

(1992) 01 MAD CK 0020
In the Madras High Court
Case No : A.A.O. No. 631 of 1985

Employees State Insurance Corporation	APPELLANT
Vs	
Oxford University Press	RESPONDENT

Date of Decision : 27-01-1992

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(4), 1(5), 2(12), 43, 75

Citation : (1993) 1 LLJ 760 : (1992) 2 LW 485

Hon'ble Judges : Y.R. Meena, J; J.R. Chopra, J

Bench : Division Bench

Advocate : S.M. Ali Mohammed, for the Appellant; B. Giridhara Rao, for the Respondent

Judgement

1. The respondent in E.I.O.P. No. 40 of 1983, before the Employees' Insurance Court (I Additional City Civil Court), Madras, has filed this civil miscellaneous appeal, against the order in the aforesaid E.I.O.P. No. 40 of 1983, filed u/s 75 of the Employees' State Insurance Act, allowing the petition for declaration that the provisions of the Employees' State Insurance Act, 1948, are not applicable to the petitioner.

2. Brief facts leading to this appeal are :

The respondent has filed the petition u/s 75 of the Employees' State Insurance Act, 1948, for declaration that the provisions of the Employees'

State Insurance Act, 1948, are not applicable to the petitioner on the following grounds :

The petitioner is a department of Oxford University in the United Kingdom. It is part of Oxford University and a non-profit making institution. It

has as its purpose the promotion of learning and research and propagation of knowledge by publishing educational and scholarly books. The

petitioner has no press. All the books are printed through other printers. The petitioner is not a "shop" or establishment. The Government of Tamil

Nadu had extended the provisions of the Act by G.O. Ms. No. 1088, dated December 22, 1975, to certain establishments wherein 20 or more

persons are employed or were employed for wages on any day of the preceding 12 months. The respondent informed the petitioner that its

establishment was cover under the Act with effect from January 16, 1977, in terms of the said notification. The respondent construed the petitioner

to be a "shop" and directed the petitioner to comply with the requirements of the Act. The petitioner is not a "shop". It does not carry on business

or trade with a profit motive. For the purpose of Income Tax, the Income Tax Appellate Tribunal has held that the petitioner is part of the Oxford

University. The High Court of Bombay had construed the petitioner to be part of the Oxford University and the petitioner's workers are not

entitled to the bonus under the Payment of Bonus Act. The Deputy Regional Director has passed an order on August 16, 1983, u/s 43-A of the

Act and determined the contribution payable by the petitioner at Rs. 36,785.84 for the period from January 16, 1977, to September 30, 1978.

The petitioner is not engaged in selling with a profit motive. It is a University or educational institution. Hence, the provisions of the Employees'

State Insurance Act, 1948, are not applicable to the petitioner. Since the Deputy Regional Director had determined that provisions of the

Employees' State Insurance Act 1948, are applicable to the petitioner, it has become necessary for the petitioner to approach the Court for a

declaration that the provisions of the Employees' State Insurance Act, 1948, are not applicable.

The respondent resists the claim on the following grounds :

The petition is barred by time. The claim that the petitioner is a department of Oxford University, London, is not admitted. The further claim of the

petitioner that it is a department of the Oxford University and it is not a profit-making institution are not admitted. Profit-making is not an essential

ingredient to bring the petitioner establishment under the Employees' State Insurance Act, 1948. The petitioner is a "shop" selling various books

and entering into various commercial activities with the public and, therefore, it is an establishment covered u/s 1(5) read with the notification issued

by the Government of Tamil Nadu, dated December 22, 1976. The petitioner is carrying on business and trade and it cannot be treated as an university. The decision of the Income Tax Appellate Tribunal is not relevant to this case. The respondent had decided about the coverage of the petitioner-establishment under the Employees' State Insurance Act, 1948, only on the inspection report submitted by the Inspector, after his inspection on March 1, 1978, which shows that 53 employees were employed in the Madras Branch of the petitioner and they were engaged in selling activities within their premises to the public. In the circumstances, the ""shop"" was treated as covered under the Act. Hence, dismissal of the petition is prayed for.

After elaborate enquiry, the learned trial judge had allowed the petition declaring the provisions of the Employees' State Insurance Act, 1948, are not applicable since the petitioner is not a ""shop"". Aggrieved by the said order, the respondent has filed this civil miscellaneous appeal.

3. Mr. S. Ali Mohammed, learned counsel appearing for the appellant, would submit that the petitioner is part of the Oxford University but yet on

that ground the petitioner is not exempted from the operation of the Employees' State Insurance Act, 1948, that the activities of the petitioner bring

it within the fold of ""shop"" which has been brought in by Notification No. G.O. Ms. No. 1088 referred to supra. Per contra, Mr. Giridhara Rao,

learned counsel appearing for the respondent, would submit that there was no sale taking place within the premises and even if there is a sale, it is a

restricted and stray sale and from it, it should not be concluded that it is a ""shop"". He would further state that in other places like Bombay and

Calcutta, the petitioner is engaged in similar activities but the provisions of the Employees' State Insurance Act, 1948, were not applicable to those

institutions as it is part of the Oxford University and it cannot by any stretch of imagination be construed as a ""shop"".

4. I have given careful consideration to the contention put forth by learned counsel appearing for rival parties. As per Section 1(4) of the

Employees' State Insurance Act, 1948, it shall apply in the first instance to all factories other than seasonal factories. As per Section 1(5) the

appropriate Government may, in consultation with the Corporation after giving six months' notice of its intention of so doing notification in the

official Gazette, extend the provisions of this Act or any of them to any other establishment or class of establishments, industrial, commercial,

agricultural or otherwise. The Government of Tamil Nadu had extended the provisions of the Employees' State Insurance Act, 1948 by G.O. Ms.

No. 1088, Labour and Employment, dated December 22, 1976, to the following establishments wherein 20 or more persons are employed or

were employed for wages on any day of the preceding 12 months : (1) hotels, (2) restaurants, (3) shops, (4) cinemas including theatres, (5)

newspaper establishments. According to the respondent, the petitioner falls within the fold of "shop" referred to supra. Though "shop" has not been

defined in the Employees' State Insurance Act, 1948, the amplitude of the word "shop" in the said G.O. Ms. No. 1088, was considered in New

India Maritime Agencies (P) Ltd. v. State of Tamil Nadu, (1987) II C.L.R. 498, in which a Division Bench of this Court has laid down as follows :

Applying the rule enunciated in the aforesaid cases, we have to give a liberal interpretation to the term "shop" without doing violence to the

language of the enactment. We have already seen that the Division Bench of the Andhra Pradesh High Court has in Employees' State Insurance

Corporation v. Brooke Bond (India) Ltd. (1978) L.I.C 367 interpreted "shop" as a place where sale or purchase is effected or where services are

rendered for remuneration. We agree with the reasoning of the Kerala High Court in Brooke Bond India Limited v. Employees' State Insurance

Corporation 1980 I LLJ 352, in that to construe the word "shop" literally would be to defeat the obvious intention of the Government and that the

word "shop" has several shades of meanings and it should be given a wider meaning than its popular sense."". However, we make it clear that it is

not every kind of commercial, industrial or agricultural establishment which would become a "shop" within the meaning of the notification. It should

be a premises wherein either goods are sold or services are rendered for a price.

5. From the above, I am clear that if it was shown that in a premises goods are sold or services are rendered for a price, it should be construed as

a "shop", for the purposes of the aforesaid G.O. Ms. No. 1088. I shall next pass on to the evidence available in this regard. The manager of the

petitioner-establishment figured as P.W.-1. He has stated that petitioner is a department of Oxford University at Oxford, England. Then he has

stated as follows :

We are not selling books our main premises. Any book sellers recognised by us are allowed to sell our books.

In the cross-examination, it was elicited from him as follows :

Whenever an educational institution wants to purchase books published by us we send them the books only if they have a book depot or stores

or registered co-operative society or stores. In that manner we sell the books. That is more an exception than a rule If any one comes to us

direct and he represents that a particular book is not available anywhere and if there are in stocks with the trade, we sell such books. We are

having our offices on Anna Salai. We are having a warehouse. Whenever an outsider wants to purchase books and places an order we find out the

credibility by referring to the Accounts Department. We also find out the availability of the books from our warehouses and then prepare an

invoice and send the books as per the instructions and send the bill through bank.

In another portion of the cross-examination, it was elicited from him as follows :

We have published the biography of Jawaharlal Nehru written by Dr. Gopal. As per the international convention 10% royalty on the sale is paid

to authors. Our accounting year ends on March 31 of every year. Within six months from the period we settle the claim, based upon the sales and

on the agreement with the author.

In re-examination, he has stated as follows :

Our profit is not distributed to anybody else since we have no shareholders and our profits are utilised for publishing reference books and other

such books.

6. The Insurance Inspector of the respondent who figured as RW-1 has stated that he visited the premises of the petitioner and found that 53

employees were working including five persons working at Bangalore. He would further state that he found that they were engaged in publication

of books, sales of books and rendering service to others who seek help in publishing a book and he had submitted report Exhibit R-3. In the

cross-examination, he has stated that he did not purchase any book from the petitioner, but he saw customers purchasing books. He had denied

the suggestion that he had not seen the persons purchasing books from the

petitioner.

7. From the answers elicited from P.W.-1 it is apparent that sales of books are effected by the petitioner and profits were derived, though the

profits were utilised for publishing reference books and other such books. P.W.-1 also speaks to the sale of books in the premises and that is

borne out by contemporaneous document prepared by him, viz., the report sent by him to the regional office, Exhibit R-3. In view of the selling

activities being carried on in the premises, as borne out by the evidence tendered by P.W-1 and R.W.-1, the petitioner would fall within the fold of

shop". Learned counsel for the respondent contended that there was only a stray and restricted sale and in view of it, the petitioner cannot be

brought in within the category of "shop". Per contra, Mr. S. Ali Mohammed would submit that in as much as this is a social welfare legislation, a

liberal interpretation should be given. He would add that even assuming it is a restricted and stray sale, still in view of the activity of sale the

petitioner would be a "shop", In *Hindu Jea Band, Jaipur Vs. Regional Director, Employees' State Insurance Corporation, Jaipur*, the apex Court

had occasion to consider the scope of the word "shop" to which the provisions of the Employees' State Insurance Act 1948, are applicable. It

was held that a place where services are sold is also a "shop". In that case, the place of business of a firm carrying on the business of playing music

on occasions, such as marriages and other social functions, which made available on payment of the stipulated price the services of the members of

the group of musicians employed by it on wages is a "shop" to which the Employees' State Insurance Act, 1948, was held to be applicable by

virtue of a similar notification as in our case. The contention raised was that the services were rendered intermittently or during marriages and so the

provisions of the Act are not applicable. While repelling that contention, the apex Court has stated as follows (at page 504) :

We do not find much substance in the second contention too. The fact that the services are rendered by the employees engaged by the petitioner

intermittently or during marriages does not entitle the petitioner to claim any exemption from the operation of the Act ...

8. The ratio of this ruling applies to the case before me. Even assuming the sales were restricted and were stray, still that will not take away the

petitioner from the ambit of "shop". Regarding the interpretation of statutes, it is settled law that a liberal interpretation should be given to social

welfare legislation. That has been laid down by a catena of decisions by the apex Court. So I am unable to accept the contention of learned

counsel for the respondent that sales were stray and restricted and hence the petitioner would not fall within the category of "shop".

9. The further contention of the learned counsel for the respondent is that petitioner is part of Oxford University and it is not covered by the

provisions of the Employees' State Insurance Act, 1948. Mr. M. Ali Mohammed concedes that petitioner is part of University of Oxford but

would contend that still the provisions of the Employees' State Insurance Act, 1948, are applicable to it. In Andhra University Vs. Regional

Provident Fund Commissioner of Andhra Pradesh and Others, the Apex Court had occasion to consider the applicability of the provisions of the

Employees' Provident Funds and Miscellaneous Provisions Act (19 of 1952), to the Department of Publications and Press run by the University.

The common contention taken by the Andhra University and the Osmania University was that universities are purely educational institutions having

number of departments, the main object of it is to impart education to the youth of the country in various branches of studies and that the

Department of Publications and Press which is intended only to cater to the needs and requirements of the students cannot be regarded either as a

"factory" or as an "industry" and the provisions of the Act are not attracted in respect of the said Department. It was also contended that for the

purposes of determining the applicability of the Act, the entire University must be treated as an establishment and if the University cannot be said to

be a factory engaged in an industry, there cannot be any question of coverage under the Act. Both these contentions were rejected by the apex

Court. The apex Court has laid down as follows (at page 157) :

In construing the provisions of the Act, we have to bear in mind that it is a beneficent piece of social welfare legislation aimed at promoting and

securing the well-being of the employees and the Court will not adopt a narrow interpretation which will have the effect of defeating the very object

and purposes of the Act.

The apex Court has also laid down as follows (at page 158) :

As already indicated the true test to be applied is whether there is an establishment which is a "factory" engaged in any of the scheduled industries and whether 20 or more persons are employed in said establishment. If the answer is in the affirmative, the provisions of the Act are clearly attracted.

10. In Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others, , the short question which arose for

determination was whether the provisions of the Employees' State Insurance Act, 1948, are applicable in respect of employees working in the

Department of Publications and Press of the Osmania University. The apex Court had held that the Department in question is a factory within the

meaning of the said expression as defined in Section 2(12) of the Act. The ratio of these two decisions is applicable to the instant case before me.

11. In view of the above pronouncements of law, the following principles emerge in respect of ""shop"" to which the provisions of the Employees'

State Insurance Act, 1948, are applicable in view of G.O. Ms. No. 1088, referred to supra :

(i) The test to be applied is whether goods are sold or services are rendered for a price in the premises and whether 20 or more persons are

employed in the establishment; if the answer is in the affirmative, the provisions of the Employees' State Insurance Act, 1948, are clearly attracted.

(ii) Even if the sale or services rendered for price are stray or restricted, nevertheless, it would be a ""shop"" if 20 or more persons are employed in

the establishment, whether it be an independent establishment or part of larger organisation which may be carrying on additional activities falling

outside the Employees' State Insurance Act, 1948.

12. The further contention put forth by Mr. Giridhara Rao is that the Assistant Inspector of Labour, 32nd Circle, Madras, had written to the

Manager of the petitioner in Exhibit P-5 that there is no necessity to register the establishment under the Shops and Establishments Act and that

would show that it was not construed as a ""shop"" under the said Act and by stretching that view, the petitioner should not be considered as a

shop"" under the provisions of the Employees' State Insurance Act, 1948, also. I am unable to accept this contention for the following reason :

The word "shop" has not been defined under the Employees' State Insurance

Act, 1948. But the amplitude of the same has been decided by a Division Bench of this Court, which I have referred to supra. While so, the definition of the "shop" as given in the Tamil Nadu Shops and Establishments Act and in respect of which a Labour Inspector had given his view cannot be imported into the Employees' State Insurance Act, 1948.

13. Mr. G. Giridhara Rao further submitted that in Bombay and Calcutta and other cities where the petitioner is having similar establishments, the provisions of the Employees' State Insurance Act, 1948, are not made applicable and so in Madras also the provisions of the Employees' State Insurance Act, 1948, should not be made applicable. This ground is totally untenable and cannot be countenanced. If the provisions of the Act are applicable, simply because in some other cities they were not applied, the petitioner cannot say that in Madras also it should not be applied. Such a contention has got no legal foundation. On evidence it is established that selling activities are carried on in the premises and more than 20 persons are employed and so the provisions of the Act are applicable to it, and the declaration prayed for by the respondent herein who is the petitioner before the Court below is to be rejected.

14. In view of the above, this Civil Miscellaneous Appeal is allowed, setting aside the judgment of the Court below in the E.S.I.O.P. No. 40 of 1985, and consequently the petition filed by the respondent herein shall stand dismissed. No costs.