with Onkar Bus or with M/s Sadhu Singh and sons. The income derived on account of operation of his bus had been coming to him and not to the account of the Respondent-firm. To the same effect was the testimony of PW3 Garja Singh when he stated that he had no concern with the Respondent-firm and the entire record was maintained separately and no record was lying intermingled anyway with that of other associates of the Respondent-firm.

12. From the above, it is clear that the Respondent-firm had been set up by a number of persons, namely, Santokh Singh, Joginder Singh, Garja Singh, Bal Krishan, Jagir Singh and Charan Singh, besides Sadhu Singh and sons. Each of the partners had bus/buses which they had been operating either by themselves or by hiring drivers and conductors. Though each of the partners had been incurring expenses and earning profits separately, besides filing their respective income tax returns separately, yet they had been carrying on their operations from the same place which, according to them, was for the limited purpose of passenger tax.

13. Karamjit Singh, who had filed the application u/s 75 of the Act, had claimed that he was partner of the Respondent-firm and, thus, competent to maintain the said application. However, while appearing as PW1, he denied knowledge about maintaining the register by the Respondent-firm regarding the receipt of wages

by each and every employee and also about the strength of the employees as shown in the survey report Ex.R-1. According to him, one Kulwant Singh had come with him and he knew about the said facts. Despite the same, the Respondent-firm did not ask Kulwant Singh to step into the witness box. Therefore, the best evidence available regarding receipt of wages, attendance register and strength of the employees had been intentionally withheld by the Respondent-firm from the Court.

14. The stand of PW1 Karamjit Singh that number of employees employed by all the partners of the Respondent-firm was less than 20 in aggregate cannot be given any credence in view of the survey report Annexure R1 wherein it was found as a matter of fact that as on 1.4.1976, 22 persons stood employed. All those employees, who were hired by the various partners of the Respondent-firm had to be considered as those of the Respondent-firm and as their number exceeded 20, the Respondent-firm stood covered u/s 2(12) of the Act.

15. In *Rajasthan Prem Krishan Goods Transport Co. v. Regional Provident Fund Commissioner, New Delhi and Ors.* AIR 1997 SC 58, it was held that where the place of a business was common, the management was common, the letter-heads bore the same telephone numbers and a number of partners of the two entities were common and the trucks plied by them were owned by the persons and were being hired through both the units, there was unity of purpose and the respective employees engaged by the two entities were required to be added together so as to bring them within the grip of the Act. The relevant portion of the judgment is as follows:

The finding recorded by the Regional Provident Fund Commissioner is that there is unity of purpose on each count inasmuch as the place of business is common, the management is common, the letter heads bear the same telephone numbers and 10 partners of the Appellant are common out of the 13 partners of the third Respondent. The trucks plied by the two entities are owned by the partners and are being hired through both the units. The respective employees engaged by the two entities when added together, bring the integrated entities within the grip of the Act; so is the finding. Now, this finding is essentially one of fact or on legitimate inferences drawn from facts. Nothing could be suggested on behalf of the Appellant as to why could the Regional Provident Fund Commissioner not pierce the veil and read between the lines within the outwardliness of the two apparents. No legal bar could be pointed out by the learned Counsel as to why the views of the Regional Provident Fund Commissioner, as affirmed by the Central Government, be overturned.

16. Relying upon the aforementioned judgment as well as the judgment in the case of *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, , the Hon"ble Supreme Court in *Sumangali Vs. Regional Director, E.S.I. Corporation*, , justified clubbing of a number of firms as "single establishments" for the purpose of coverage under the ESI Scheme as there was unity in management, supervision and control, geographical proximity,

financial unity, general unity of purpose and functional integrality between the different units. It was also held that even if each unit was an establishment having separate registration under the Sales Tax Act, Shops and Establishments Act and the Income Tax Act, all the units were inter-dependent and were supplementary and complementary to each other for the sake of their textile business.

17. In view of the above, all the employees hired by the various partners of the Respondent-firm have to be treated as the employees of the Respondent-firm. As the number of employees exceeded 20, the Respondent-firm stood covered u/s 2(12) of the Act.

18. Resultantly, the appeal is accepted, impugned order passed by Employees' Insurance Court, Chandigarh, while accepting the application filed by the Respondent-firm u/s 75 of the Employees State Insurance Act, is set aside and the order dated 29.6.1979 passed by the Corporation while claiming contribution amounting to Rs. 26,605.70p from the Respondent-firm, is upheld.