
(1964) 05 KAR CK 0001
In the Karnataka High Court
Case No : M.F.A. No. 138 of 1962

Employees" State Insurance Corporation	APPELLANT
Vs	
Siddique (M.A.)	RESPONDENT

Date of Decision : 25-05-1964

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (12), 3, 40 (1), 75 (2), 82 (2)

Citation : (1965) 1 LLJ 373 : (1964) 1 MysLJ 526

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Ayyar, J

Bench : Division Bench

Judgement

Somnath Ayyar, J.—This is an appeal under S. 82(2) of the Employees" State Insurance Act, 1948. The material facts are these. The respondent before us is a private limited company incorporated under the Companies Act carrying on a tailoring business. The appellant which is the Employees" State Insurance Corporation established under the provisions of S. 3 of the Employees" State Insurance Act, 1948, called upon the respondent to pay contribution under S. 40(1) of the Act to the fund to be created under its provisions. The respondent was called upon to pay a sum of Rs. 300 for the period between 31 July 1960 and 28 January 1961 on what is described as an ad hoc basis. The only ground on which this demand was resisted by the respondent was that the respondent was not a factory within the meaning of S. 2(12) of the Act. Thereupon the appellant-Corporation made an application under S. 75(2) of the Act to the Employees" State Insurance Court for a direction that the respondent should make the contribution. The Employees" State Insurance Court dismissed that application and it is from that order that the Corporation appeals.

2. The view taken by the Employees" State Insurance Court was that the respondent was right in its contention that it was not a factory as defined by S. 2(12) of the Act which reads :

""factory" means any premises including the precincts thereof whereon twenty or more persons are working or were working 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 but does not include a mine subject to the operation of the Indian Mines Act, 1923, or a railway running shed."

3. Since one of the essential requirements of this definition is that twenty or more persons should have been working at the relevant point of time on the premises of the respondent, the Insurance Court addressed itself to the question whether it is established that that complement of persons was working on the respondent's premises and it came to the conclusion that the number of persons so working was less than twenty. So it was that it refused the direction sought by the Corporation.

4. The evidence produced before the Insurance Court consisted of that given by two witnesses both of whom were examined by the respondent. R.W. 1 is an Insurance Inspector working in the Corporation and his evidence was that he inspected the respondent's premises on 16 May 1960 when he found 23 persons working therein, including 9 unpaid apprentices. This is what he said :

"I found on 16 May 1960 that 23 persons were working who include 9 unpaid apprentices for whom no attendance had been marked."

5. The evidence given by R.W. 1 was fully corroborated by the evidence given by R.W. 2 who was one of the managing directors of the respondent-company. This is what he stated :

"On 16 May 1960, the Insurance Inspector, Sri Chellappa, R.W. 1, appeared in the factory and examined the books of accounts, etc. There were 23 persons found working in the factory of which 14 were the paid workmen whose names are given in R. 1(a) and the other 9 were unpaid apprentices whose names I furnished to him as per Ex. A. 1(a). The company's accounts do not disclose any payments made to the apprentices because they were only trainees. They were deputed by some organization, so that they may learn work."

6. The argument advanced before the Insurance Court was that the nine unpaid apprentices could not be taken into consideration for the determination of the number of persons working on the respondent's premises for the purpose of S. 2(12) of the Act. The contention advanced was that the persons referred to in S. 2(12) are persons who are employed for wages and that since the nine apprentices did not work for wages but worked only for the acquisition of necessary skill and equipment, they could not be regarded as persons working on the premises for the purpose of S. 2(12). This submission appealed to the Insurance Court which reached the conclusion that the number of persons working on the respondent's premises was only 14 and not 23 since out of the 23 persons working on the premises the 9 unpaid apprentices should be excluded from consideration.

7. It is clear from the definition contained in S. 2(12) of the Act that it does not

speak of persons working for wages. It makes every premises on which twenty or more persons are working, a factory, provided the other conditions referred to in that part of the section exist. It is not disputed that those other requirements of the section exist. But what is seriously disputed by Sri Srikantiah appearing on behalf of the respondent is that the unpaid apprentices are persons working on the premises.

8. On a proper interpretation of S. 2(12), it appears to me that we should take the view that so long as the number of persons working on the premises is twenty or more, the premises is a factory falling within the definition, it being immaterial whether those persons so working are paid wages or not. That in my opinion, is the plain interpretation flowing from the language of S. 2(12) which does not admit of any other construction.

9. In that view of the matter since both the witnesses who gave evidence before the Insurance Court stated in clear language that all the 23 persons who were found on the premises on 16 May 1963 were working on the premises, it was not possible, in my view, for the Insurance Court to take the view that the respondent was not a factory within the meaning of the Act. In my opinion it was.

10. This appeal must therefore succeed. It is accordingly allowed. In supersession of the order of the Insurance Court which is hereby set aside, there will be a direction in favour of the Corporation as prayed for by it.

11. In the circumstances, there will be no direction as to costs.

Kalagate, J.

12. I agree.