
(2012) 11 GAU CK 0014
In the Gauhati High Court
Case No : MFA No. 52 of 2002

Employees State Insurance Corporation	APPELLANT
Vs	
Rhino Industries (M/S)	RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(4), 2, 2(12), 2(15C), 2(g)

Citation : (2013) 1 GLT 756

Hon'ble Judges : Smtlanima Hazarika, J

Bench : Single Bench

Advocate : K.K. Nandi, for the Appellant; G.N. Sahewalla, Mr. S. Murarka, P. Bora, Md. Aslam and Mr. D. Senapati, for the Respondent

Final Decision : Allowed

Judgement

Smtlanima Hazarika, J.—Challenge in the instant appeal is made against the judgment dated 26.12.2001 passed by the learned Employees' State Insurance Court, Dibrugarh (in short, "Court", only) in Employees' State Insurance ("EST" for short) Case No. 5 of 2000 filed by the respondent herein u/s 75 of the Employees' State Insurance Act, 1948 (as amended) holding that the respondent establishment is a seasonal factory which do not come within the purview of the Employees' State Insurance Act, 1948 ("ESI Act" for short) thereby set aside the demand made by the corporation. The demand to pay an amount of Rs. 1,05,130/- (Rupees one lakh five thousand one hundred and thirty) only from the respondent establishment rests on the Preliminary Inspection Report dated 26.05.1998 made by the Inspector, Employees' State Insurance Corporation (hereinafter referred to as "the Corporation", only) wherein it was found that the respondent establishment was carrying on manufacturing process of tea with the aid of power from 30.10.1996 wherefor more than 10 (ten) employees were working with effect from 01.04.1997. The other vital documents such as salary/wage register, cash book, ledger etc. except the attendance register from 1.4.1997 to May, 1998 could not be inspected since

the documents were not made available for inspection. On the basis of the particulars so submitted, recommended to cover the provisions of the Act on the establishment demanding the amount as aforesaid vide communication dated 28.12.1999.

2. The communication dated 28.12.1999 along with the letter dated 13.06.2000 whereby a show cause notice was issued as to why the contribution mentioned therein as well as the letter dated 05.12.2000 sent by the Branch Manager of Vijaya Bank Ltd. enclosing therewith a copy of the Recovery Notice issued by the corporation for recovery of Rs. 1,05,130/- from the account of Vijaya Bank of the respondent establishment was put to challenge u/s 75 of the Act before the ESI Court at Dibrugarh being ESI Case No. 5 of 2000, contending inter alia that the establishment/firm is a seasonal factory exclusively engaged in manufacturing of tea and is covered u/s 1(4) of the Act wherein the provisions of the Act has been made applicable to all factories other than seasonal factories as provided u/s 2(12) of the Act. It has further been contended that the findings arrived at in the enquiry report and the claim made is beyond the scope of the Act, more so, when no opportunity was afforded to the establishment to controvert the findings arrived at by the Inspector of the Corporation which require interference in the interest of justice.

3. Heard Mr. K.K. Nandi, learned counsel appearing for the appellant corporation. Also heard Mr. S. Murarka, learned counsel appearing for the respondent.

4. The pleaded facts of the respondent establishment has been objected to by filing the written statement contending inter alia that the firm/establishment/factory is engaged in the processing, manufacturing and marketing of tea throughout the year as confirmed from the certificate bearing No. 060101038 dated 30.10.1996 issued by the Superintendent, Customs and Central Excise Department, Dibrugarh which certificate is in possession of the management of the factory and may be asked to produce the same in the court in order to adjudicate the case finally. The Corporation has further contended that on preliminary inspection made on 26.05.1998, it was found that the factory was carrying on manufacturing process with the aid of power since 30.10.1996 engaging more than ten (10) persons with effect from 01.04.1997 and accordingly coverage letter No. 43-3126-09 dated 19.06.1998 was issued requesting the employer to comply with the provisions of the Act. Thereafter, C-18 letter was issued to the employer on 31.03.1999 demanding contribution of Rs. 94,804/- for the period from 01.04.1997 to 31.03.1999, which, however, did not yield any result which caused issuance of a show cause notice on 04.11.1999 for payment of contribution and hence denied the allegations that no notice was issued prior to 21.12.1999. Finally the demand of Rs. 1,05,089/- including interest due to the tune of Rs. 10,285/- was made. It was further contended that during the inspection, the employer did not produce necessary records, viz., Salary/Wage Register, Cash Book, Ledger, etc. save and except the Attendance Register from 01.04.1997 to May 1998 and the employer firm having found

covered on the basis of available records the demands were made in accordance with law and thus prayed for dismissal of the case.

5. The learned court below while deciding the case has framed the following issue:

Whether the factory exclusively engaged to manufacture of tea and working throughout the year ceases to be seasonal factory?

6. In deciding the issue, the learned court referred the decision reported in 1977 Lab IC 770 which was subsequently upheld by the Apex Court reported in Regional Director, Employees' State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons and Another, wherein the Apex Court dealt with unamended provisions of Section 2(12) of the Act relating to seasonal factory vis-a-vis the expression manufacturing process as defined in Section 2(k) of the Factories Act, 1943. The learned trial court, therefore, has held that unamended provisions of the Act would not change the character of seasonal factory even after the amendment of the provisions, though the period of its operation exceeded seven months in a year and accordingly answered that the employer factory does not cease to be seasonal factory which would not come within the purview of the Act, thereby set aside the demands made by the corporation which is under challenge u/s 82 of the Act.

7. The ground of attack as contended by Mr. Nandi, learned counsel appearing for the corporation is that the employer factory is engaged in the processing, manufacturing and marketing of tea throughout the year which has been confirmed from the certificate issued by the Superintendent, Customs and Central Excise Department, Dibrugarh on 30.10.1996 and the factory is carrying on manufacturing process with the aid of power since 30.10.1996 wherein more than 10(ten) workers are working with effect from 01.04.1997 which amply demonstrate that the employer factory is not a seasonal factory as has been held by the learned court below, rather it would be covered under the provisions of the Act which require interference under appellate jurisdiction.

8. In support of his contentions, Mr. Nandi has referred the following decisions, viz.:-

(i) 1994 Lab IC 1593: M/s. Siva Trading Co. & Ors. Vs. Secretary to the Government of India, Ministry of Labour and Employment & Ors., and

(ii) Civil Appeal No. 8335 of 2004: Employees' State Insurance Corporation Vs. Bhakra Beas Management Board & Anr.

9. Supporting the judgment of the learned trial court, Mr. Murarka, learned counsel appearing for the respondent would contend that the employer factory is a seasonal factory which was excluded from the operation of the Act since the factory was declared to be a seasonal factory within the meaning of Section 2(12) prior to its amendment by Act 44 of 1966, will not cease to have the benefit of exclusion from the Act by reason of amendment of the definition of

seasonal factory u/s 2(12) of the Act, inasmuch as, the amendment does not restrict the original definition of seasonal factory and is not covered under the provisions of the Act, hence, the demand so made has been rightly set aside. The judgment under challenge, therefore, do not require to be interfered with in the interest of justice.

10. In support of his contention, Mr. Murarka has referred the following decisions:

(I) Regional Director, Employees' State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons and Another,

(II) 1978 Lab IC 1074: The Regional Director, Employees' State Insurance Corporation & Ors. Vs. M/s. Brooke Bond India Ltd. & Anr. and

(III) 1980 Lab IC 1078: Employees' State Insurance Corporation, Hyderabad Vs. M/s. Jaya Lakshmi Cotton and Oil Products (P) Ltd., Perecherla.

11. After hearing the learned counsel appearing for the parties and upon perusal of the materials available on record, this Court has formulated the following substantial questions of law:-

(i) Whether the establishment of the respondent is covered under the provisions of the Employees' State Insurance Act, 1948?

(ii) Whether the power as defined under the Act is used in the processing and manufacturing of tea in the factory of the respondent?

12. The learned counsel for both the parties were heard on these substantial questions of law.

13. The Act is made applicable to all factories including factories belonging to the Government other than seasonal factories. Proviso appended to Section 1(4) of the Act carves out an exception. Proviso to Sub-section (4) of Section (1) of the Act shall not apply to a factory or establishment belonging to or under control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the Act.

14. Section 2 of the Act defines the meaning of certain expressions for the purpose of the Act. Section 2(12) of the Act defines the meaning of the expression "factory" to mean any premises including the precincts thereof:-

(a) Whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on or,

(b) Whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

.....

15. Section 2(15-C) of the Act is inserted by amendment Act 29 of 1989 with effect from 20.10.1989. The sub-section defines the meaning of the expression "power" as under:

(15-C) - Power shall have the meaning assigned to it in the Factories Act, 1948.

16. Section 2(g) of the Factories Act, 1948 defines the meaning of the expression "power" as follows:

Section 2(g): power means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.

17. To cover up the respondent factory under the Act as factory, the following conditions are required to be satisfied:-

(i) Manufacturing process is being carried out in the establishment;

(ii) There is power being used to aid the manufacturing process being carried out;

(iii) Ten (10) or more persons were working in the establishment on any day in the preceding twelve months with the aid of power in the manufacturing process;
or

(iv) Twenty (20) or more persons are employed for wages in the establishment on any day of the preceding twelve (12) months, if power is not being used to aid the manufacturing process.

Therefore, first it needs to be proved as to whether there is manufacturing process carried on in the establishment of the respondent.

18. "Manufacturing process" is defined u/s 2(k) of the Factories Act which reads as follows: -

Section 2(k):-

manufacturing process" means any process for-

(i) making, altering, repairing, ornamenting, finishing packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance, or;

(iii) generating, transforming or transmitting power, or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage.

19. Admittedly the respondent factory dealt with the manufacturing process of tea. However, for holding an establishment to be a "factory" within the meaning of Section 2(12) of the Act, it must first be established that some work or process is carried on in any part of the establishment which amounts to "manufacturing process" as defined u/s 2(k) of the Factories Act, 1948. In case the number of persons employed in the establishment is less than twenty but more than ten, then it must further be established that the manufacturing process in the establishment is being carried on with the aid of power which should be direct and proximate.

20. From the pleaded facts of the contesting parties along with the definitions clause of Section 2(k) of the Factories Act and Section 2(12) of the Act, it would reveal that the links have been established that some process or work is carried On in the establishment of the respondent which qualifies as "manufacturing process" within the meaning of Section 2(k) of the Factories Act and the manufacturing process is carried on with the aid of power as defined u/s 2(g) of the Factories Act which has been elaborately dealt with in the earlier paragraphs. Therefore, this Court has no hesitation to hold that the establishment of the respondent would not come under the heading of seasonal factory as has been held by the learned trial court.

21. It would not, however, be inappropriate to refer to the aim and objects of the Act which is a beneficial legislation. The main purpose of the enactment as the preamble suggests, is to provide for certain benefits to employees of a factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Act is a social security legislation and in order to achieve the purpose, it must receive a liberal construction so as to promote its objects.

22. The decision cited by the learned trial court while setting aside the claim made by the Corporation rests on Regional Director, Employees" State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons and Another, whereby the Apex Court upheld the decision of the Karnataka High Court holding that the factories of the respondents were excluded from the operation of the Act since they were declared to be seasonal factories within the meaning of Section 1(4) read with Section 2(12) of the Act; whereas in the present case the factory of the respondent was/is not declared as a seasonal factory as claimed by any authority competent to declare the factory run by the respondent is a seasonal factory. Therefore the decision cited and relied on by the learned trial court reported in 1977 LabIC 770 and 1992 LabIC 68 (supra) went on a wrong footing, Similarly the decision cited by the learned counsel representing the respondent and reported in, 1978 LabIC 1074 (supra) and 1980 LabIC 1078 (supra) do not come in aid of the respondent factory. Moreover, the Court in 1980 LabIC 1078 in the concluding paragraph of the judgment while holding the factories are seasonal factory has observed as follows:-

Paragraph 13: Before parting with the case, it would be pertinent to point out

that the most important criterion for evaluating the efficacy and merit of a social insurance legislation is its universality. But by Section 1(4) of the Act the applicability is limited to perennial factories and seasonal factories are exempted; thereby a number of employees in the country are denied the benefits conferred by the Act. The employees in seasonal factories need as much care and protection against risks as those in factories now within the purview of the Act. Time has now come to widen the scope of the Act and extend its operation to seasonal factories also. In respect of seasonal factories, depending upon the duration for which they function in a year, the rate of contribution may proportionately be fixed under the Act.

23. In view of the finding arrived at by the court on the law point alongwith the pleaded facts of the case including the evidence on record, this court has no option but to hold that the factory of the respondent would never be a seasonal factory as claimed, rather the factory of the respondent would come under the provisions of the Act and would cover under the Act. The learned ESI Court committed an error in holding that the respondent company is a seasonal factory without examining or scrutinising the relevant materials on record.

24. That being the position, I have no hesitation to set aside the impugned judgment dated 26.12.2001 rendered by the learned ESI Court, Dibrugarh in ESI Case No. 5 of 2000 by declaring that the respondent establishment is covered under the ESI Act.

25. In the result, the appeal is allowed, The parties are left to bear their own costs. Send down the lower court records.