

(1986) 10 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Mics. Appeal No. 98 of 1981

E.S.I. Corporation

APPELLANT

Vs

Shri Ram Chemical Industries

RESPONDENT

Date of Decision : 29-10-1986

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 41

Citation : (1987) RLW 212 : (1987) 2 WLN 610

Hon'ble Judges : Guman Mal Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Guman Mal Lodha, J.—An important question of law has been raised in this appeal by the learned Counsel Mr. Gupta for the ESI. The question is whether LIC premium subsidee given to workmen by the management is to be included for the purpose of computation of wages in respect of the contribution to the Employees State Insurance fund.

2. The Tribunal has come to the conclusion that it is not wages and therefore no contribution is required to be paid by the employer of the employee.

3. In this appeal it has been argued that this is an additional remuneration within the meaning of Section 2 Sub-section (22) of the ESI Act and this amount is wages. Reliance is placed on the judgment of the Hon''ble Supreme Court 1984 Lab. IC 1970.

4. Mr. Sharma, learned Counsel for the management of Shri Ram Chemicals on the contrary seriously contest the correctness of the submission of Mr. Gupta. According to him this is a unilateral payment depending upon the discretion of the management and may be paid; or may not be paid; with express understanding that it would not be treated as wages for the purposes of contribution to the ESI or any other. Mr. Sharma pointed out that the judgment of Hon'' ble Supreme Court in Braithwait''s case AIR 1968 SC 416 still holds the

field and that being so it covers the entire definition of wages including the part in which additional remuneration has been mentioned.

5. According to Mr. Sharma once the payment is discretionary and unilateral, it cannot form the part of wages more so because it would never go in the heads of the employees or the workmen, and the workmen is also required to make payment of his part of contribution which he would never be able to do because it would never go in his hand.

6. I have given a very serious and thoughtful consideration to the rival contentions of the learned Counsel for the parties and issues involved in it.

7. Section 2 of Sub-section (22) defines wages and reads as under:

Wages means all remuneration paid or payable in cash to an employee in terms of 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 lay off hands) other additional remuneration if any paid at interregnum not exceeding two months not includes.

Mr. Gupta's emphasis is on additional remuneration. Mr. Gupta's submission is that by the latest judgment of the Hon'ble Supreme Court it has been clarified that the earlier judgments would not apply to this piece of additional remuneration and the earlier judgments were only meant for the definition of wages in the first part and not in the third part. Mr. Gupta's argument is that it is immaterial whether the wages or any amount in the form of wages in the hands of the employees workmen or not because it may be paid or may be payable.

8. Now the earlier judgment of the Hon'ble Supreme Court in what is popularly known as Braitwait 's case may be first noticed. In AIR 1958 SC 413, the Hon'ble Judges of the Supreme Court were required to consider whether Inam scheme is wages. It was not amongst the original terms of the contract of the employment of the employees of the company. In these terms there was no offer of any reward or prize to be paid for any work done by the employee. The only offer under scheme was to make incentive payments to certain specified conditions were to be fulfilled by the employees and the company reserved the right to withdraw the scheme altogether without assigning any reason or to revise its conditions at its sole discretion. The payment of Inam was dependent upon the employees exceeding the target of output appropriately applicable to them. But though primarily the right to receive the Inam was dependent on the efficient working of the employee, there was another clause which laid down that if the targets were not fulfilled due to lack of order, lack of material, break down of machinery, lack of labour strike, lock out, go slow or any other reason whatsoever no Inam was to be awarded. The company also laid down that if any deterioration of workmanship was noticed on the part of the employees in order to achieve the target prescribed for achieving the Inams the schemes could be absorbed forth with. It was also made clear that the payment of reward was nowhere connected with part of wages.

9. Their Lordships held that the payment of Inam through remuneration could not be said to have become a term of contract of employment within the meaning of definition of wages given in Sub-section (22) of Section 2. It appears that in that case the High Court relied upon legal fiction by extending Section 41 explanation to the definition of wages for the purpose of considering the nature of Inam under the scheme. The Hon'ble Judges of the Supreme Court took exception to it and observed that the explanation to Section 41 is not to be utilised for interpretation of general definition of wages given in subsection (22) of Section 2 of the Act and is to be taken into account only when the word wages requires interpretation of Section 41 of the Act. The emphasis in that case was on part of contract of employment." The Hon'ble Supreme Court considered it from the point of offer and acceptance by the employees as a condition of service. It was held it was never in implied terms of the contract or employment of the employees of the appellant. In "he later case Bombay Oil Industries Pvt. Ltd. Vs. Union of India (UOI) and Others, E.S.I Corporation wages were again considered for the purposes of House rent allowance, chief guest and incentive allowances etc.

10. Their Lordships observed that the term wages would include all of them u/s 2, Sub-section (22) because it includes remuneration paid or payable under the terms of contract of the employment express or implied but further extend to other additional remuneration" if any paid at the interval of not exceeding two months, so also terms of employment.

11. On a very serious and thoughtful consideration of "the principles laid down in the two judgments of the Apex Court I am persuaded to accept the contentions that in Harihar Poly fibre"s case (supra) the Hon'ble judges of the Supreme Court distinguished and emphasised the two parts of the terms wages, the first part being emphasised by contract of employment express or implied. The Hon'ble Judges held that the legislature had not estopped there but it has extended to "additional remuneration" which may be outside the terms of employment. Their Lordships emphasised the interposition of the clause 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 between the first clause, "all remuneration paid or payable in cash to an employee in terms of the contract of employment express or implied "was fulfilled and the third clause" other additional remuneration if any paid at the interval not exceeding two months" and then observed that this makes it abundantly clear that while remuneration under the first clause has to be under a contract of employment express or implied; remuneration under third clause need not be under the contract of employment, but may be any "additional remuneration" out side the contract of employment.

12. I am considering a case where the question of payment of Life Insurance Corporation premium subsided is patently outside the terms of contract of employment express or implied and therefore in that clause it can never come.

However, since the Hon''ble Supreme Court by this latest judgment in M/s Harihar Poly fibre (supra) enlarged amplying increased and extended the dimension and horizons of this term "wages" by mentioning that the third clause need not be under the contract of employment but may be any other remuneration outside the term of contract of employment and then giving the examples of house rent, allowances, night trip allowance, incentive allowance, heat gas and dust allowance and holding that they are all wages, it is obvious that the subsideo given for Life Insurance Premium should also cover and come in this clause.

13. Obviously, this additional remuneration is not in one of the exception mentioned in Sub-clause (22).

14. Their Lordships expressed their respectful agreement with the judgment of the Full Bench of the Andhra Pradesh High Court and dissented from the judgment of Calcutta High Court in para 5 of the above judgment, in the matter of house rent allowance. The Andhra Pradesh High Court considering the matter in Full Bench Employees" State Insurance Corporation, Hyderabad Vs. Andhra Pradesh Paper Mills Ltd., Rajahmundry, held that the incentive bonus paid to an employee which was not in terms of remuneration, in terms of contract employment express or implied will fall within the third part of the definition of wages, i.e. additional remuneration if any paid at the interval of not exceeding two months.

15. The Full Bench said in para 19 that the word "other" appearing at the commencement of the third part of the definition of wages u/s 2 Sub-section (22) indicates that it must not be remuneration which is referred to in the earlier part of the definition, i e., all remuneration paid or payable in cash to the employee in terms of contract of employment express or implied are fulfilled as incentive bonus in the present scheme is certainly additional remuneration. It must be emphasised that at this stage another third part of the definition of wages, is actual factum of payment which counts because the words used "if paid" is distinguished from "paid" or "payable." The moment he gets on additional remuneration other than the remuneration payable under the contract of employment and if additional remuneration is paid at the interval of not exceeding two months it becomes wages by virtue of the third part of definition or wages. The Andhra Pradesh then referred to Calcutta High Court Judgment in Pottery Limited 1973 Lab. IC 1328 where it was held that the additional remuneration, sought to be included by the expression and includes other additional remuneration must be remuneration which though no part of the wages could be paid as part of the terms of the contract of employment. The Full Bench did not agree with it. The Supreme Court agreed with the Andhra Pradesh.

16. In para 11 Justice Amrendra Nath, is concurring judgment observed as under:

I entirely agree with my learned brother that on a proper interpretation of the term wages the legislature intruded it manifestly clear that the term wages as

used in the Act will include "House rent allowances, night shift allowance and incentive allowances." The definition to my mind on its plain reading is clear and unambiguous. Even if any ambiguity has been suggested the expression must be given a liberal interpretation beneficial to the interests of the employees for whose benefits the Employees State Insurance Act has been passed.

I have therefore, no hesitation in holding that the beneficial interpretation for the employees would be to include LIC premium subsided in the term wages.

17. Consequently, the appeal is accepted.

18. The E.S.I. contribution for the amount of "L.I.C. premium subsided" would be chargeable or would be required to be included in "wages" for the purpose of contribution to the E S.I.

19. The parties would bear their own costs. The E S.I. would now consider the amount after calculation and computation for the purpose of contribution to the E.S.I, by the employer in this case and for that purposes the case is remanded to the ESI. Court.