



4. The learned E.S.I. Judge framed the following issue for determination:

"Whether the thelawalas, who work for delivery of Cylinder on receipt of commission, are employees of the petitioner and if so, is the petitioner liable to pay contribution ?"

5. Considering the evidence and materials on record, the learned Judge held that M/s. Technico has only 13/14 regular employees and thelawalas cannot be considered to be employees of Technico and as such the provisions of the Act are not applicable. Hence, the present appeal.

6. I have heard Mr. B.R. Dey, learned counsel for the appellants and Mr. G.K. Battacharjee, learned counsel for the respondents.

7. There is no dispute at the bar that Technico has got 13/14 regular employees which is below the limit of 20. The question is whether the thelawalas employed occasionally by the respondents can be deemed to be employees within the meaning of Section 2(9) of the Act. In the case of Employees' State Insurance Corpn, v. K. Ramchandran and Ors., 1986 (3) SCC 238, the Apex Court held that even casual employees are employees, within the meaning of Section 2(9) of the Act." Section 2(9) reads as follows:

"(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to; which this Act applies and-

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on. in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

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 the products of the factory or establishment; (or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), the Standing Orders of the establishment; but does not include.)

(a) any member of the Indian Naval, Military Or Air Forces; or

(b) any person so employed whose wages (excluding remuneration for overtime

work) exceed (such wages as may be prescribed by the Central Government) a month;

provided that an employee whose wages (excluding remuneration for overtime work) exceed (such wages as may be prescribed by the Central Government) a month at any time after (and not before) the beginning of the contribution period shall continue to be an employee until the end of that period:"

8. In *Employees' State Insurance Corpn. (supra)*, the Apex Court further observed:

"13. The Act is a piece of social security legislation enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury. To hold that the workers employed for the work of construction of buildings for the expansion of the factory are not employees within the meaning of Section 2(9) of the Act on the ground that such construction is not incidental or preliminary to or connected with the work of the factory will be against the object of the Act. In an enactment of this nature, the endeavour of the Court should be to interpret the provisions liberally in favour of the persons for whose benefit the enactment has been made."

14. In this connection, we may refer to a decision of this Court in *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, The question that came up for consideration by this Court was whether the workers employed to run the canteen and the cycle stand situate within the compound of a cinema theatre were employees within the meaning of Section 2(9) of the Act. It was held that the workers employed to run the canteen and the cycle stand were employees within the meaning of Section 2(9) of the Act. KRISHNA IYER, J. speaking for the Court, observes:

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 the establishment... Taking the present case, an establishment like a cinema theatre is not bound to run a canteen or keep a cycle stand (in Andhra Pradesh) but no one will deny that a canteen service, a toilet service, a car park or cycle stand, a booth for sale of catchy film literature on actors, song hits and the like, surely have connection with the cinema theatre and even further the venture."

9. In a recent judgment, in the case of Rajakamal Transport and Another Vs. Employees" State Insurance Corporation, Hyderabad, the Apex Court held:

"7. It is seen that the Insurance Court after elaborate consideration, found as a fact, that the appellants have the control over loading and unloading of the goods entrusted to the appellants. The appellants" regular business is transportation of the goods entrusted to them as carriers. When the goods are brought to the warehouse of the appellants, necessarily the appellants have to get the goods loaded or unloaded through the hamalis and they control the activities of loading and unloading. It is true as found by the Insurance Court that instead of the appellants directly paying the charges from their pocket, they collect it as a part of the consideration for transportation of the goods from the customers and pay the amount to the hamalis. The test of payment of salary or wages in the facts of this case is not relevant consideration. What is important is that they work in connection with the work of the establishment. The loading and unloading of the work is done at their directions and control."

10. From the above decisions it is apparent that the mode of payment and fact that the employees are casual employees it is not at all relevant. The learned counsel for the respondents has further submitted that there is no material on record to show that the respondents have engaged the thelawalas on casual basis and the respondents have (sic) engaged them in the work of transportation. Further the thelawalas are self employed persons like Taxi drivers etc., running their thela or vehicle for hire and if such thela are hired or services of thelawalas are utilised on payment can be, termed as employees of the persons engaging them. There is no evidence to show that thelawalas, are performing full time or fixed time job under the respondents. During whole day thelawalas are engaged by different concerns for taking their different handling jobs. Hence, in a case where a particular thelawala has worked for 5/6 persons on a particular day can he be deemed to be an employee of the 5/6 persons for the purpose of the Act or the same persons will be getting benefits under the Act though under 5/6 heads. I find sufficient force in the above submission and in view of the finding of the learned Trial Judges that the thelawalas are not casual employees even, I find no merit in this appeal. The appeal is accordingly, dismissed. No order as to costs.