
(1995) 11 AP CK 0055
In the Andhra Pradesh High Court
Case No : L.P.A. No. 296 of 1988

Employees" State Insurance Corporation	APPELLANT
Vs	
Scientific Fertilizer Co. (Pvt.) Ltd.	RESPONDENT

Date of Decision : 02-11-1995

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1966 — Section 2(10), 2(9), 22

Citation : (1999) 3 LLJ 169

Hon'ble Judges : S.V. Maruthi, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : V. Venkateswar Rao, for the Appellant; A. Krishnamurthy, for the Respondent

Final Decision : Allowed

Judgement

N.Y. Hanumanthappa, J.—This appeal is filed by the Employees" State Insurance Corporation, Hyderabad aggrieved by the order of the learned single Judge of this Court passed in A.A.O. No. 130/1984 dated September 25, 1987, wherein the learned single Judge of this Court considered the scope of Section 2 Subsection (9), Section 2 Sub-section (10) and Section 2 Sub-section (21) of Shops and Establishments Act, 1966 and found that as "shop" is nowhere defined in the Employees State Insurance Act, 1948, the definition as made out in the Shops and Establishments Act, 1966 shall be looked into and he also considered that the employees who are on deputation are not liable to be counted for the purpose of applying the provisions of the Act and to make demand for E.S.I, contribution.

2. A few facts which are necessary to decide this appeal are that the Respondent herein is a company having its concerns at two places, at one place manufacturing insecticides and at other place manufacturing pesticides and maintaining two separate muster rolls of its employees. The Corporation authorities issued a demand notice calling upon the company to pay contribution on the ground that in its establishment situated at Mangalagiri Road, Guntur it

has twenty employees, failing which, action as required under Sections 85 and 45B of the Employees' State Insurance Act, 1948 be invoked. Aggrieved by the said demand notice the company filed an appeal in E.S.I. Case No. 6/1983 on the file of the Employees' State Insurance Court, Hyderabad. It was contended by the company in that case that the Act has no application to the company as it has workmen less than twenty, namely, 19 ; among 19 four have been deputed to its sister concern situated adjacent to Scientific Insecticide Company which factory is covered by the E.S.I. Act. Secondly that there are three employees drawing salary of more than Rs. 1,000/- per month; as such, they cannot be brought within the definition of "employee" so as to make applicable the provisions of the Act. The E.S.I. Court after going through the pleadings raised the following points for consideration :

- (1) Whether the petitioner/establishment is not coverable by the E.S.I. Act?
- (2) Whether the demand of the E.S.I. Corporation for contribution is valid and tenable?

Evidence was let in by both sides. On Company's side one Mr. S. Krishnan was examined and on Corporation side one Mr. G. Venkateswar Rao was examined. Exs. P-1 to P-4 were marked on Company's side. Ex. P-1 is letter dated March 23, 1977 addressed by the Corporation to the Company. Ex-2 is the attendance register for the period from January 1, 1978 to December 31, 1982. Ex.P-1 (a) is attendance register from January 1, 1980, to December 31, 1980. Ex.P-3 dated April 29, 1992 is again a letter of Corporation addressed to the Company informing the company to implement the Act. Ex.P-4 dated October 16, 1992, is the letter addressed by the Corporation to the Company. On Corporation's side four documents were marked as Exs.R-1 to R-4. Ex.R-1 dated February 2, 1979, is the inspection report pertaining to the company. Ex.R-2 dated March 12, 1980, is again another inspection report pertaining to the same company. Ex.R-3 is the statement showing employees of the company covered under E.S.I. Act for the month of August, 1978. Ex.R-4 is the statement showing the employees of the company covered and decovered under the E.S.I. Act for the month of October, 1978.

(i) The Court after considering the entire evidence observed by giving reasons at paras 8 and 9 of its order that four employees deputed to its sister concern are liable to be calculated for the purpose of collecting contribution; so also those employees who are drawing salary of more than thousand rupees. Thus observing, the Court held that there was no infirmity in the demand made by the Corporation. The Court, in the result, dismissed the petition by its order dated November 15, 1983.

(ii) Aggrieved by the said order the Company preferred an appeal before the learned Single judge before this Court in the appeal as referred already.

(iii) The learned single judge no doubt again considered the entire evidence but held that the Act has no application to the company for two reasons :- Firstly the

activities of the company cannot be brought within the definition of the "shop" as defined in the Shops and Establishments Act. Secondly, for the purpose of calculating the strength of employees for payment of the E.S.I, contribution, the employees who were actually working in the company shall be calculated and not those who have gone on deputation. Having found that four employees of the company have gone on deputation to its sister concern, thus found the strength as less than "20" and placing reliance on a Full Bench decision of this Court in Lipton (India) Ltd. and Another Vs. The Secretary to Govt, Employment and Social Welfare (Labour- I), Andhra Pradesh, Hyderabad and Others, . For the purpose of the possibility of extending the meaning of "shop" to the activities of the company, found that the reasoning adopted by the E.S.I. Court was not correct and allowed the appeal and declared the demand notice of the Corporation as incorrect.

3. Aggrieved by the said order this Letters Patent Appeal has been filed by the E.S.I. Corporation. Sri V. Venkateswar Rao, the learned Counsel for the Corporation argued that the reasoning of the learned single Judge is incorrect for the following reasons :

(i) The learned single Judge committed mistake in extending the meaning given to the "shop" in the Shops and Establishments Act, 1966 when the Act itself has no application to the E.S.I. Act, 1948.

(ii) Those who had gone on deputation should have been counted for the purpose of making a demand for contribution.

(iii) The learned single Judge should not have deleted the three employees who were getting salary at rupees thousand per month.

(iv) Reliance placed on Brook Bonds" case (cited supra), on facts, had no application.

(v) When the word "shop" is not defined in the E.S.I. Act, the surrounding circumstances and activities of the concern shall have to be taken into consideration and the "shop" how worded in the dictionary or meant in common parlance shall be made applicable. If this approach had been applied by the learned single Judge, the company"s concern comes within the definition of a "shop" or an "establishment" or otherwise defined by G.O.Ms. No. 187, Labour Employment and Technical Education Department dated March 2, 1978.

(vi) To support his contention that Brook Bond"s case (cited supra) has no application to the facts of the case and the word "shop" has to be understood as it is understood in common parlance, he placed reliance on some Division Bench decisions of this Court and also recent decision of the Supreme Court in AIR 1994 1154 (SC) wherein the Supreme Court laid down, in matters of this type, the guidelines to reach a conclusion that whether a concern is "shop" or otherwise.

Thus contending, he sought that the appeal be allowed and the order of the

E.S.I. Court be cancelled.

4. As an answer to these contentions, Sri Amancharla Krishnamurthy, the learned counsel for the company took us through the entire order of the learned single Judge and some of the provisions both in the Shops and Establishments Act, 1966 and the Employees' State Insurance Act, 1948. According to him, in the E.S.I. Act, 1948 the word "shop" is not defined. Since it is not defined its meaning has to be borrowed from the Shops and Establishments Act where the "shop" has been clearly defined. So also the word "commercial establishment" etc. According to him, the relevant provisions of the Shops and Establishments Act, 1966 to be understood are Section 2(9), Section 2 (10) and Section 2 (21) of the said Act. He submitted that the company with which we are concerned, is not a "shop" as the activity of service to consumer is absent. It receives orders in the company and directs its sister company to dispose of. The employees working are less than 19. Among them, four are on deputation and three are getting salary of Rs. 1,000/-. If the activities of the company and the nature of the work the workmen are carrying on or discharging are strictly considered, they do not come under the definition of the "employee" as defined under Sec.2 (8) of the Shops and Establishments Act, 1966 which is as follows :

"Section 2 (8). "Employee" means the person wholly or principally employed in, and in connection with any establishment and includes an apprentice and any clerical or other staff of a factory or industrial establishment who fall outside the scope of the Factories Act, 1948 (Central Act 63 of 1948), but does not include the husband, wife, son, daughter, father, mother, brother or sister of an employer or his partner, who is living with depending upon such employer or partner and is not in receipt of any wages."

The E.S.I. Court is not justified in making a demand of contribution from the company. As the order of the E.S.I. Court was perverse, the Learned Single Judge is justified in reversing it. The view taken by the learned single Judge is supported by a Full Bench decision of this Court in Brook Bond's case. Thus arguing, he maintained that there is no illegality in the order of the learned single Judge so that this Court can interfere under Clause 15 of the Letters Patent Act.

5. In order to know how far the view taken by the learned single Judge is correct, we again went through some of the provisions of both the Shops and Establishments Act, 1966 and the Employees' State Insurance Act, 1948 particularly Section 2 (8), Section 2(9), and Section 2(9), of the Shops & Establishments Act and Section 2 (9) of the E.S.I. Act, 1948. We went through facts involved and the reasonings and the findings reached by this Court in its number of decisions referred to by both the sides and the applicability of the provisions of the Shops & Establishments Act to the E.S.I. Act, 1948. How far the Shops and Establishments Act be made applicable to the facts involved and so also the nature of the transaction the company is carrying on?

6. From the facts it is clear that company has got two concerns. One in insecticides and the other in pesticides, maintaining two separate muster rolls. Nowhere in the E.S.I. Act, 1948 it is said that those who have gone on deputation be counted for the purpose of liability to pay contribution. The lien of the four employees who have gone on deputation and against whom a demand to pay contribution is made, is still existing in the concern. The E.S.I. Court rightly held that those who have gone on deputation are to be calculated to fix the liability to pay contribution and so also those employees who were getting salary of Rs. 1,000/- per month. But the learned single Judge was not right in excluding those employees who were getting salary of Rs. 1,000/-per month and four persons who have gone on deputation and reaching the conclusion that the strength of the employees of the concern in question was not liable to answer for the demand of the contribution. Regarding activities of the concern, a shop or otherwise, the learned single Judge placed reliance on the Brook Bond's case (supra). But the facts involved in the said case are altogether different when compared to the facts involved in the present case. Further, this Court in E.S.I. Corporation v. New Empire Tailors 1995 (2) APLJ 123. held that "shop" or "establishment" as defined under the Shops and Establishments Act cannot be made applicable to the E.S.I. Act. On the other hand, whether the activities of a concern be brought within the definition of the notification dated March 2, 1978 or otherwise has to be understood by taking into consideration its activities and the word "shop" as meant in the Oxford Dictionary so also as understood in common parlance.

7. The Supreme Court referred to the meaning of the word "shop" as mentioned in the Oxford Dictionary and explained in detail about the word "shop" and placing reliance on its earlier decisions in International Ore and Fertilizers (India) Pvt. Ltd. v. Employees' State Insurance Corporation (supra) and in the case of M/s. International Ore and Fertilizers (India) Pvt. Ltd. Vs. Employees' State Insurance Corporation, the Supreme Court held as follows at para 4 in the case cited supra for the proposition that a statute has to be read in harmony :

"The word "shop" is not defined in the Act or in the notification issued by the State Government. According to the Shorter Oxford English Dictionary the expression "shop" means "a house or building where goods are made or prepared for sale and sold". It also means a "place of business" or "place where one's ordinary occupation is carried on". In ordinary parlance a "shop" is a place where the activities connected with the buying and selling of goods are carried on. The evidence produced in the case shows that the petitioner is carrying on its business at its business premises in Secunderabad. At that place the petitioner carries on the commercial activity facilitating the emergence of contracts of sale of goods between its foreign principles and the State Trading Corporation/ Minerals and Metals Trading Corporation of India. It arranges for the unloading of the goods under its supervision and for the survey of the goods despatched by its foreign principals at the ports on behalf of its foreign principals and on the goods being delivered to the Central Government it collects the price payable by

the Government and remits it to its foreign principals. All these activities are directed and controlled from its premises at Secunderabad. It is thus clear that the activities carried on by the petitioner constitute trading activities although the goods imported from abroad are not actually brought to the said premises and delivered to the purchaser there. In our opinion it is not actually necessary that the delivery of the goods to the purchaser should take place at the premises in which the business of buying or selling is carried on to constitute the said premises into a "shop". The delivery of the goods sold to the purchaser is only one aspect of trading activities. Negotiations of the terms of sale, carrying on of the survey of the goods imported, arranging for the delivery of the goods sold, collection of the price of the goods sold etc. are all trading activities. The premises where business is carried on by the petitioner is undoubtedly a shop as the activities that are carried on there relate only to the sale of goods which are imported into India. The petitioner acts as the agent of its foreign principals who are the sellers. The petitioner directs and controls all the activities from the premises in question. If orders are received at a place which ultimately fructify into sales and the resulting trading activity is directed from there that place comes to be known as "shop". In our view the Employees' Insurance Court placed a very narrow interpretation on the expression "shop" while upholding the contention of the petitioner by confining "shop" to a place where goods are actually stored and delivered pursuant to a sale. We agree with the decision of the High Court that while construing a welfare legislation like the Act and the notification issued thereunder a liberal construction should be placed on their provisions so that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified."

In view of the pronouncement of the Supreme Court taking into consideration the activities the company is carrying on, we do not hesitate to hold that the said concern is a "shop", as defined in the G. O. dated March 2, 1978. Further, on the point whether the employees those who have gone on deputation are to be calculated for the purpose of fixing liability to pay contribution or not, a Division Bench of this Court, while dealing with a case where some of the employees had gone on leave etc., held that they shall be deemed to be computed as employee in the case of *Paramount Press v. E.S.I. Corporation* 1993 (1) An. W.R. 522. Both sides placed reliance on a few more decisions but their consideration is not so necessary as the purpose for which reliance is placed has already been served by the decision in the case cited (supra) and any reliance will amount to mere multiplication of decision.

8. In view of the above discussion, it is answered that the concern in question is liable for payment of contribution and the demand made by the Corporation is a valid one and the E.S.I. Court rightly upheld it and the approach of the learned single Judge to reverse it is incorrect. The same deserves to be interfered with. Hence, this appeal is allowed. The order of the learned single Judge dated September 9, 1987 in A.A.O. 130/1984 is set aside and the judgment and order passed by the E.S.I. Court, Hyderabad dated November 15, 1988 in E.I.C.

6/1983 are confirmed. No costs.

While parting with the matter, we would like to observe that the demand of the Corporation, if made by exercising the powers conferred on it under the E.S.I. Act which is a welfare legislation, meant for the welfare of the employees, while considering the request of the beneficiaries, it is the bounden duty of the Court to consider how far they are entitled and not to reject the claim purely on technicalities.