

(1983) 02 AP CK 0006

In the Andhra Pradesh High Court

Case No : A.A.O. No. 480 and 635 of 1979

Employees" State Insurance Corporation, Hyderabad

APPELLANT

Vs

Southern Eastern Roadways

RESPONDENT

Date of Decision : 07-02-1983

Acts Referred:

Employees State Insurance Act, 1948 — Section 1, 1(5), 2, 2(13), 2(17)

Citation : (1983) 2 LLJ 396

Hon'ble Judges : Ramanujulu Naidu, J;K. Ramachandra Rao, J

Bench : Division Bench

Judgement

Rama Rao, J.—This appeal under S. 82 of the Employees" State Insurance Act, 1948 is at the instance of the Employees" State Insurance Corporation, Hyderabad, the 1st respondent in E.I. Case No. 129 of 1978. The petitioner in E.I. Case No. 129 of 1978. The petitioner in E.I. Case No. 129 of 1978 filed petition under S. 75 of the Employees" State Insurance Act for a declaration that the provisions of the Act and the notification No. 102 dated 26th March, 1975 issued thereunder are not applicable to the petitioner and the orders of the respondent therein dated 1st November, 1976 and 26th February, 1976 are illegal and without jurisdiction. The averments in support of the petition are that the petitioner is a transport company engaged in the business of transporting goods, the head office of which is at Calcutta. The Company has several branches all over India, one among whom is the petitioner. All the branches are controlled administratively and financially by the head office at Calcutta and as such each of the branches is a separate and independent unit having no connection whatsoever with the other branches and at no time 20 or more persons are employed for wages by the petitioner in its branch office. The respondent corporation issued notice to the petitioner to the effect that the petitioner is liable for coverage. The petitioner cannot be treated as a Motor Transport establishment as it is only a Motor Transport undertaking registered as such under the Motor Transport Workers Act. Further the petitioner is not liable for coverage unless it is further proved that 20 or more persons are employed for

wages on any one of the preceding 12 months. At no time 20 or more persons have been employed by the petitioner and hence the action on the part of the respondent Corporation in seeking to cover the petitioner is illegal.

2. The respondent Corporation filed a written statement that the petitioner is Road Motor Transport establishment, the head office of which is at Calcutta. There are 5 zonal offices situated at Hyderabad, Bangalore, New Delhi and Assam in addition to number of branches situated all over the country. The petitioner is one such zonal office situated at Hyderabad having four branches within the limits of twin cities of Hyderabad and Secunderabad. Eight persons are employed in the zonal office at Hyderabad whereas six persons are employed in Feelkhana branch, two persons in Secunderabad branch, 13 persons in Miralam tank branch and one person in Sanathnagar branch for wages. The petitioner establishment being a zonal office, is the controlling office for all the 85 branches situated in the states of Andhra Pradesh, Orissa part of Maharashtra and Karnataka. The employment strength of the petitioner of the branches situated within the twin cities of Hyderabad and Secunderabad is 30 and as such the requirement of sub-clause (iv) of clause III of G.O. Ms. No. 788. Health dated 25th September, 1974 read with G.O. Ms. No. 297 Health dated 25th March, 1975 and S. 1(5) of the Employees' State Insurance Act are satisfied. The petitioner cannot avoid coverage under the provisions of the Act as the employment strength in all the branches has to be taken into account. The petitioner did not comply with the provisions of the Employees' State Insurance Act and therefore notice was issued intimating that the contribution payable will have to be assessed on ad hoc basis if the petitioner fails to pay contribution. The petitioner paid the contribution and case forward with this petition questioning the coverage. The petitioner establishment is a Road Motor Transport establishment having regard to the nature of the business carried on by the petitioner. As all the necessary ingredients are present to cover the petitioner establishment, the coverage cannot be questioned.

3. On these pleadings the following issues were framed :

1. Whether the petitioner Roadways is liable to be covered by the provisions of the Employee's State Insurance Act ?

2. To what relief ?

4. The Employees' Insurance Court held that the petitioner is a motor transport establishment and hence by virtue of notification issued under S. 1(5) of the Act the provisions of the act are extended to cover the petitioner also. It is further held that the persons employed in the branches in the twin cities of Hyderabad and Secunderabad exceed 20 and they are all appointed by the office at Hyderabad and held that so long as the head office itself is not covered, it cannot be said that the persons employed in the branches have to be considered as employees of the petitioner as direct or from the immediate employer. It is finally held at each of the branch office shall be treated as separate and independent

unit and if that is done employment strength of the petitioner alone has to be taken and in view of the fact that 8 persons are only employed in the petitioner-establishment the provisions of the Act cannot be made applicable to the petitioner-establishment. The Court below found that the provisions of Employees' State Insurance Act are not applicable to the petitioner-establishment and it is not therefore liable to pay any contribution.

5. For appreciation of the rival contentions, it is necessary to get at the relevant provisions of the Act touching the issue. Section 1 of the Act concerning with the commencement and applicability of the provisions of the Act empowers the appropriate Government to extend the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise after complying with the Procedure prescribed in S. 1(5) of the Act. Section 2 of the Act defines appropriate Government as the Central Government in respect of establishments under the control of the Central Government and in all other cases the State Government. Section 2(9) of the Act regarding the inclusive definition of the employee is as follows :

(i)

(ii)

(iii)

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of products of, the factory or establishment; but does not include."

It may be mentioned that the inclusive portion in the definition has been substituted by Act XLIV of 1966 for the words "But does not include". Section 2(17) is concerned with the definition of the principal employer and it is as follows :

"(17) "principal employer" means -

(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948 (LXIII of 1948), the person so named;

(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the department;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment";

Section 2(13) provides for the definition of "immediate employer", which is as follows :

"(13) "Immediate employer", in relation to employees employed by or through him means a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the a principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by him the services of an employee who has entered into a contract of service with him are temporary lent or let on hire to the principal employer."

Section 38 lays down that all employees in factories establishments to which this Act applies shall be insured in the manner provided in this Act. G.O. Ms. No. 187, Labour Employment and Technical Education Department (Labour-II) dated 6th March, 1978 issued by the State of Andhra Pradesh under the powers vested by S. 1(5) of the Employees" State Insurance Act extended all the provisions of the Act to the class of establishments mentioned in the schedule. Item 3 of schedule pertains to road transport establishments where 20 or more persons are employed.

6. The learned counsel for the appellant contended that the branches situated in the twin cities are the branches of M/s. South Eastern Roadways whose head office is situated at Calcutta and the number of employees employed in all the branches have to be aggregated for the purpose of coverage under the Employees" State Insurance Act in view of the finding given by the Court below that the business of the head office as well as branches is a road transport organisation, the Employees" State Insurance Act is clearly applicable. The learned Counsel for the respondent contended that if the head office is not covered the employees of the branches cannot be totaled in and covered and the branches have to be considered in isolation and the clubbing of all the branches for the purpose of computing the number of employees does not arise.

7. The learned Counsel for the appellant invited our attention to the decision of the Supreme Court in Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation, , wherein the range and reach of the definition of "employee" is considered. The appellants in this case viz., Royal Talkies are owners of the theatres in twin-cities of Hyderabad and Secunderabad where films exhibited and in the said premises there is a canteen and cycle stand. The canteen and cycle stand are lease out to contractors under instruments of lease and the contracts employ their own servants to run the canteen and the cycle stand. Regarding the persons so employed by the contractors, the owners of the theatres were treated as principal employers and notices of demand were issued to them calling upon them to pay contribution under the employees" State Insurance Act. Thereupon the owners of theatres filed application under S. 75 of the Employees" State Insurance Act for declaration that the provisions of the Act are not applicable to the theatres and they are not liable to any contribution in respect of the persons employed in the canteen and cycle stand attached to the

theatres. The Insurance court held that they are employees. The High Court confirmed this judgment and on appeal the Supreme Court confirming the decision of the High Court held as follows at Page 394 :

"The expression "in connection with the work of an establishment" ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of the establishment. Some nexus must exist between the establishment and the work of the employee but it may be a loose connection. "In connection with the work of an establishment only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of establishment."

It is further held as follows at page 395 :

"The primary test in the substantive clause being thus wide, the employees of the canteen and the cycle stand may be correctly described as employed in connection with the work of the establishment. A narrower construction may be possible but a larger ambit is clearly imported by a purpose oriented interpretation. The whole goal of the statute is to make principal employer primarily liable for the insurance of kindred kinds of employees on the premises, whether they are there in the work or are merely in connection with the work of the establishment."

In Hyderabad Asbestors Cement Products Limited Vs. E.S.I. Court and Another, the Full Bench of this Court is concerned with the issue whether the zonal office employees of the petitioner-company at Vijayawada could be said to be employees of the factory located at Hyderabad and covered by the Act. The company has zonal sales offices in several States of the country. The issue that came up for consideration is whether the employees of the zonal offices can be covered by the provisions of the Employees' State Insurance Act. The Full Bench held that the employees in the zonal sales office at Vijayawada are the employees covered by the Act in view of the inclusive part of the definition of S. 2(9) of the Act by the Amending Act of 1966. After extracting the definition of "employee" under S. 2(9) the Full Bench held as follows at page 392 :

"This is the definition that has to be read in S. 38 for the word "employee" in the present context. So read, we find no difficulty in holding that S. 8 of the Act should be understood to take in all persons employed in the sales office of the petitioner-company at Vijayawada. For, it cannot be disputed that they are persons employed for wages on a work connected with the distribution or sale of the product of the factory. They are employees in factories to which the Act applies and shall be insured in the manner provided by the Act. No doubt the

word "factory" defined in the Act states that "factory" means any premises including the precincts etc. To construe the expression "in factory" in S. 38 of the Act as only meaning the premises of the precincts thereof would not give effect to the legislative intendment in amending the word "employee" as defined in the Act.

The definition before the amendment as well as after the amendment would include not only the persons employed in the factory but also in connection with the work of the factory. It is further held as follows :

"We are unable to accept the contention that on reading of the relevant section it is clear that the word "employee" would include not only persons employed in the factory but also persons connected with the work of the factory. The employee may be working within the factory or outside the factory or may be employed for administrative purposes."

Reliance is also placed upon the decision of the Calcutta High Court in Calcutta Electric Supply Corporation Ltd. Vs. Employees State Insurance Corporation, in support of the proposition that the employees in each of the branches should be added up for the purpose of coverage under the act. In this case the appellant-Corporation carried on business of generating and supplying electrical energy and for that purpose it had three power houses or generating stations and 23 sub-stations and certain ancillary establishments. The Corporation objected to the levy of Special contribution and filed application praying for a declaration and it was not liable to pay any contribution at all in respect of the employees at the sub-stations and ancillary establishments each of which individually employed less than 20 persons. In the context of considering whether the employees of the sub-stations and ancillary establishments are employees and they can be aggregated, the Division Bench of the Calcutta High Court held as follows :

"This follows primarily from the fact that having regard the nature of the appellant's business, namely, of generation and supply of electricity, including its distribution and sale to individual consumers, and the purpose, for which the above sub-stations and other ancillary establishments exist and/or are actually used, the Power Houses or Generating Stations and the connected sub-stations and other ancillary establishments must be regarded as one unit or part of same unit or, in other words, the sub-stations and the other ancillary establishments are really adjuncts to the corresponding main Generating Station or Power House and they and their employees cannot be considered separately or in separate or different compartments. They are parts of the same unit and must be regarded as a whole. If this be the correct approach the appellant's objection, based on the fact that the number of employees at each of the sub-stations is less than 20 or that the ancillary establishments do not carry on any work of manufacture within the meaning of the statute, read with or without the Factories Act, must vanish."

The learned Counsel for the appellant also placed reliance upon the unreported

decision of this Court in A.A.O. No. 609 of 1979 dated 3rd December, 1982. In this case the petitioner viz., Spencer & Company Limited, Visakhapatnam branch filed application under S. 75 of the Employees' State Insurance Act for a declaration that the provisions of the Act are not applicable. The petitioner, the branch of Spencer & Company at Visakhapatnam whose head office is at Madras contended that only 12 persons have been employed therein for wages and as such the petitioner is neither an establishment for factory liable for coverage and Employee's State Insurance corporation contended that the total number of persons employed in various branches in Secunderabad as well as Visakhapatnam branch exceed 20 and therefore Visakhapatnam branch will come under the purview of the Act though 12 persons are actually working at Visakhapatnam branch. The Employees' Insurance Court, Hyderabad rejected the contention of the Company and held that Visakhapatnam branch comes within the purview of the Act as the persons employed in other branches of the company in the State of Andhra Pradesh have to be considered and the employees in the Visakhapatnam branch alone cannot be considered as relevant. In appeal it was contended that the Visakhapatnam branch employed only 12 persons and as the staff did not exceed 20, it does not come within the purview of the Act and also contended that the factory of the company is at Madras and the Regional Office of the Employees' State Insurance Corporation at Madras alone has jurisdiction over the branches of the company in Andhra Pradesh and the Regional Office in Andhra Pradesh cannot have jurisdiction over the branches of the Company. In the context of considering these aspects, the Division Bench of this Court consisting of Kodandaramayya and Jagannadha Rao, JJ., after referring to the decision of this Court in Hyderabad Asbestos Cement's case (supra) and also the decision of the Supreme Court in Royal Talkies case (supra) and in view of the wide definition of the employee Jagannatha Rao, J., observed as follows :

"A reading of these regulations would clearly suggest that the Act is intended to confer various benefits on employees in the factories or establishments in respect of medical care and other claims mention in the Act and in the regulations. It is but appropriate that the control is vested in the regional offices within whose jurisdiction the branches of any factory or establishment are situated so that the regional office which is nearer to the branches would be able to ruse necessary help to the employees immediately. The scheme relating to medical benefits has to be provided at the door-steps of the employee if the benefit is to reach the employee in time. If the employees of branch offices located within the jurisdiction of one regional office are to be treated as outside its jurisdiction and to fall with in the jurisdiction of the regional office in which the main factory is located, it may practically amount to denying the benefits to the employees in time. If the employee at Visakhapatnam who is within the jurisdiction of the regional office in Andhra Pradesh is to be denied the right to approach the regional office in Andhra Pradesh and its sub-offices and if the is to be directed to approach the regional office at Madras merely because the factory or head office

is located at Madras, it will lead to a denial of immediate medical relief and may practically amount to frustration of the very purpose of the Act. The Act and the regulations contemplate the thought that there is a single corporation it would divide itself into various regional offices so that the benefits arising under the Act can be brought to the door-step of the employee."

The decision squarely covers the issue in this case. It is held that the employees in all the branches can be aggregated for the purpose of coverage under the act notwithstanding the fact that the head office is situated outside the State. The learned Counsel for the respondent sought to distinguish the decision on the ground that it is not clear from the decision whether the head office is covered by the Insurance Act.

8. The Employees' State Insurance Act is aimed at conferring benefits on employees in case of sickness, maternity and employment injury. S. 38 of the Act mandates that all the employees in the factories or establishments shall be insured. The initial and vital endeavour should be to identify the beneficiaries or the employees for insurance. It is well settled that the employees in head office as well as the branches are comprehended within the ambit of the coverage of the Act. The branch office is only an appendage to the head office and the branches are located in the place or State where the head office is situated or other places outside the States also to measure up to the expansion or diversification of the business or undertaking. Each branch is an off-shoot of the head office and cannot be considered to have an independent entity as all the transactions ultimately funnel into head office and the entirety of transactions of the head office and branches as well are reflected by the head office as one unit. The infrastructure for the maintenance and running of all the branches flows from the same capital source and the streams of business by all the units will be ultimately pooled. It is not in dispute that the branches carry on the identical business and transactions. Each branch is a component of the main office and all the branches are miniatures of the main office and as such cannot be considered as separate and independent entities.

9. The situs or coverage of the head office is not relevant for the purpose of coverage of the employees in the branch offices. The crucial consideration should be whether the employees in the branches are within the fold of the definition of employee under S. 2(9) of the Act. If this foremost test is satisfied the issue of coverage of head office recedes to the background. If the best of coverage head office is countenanced S. 1(5) of the Act will be paralysed. S. 1(5) postulates that the State Government is competent to extend the provisions of the Act to other establishments. The location of the head office of the establishment as an essential ingredient for coverage cannot be accommodated within the precincts of S. 1(5). The provisions of the act can be extended by the State Government by notification to any establishment and in the event if such extension the employees in the head office if it is situated within the State or the employees in the branch offices irrespective of the location of head office are covered under

the Act. S. 2(9) concerned with the definition of an employee comprehends the employees in the head office and the branch offices as well and the coverage of head office as condition precedent for coverage of employees in the branch office is not visualised by the provisions of Employees' State Insurance Act.

10. The learned Counsel for the respondent relied upon the decision of the Kerala High Court in *E.S.I.C. Vs. New India Maritime Agencies*, . This case is concerned with the employees of establishment at Willingdon Island with its head office at Madras. There are 15 employees the Willingdon Island office. The company is doing business in steamer agency. Besides the office at Willingdon Island the company has office at Alleppey and Quilon with 2 and 6 employees respectively. If these three establishments are treated as independent non of them would be liable to be covered for the number of employees in each of these branches would be below 20 and if it is deemed as one unit there can be coverage as the number of employees exceed 20. The Employees' Insurance Corporation has taken the view that the Willingdon Island establishment is liable to be covered on account of the fact that the number of employees therein as well as in Quilon and Alleppey are more than 20 and further these three branches are concerned with the same work as that of the head office. The Employees' Insurance Court, however held that the question of coverage does not arise as a unit unless the persons are working in the same premises and in this view rejected the contention of Employees' State Insurance Corporation. The Division Bench consisting of Subramonian Poti and Kumari Janaki Amma, JJ., formulated the issue for consideration as follows :

"But the more interesting question is whether the coverage of an establishment which is a branch of a concern situated with its head office outside the State would call for coverage of employees in the other branches within the State too as one unit ?

On this issue it is held as follows in the earlier portion of para 7 :

"In a case where an establishment carries out its work not only in its office but also in other places employees who work at such other places could also be said to be employees in the establishment whose coverage would fall within S. 38 of the Act. That is because they are employed in establishments as the term has been explained."

Having considered the legal position regarding the coverage of branches of a Company whose head office is located outside the State the Court considered the other issue whether the branches can be treated as one unit on the facts and circumstances in the case and the stress is laid by the learned Counsel on the observations hereunder in the later portion of para 7 :

"But this does not mean that independent branches of a company such as the one here controlled from outside the State have necessarily - to be treated as one unit. That would depend upon the evidence in the case. If different offices are carrying out work of one central establishment naturally despite the fact that

the offices are located a different places employees who are so stationed in different places can be said to be employees in the establishment whose work they are carrying out at such places. But if they are not doing the work of the establishment which is sought to be covered though they may be branches of the same company there is no question of treating all of them as one establishment whose employees are employed in the other offices."

The accent is made upon the test whether there is identity of work carried on by the employees in the branches and the work of the establishment and it is held that this question has to be determined on the facts of each case. It is pertinent to refer to the observations at para 9 wherein the legal position and the necessity of giving finding on the fact is elucidated :

"It may not be proper for us to dispose of the case in this appeal. That is because having stated the law applicable to the case, on the facts of the case what the finding is to be is a matter for the Regional Director to consider. This Court sits only to decide question of law. Necessarily, therefore, having given the guidelines the course that we should properly adopt is to remit the case back for fresh disposal in the light of what we have said in this judgment."

It is abundantly clear the Kerala High Court held that the employees in the branches have to be aggregated notwithstanding the fact that the head office is situated outside the State. The observations in the later portion in para 7 relied upon by the learned Counsel are confined to the issue whether the employees in the branches are exercising the same functions as that of the head office and whether these branches can be considered as adjuncts to the head office and on this issue the matter was remitted to the Court below of consideration.

11. The Court below erred in holding that the branches cannot be treated as one unit for the employment strength in the absence of coverage of the head office. It is not in dispute that all units are branches of the head office and as such have nexus with the head office and the question of establishing nexus or interlacing amongst the branches does not arise.

12. In the circumstances, the judgment and order of the Court below is set aside.

13. Appeal allowed. No costs.

14. C.M.A. No. 480 of 1979 : This appeal at the instance of Employees" State Insurance Corporation is against the order directing the Corporation to refund the sum of Rs. 4,120-10 under S. 75(g) of the Employees" State Insurance Act. Pursuant to the ad hoc assessment of the Employees" State Insurance contribution the sum of Rs. 4,120-10 was collected from there respondent by recourse to proceedings under Revenue Recovery Act. The respondent also paid a sum of Rs. 3,937-50 by affixing the stamp on contribution cards and there was delay in submission of cards as the stamps were not supplied by the Bank till 24th July, 1976.

15. The Court below directed the refund of Rs. 4,120-10 as the amount

represents interest and also based upon ad hoc assessment. The order passed by the Court is quite reasonable and proper in the circumstances and we see no reason to interfere with the order.

16. Appeal dismissed. No costs.