

(2003) 06 KAR CK 0049
In the Karnataka High Court
Case No : MFA No. 2236 of 2001

Employees State Insurance Corporation	APPELLANT
Vs	
Sree Chandrodaya Mills Limited	RESPONDENT

Date of Decision : 13-06-2003

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (22), 75

Citation : (2003) ILR (Kar) 2784 : (2003) 5 KarLJ 127 : (2003) 3 KCCR 174
SN : (2003) 3 LLJ 1039

Hon'ble Judges : S.B. Majage, J

Bench : Single Bench

Advocate : M. Papanna, for the Appellant; Ramachandra, for M.R.C. Ravi, for the Respondent

Final Decision : Allowed

Judgement

Majage, J.—The appellant Corporation has challenged the order dated 14/03/2001 passed in E S I No 13/2000 by the Employees Insurance Court at Hubli, by which, order dated 14/02/1999 at Ex R-16 passed by the Corporation has been set aside, holding that the respondent herein is not liable to pay the contribution claimed in the said order.

2. Heard arguments. It is submitted for the Corporation that the E I Court has committed an error in relying on the decision in the case of Braithwaite and Co. (India) Ltd. Vs. The Employees" State Insurance Corporation, since according to it, the said decision does not hold the field now and, in view of the definition of the word "wages" as it stands now and as per the recent decisions of the Supreme Court on the point, even the "exgratia" payment made comes within the definition of the word "wages" as defined u/s 2(22) of Employees" State Insurance Act, 1948 (hereinafter referred to as the "Act"). On the other hand, learned Counsel for the respondent supported the impugned order submitting that no view other than the view taken by the EI Court based on the decision of the Supreme Court referred to above is possible. Perused the records carefully.

3. The facts, which are not in dispute, are:

The respondent is an Industry engaged in the manufacture of yarn and covered under the Act and, admittedly, made "exgratia" payment to its employees for the period from 03/06/1993 to 29/07/1993 in pursuance of the settlement arrived at between it and its employees when the matter regarding non-payment of wages was agitated under the Industrial Disputes Act. Admittedly, as per the case of the respondent, the work of the Industry had been suspended and as such, there was no production during the relevant period and consequently, wages had not been paid to its employees during that period. It was for that reason, admittedly, the employees had taken the matter under the Industrial Disputes Act. Thereafter, there was "exgratia" payment to the employees by the respondent. Based on the said payment, the Corporation had issued notice and ultimately passed the order dated 14/12/1999, which was challenged by the respondent u/s 75 of the Act before the EI Court at Hubli, which upheld the stand of the respondent that "exgratia" payment made to the employees does not come within the definition of the word "wages" and consequently, the respondent was not liable to pay any contribution on such payments made and accordingly, set aside the order passed by the Corporation. Hence, the Corporation is before this Court, raising the following substantial question of law:

"whether "exgratia" payment, made to employees under settlement (arrived at in connection with wages not paid), comes within the definition of the word "wages" defined u/s 2(22) of the Act ?"

4. The word "wages" has been defined u/s 2(22) of the Act as follows:

""wages" means all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and other additional remuneration, if any paid at intervals not exceeding two months, but does not include-

- (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;
- (b) any travelling allowance or the value of any travelling concession;
- (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment, or
- (d) any gratuity payable on discharge."

5. Admittedly, the "exgratia" payment made to its employees by the respondent in the present case under the settlement does not come in any of the said Clauses (a) to (d). In the case of *Indian Drugs and Pharmaceuticals Ltd. and Others Vs. Employees' State Insurance Corporation and Others*, the Supreme Court has held that except what has been excluded specifically by Clauses (a) to

(d) u/s 2(22) of the Act, other remuneration received by the employees comes within the meaning of the word "wages".

6. Further, the "exgratia" payment made to the employees by the respondent - Industry was in pursuance of a settlement arrived at between respondent and its employees, when dispute was raised under the Industrial Disputes Act by the employees regarding wages, not paid to them by the respondent, on the grounds that the work had been suspended during the period in question and there was no production and, consequently, employees were not entitled to have any wages. Thus, the "exgratia" payment made to the employees was the payment made to the employees in lieu of wages, and not in addition to wages, which they had claimed under the Industrial Disputes Act.

7. In the case of SHREE CHANGDEO SUGAR MILLS AND ANR. v. UNION OF INDIA AND ANR (2001) 2 SCC 519, the Supreme Court has also held that when the amount is received by the employees under settlement towards wages, it comes within the meaning of the word "wages".

8. In the above view of the matter and the decisions of the Supreme Court, there can be no hesitation to hold that the payment made to the employees by the respondent - Industry, styling it as "exgratia payment" cannot take away such payment from the category of the word "wages" defined u/s 2(22) of the Act. As rightly submitted for the Corporation, the decision in the case of BRAITHWAITE AND COMPANY (supra), relied on for the Industry and referred to by the E I Court, does not hold the field now, as has been made clear by the Supreme Court in the case of Harihar Polyfibres Vs. Regional Director, ESI Corporation, . The decision in the case of HARIHAR POLYFIBRES (supra), has not been dissented so far by the Supreme Court in any of its subsequent decisions. On the other hand, it is being followed consistently by the Supreme Court. So, reliance placed by the E I Court on the decision in the case of BRAITHWAITE AND COMPANY (supra) was not correct. Consequently, the substantial question of law raised is answered in favour of the Corporation.

9. At this stage, it may also be noted that the E I Court has not recorded any finding on the issue relating to payment of contribution on the amount paid to the Contractor namely, Sri D.J. N Rao, for executing the work on the premises of the respondent's establishment, though that was involved and raised before it. It appears that the E I Court had lost sight of the said point after it recorded its finding on the "exgratia" payments made to the employees and as such, the E I Court has to record its finding on it.

10. So, though the question of law has been answered in favour of the Corporation and the order passed by the E I Court requires to be set aside, still, the matter requires to be remitted to the EI Court to record its finding on the issue relating to payment of contribution on the amount paid to the Contractor - Sri D.J.N. Rao referred to above.

In the result, the appeal is allowed and set - aside the impugned order dated

14/03/2001, holding that exgratia" payment made to the" employees by the respondent comes within the meaning of the word "wages" defined u/s 2(22) of the Act, but remitted the matter to the E I Court to record its finding on the issue relating to payment of contribution on the amount paid to the Contractor, referred to in the body of the order, and pass an order afresh bearing in mind the observations made.

Send back the L.C R. forthwith to the E.I. Court at Hubli to decide the matter early.