

(1978) 10 MAD CK 0029
In the Madras High Court

E.S.I.C.

APPELLANT

Vs

Bharat Pulverising Mills (P) Ltd.

RESPONDENT

Date of Decision : 17-10-1978

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 74, 75

Citation : (1979) 1 LLJ 343

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Judgement

S. Mohan, J.—This civil miscellaneous appeal, raises an interesting question as to the liability of the respondent in the civil miscellaneous appeal, viz., Bharat Pulverising Mills (P) Ltd., No. 1074, T.H. Road, Madras-19, to make necessary contribution under the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act). By letter dated 19th March, 1974, the appellant called upon the respondent to make the contributions under the Act in respect of attendance bonus, incentive payments, payments to contractors and certain allowances and petty cash payments of a casual nature. The respondent objected to the demand. Thereafter, the Revenue Recovery Act was set in motion, and the contributions due on the above accounts were sought to be recovered. This necessitated the respondent to file a petition u/s 75(1) of the Act for a declaration that the payments like attendance bonus, incentive payments, payment to contractors for contract work done and casual payments are not wages within Section 2(22) of the Act and for a declaration that the respondent is not liable to pay contribution as demanded. The matter came up before the learned First Additional Judge, constituting the Employees' State Insurance Court, Madras, u/s 74 of the Act. The Court held that these payments are not wages, and therefore, there was no liability on the part of the respondent to make the contribution as demanded. It is against this the Employees' State Insurance Corporation has preferred the appeal.

2. Mr. S.M. Ali Mohammad states that the judgment of the Court below is liable

to be set aside. According to him, all these four categories of payments would fall within the definition of "wages", and, consequently, the Act is attracted. In any event, according to the learned Counsel, having regard to the comprehensive definition of the word "employer" as laid down in Section 2(9)(ii) read with Section 2(13) of the Act, albeit the fact that these contract workers are employed through the medium, of another employer, the liability to contribute by the respondent cannot be avoided. The Court below erred in holding that because of the medium of employment through the contractor, there is no relationship of master and servant and consequently there is no liability to contribute.

3. Mr. P.V. Marthandam, the learned Counsel for the respondent, in supporting the judgment of the Court below, states that attendance bonus, incentive payments, and payments made to casual workers do not form part of Section 2(22), and, therefore, they are not wages since the terms of the contract of employment neither expressly nor impliedly contemplate such payments. As regards the contract workers, his submission is that because the employment is through the immediate employer and there being no privity of contract between the principal employer and the ultimate workers, the judgment can be sustained.

4. As regards the three categories, viz., attendance bonus, incentive payments and payment to casual workers, I see no difficulty in accepting the judgment of the Court below.

5. Section 2(22) of the Act defines "wages" thus:

"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;

The terms of the contract of employment neither expressly nor impliedly require these payments. In other words, they are not comprehended within those terms of employment. However, the payment to contract workers stands on an entirely different footing. In this case, the admitted facts are that the workers are employed through an intermediary. It is for this specific purpose, Section 2(9)(ii) provides thus:

(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--

* * * (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

* * * 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; 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 one thousand rupees a month.

In this connection, it is also necessary to advert to Section 2(13) of the Act which runs as under:

"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 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 whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer;.

On a careful reading of the above provisions, it is clear that notwithstanding the fact that the workers work through the medium of another employer and notwithstanding the further fact that there is no direct relationship between the principal employer and the ultimate workers, as master and servant, the Act takes in those workers employed through the medium of some other employer, though not by the principal employer. Otherwise, the provisions of the Act would easily be defeated by the principal employer by enlisting the workers through the medium of contractor. From this point of view, I am unable to agree with the finding of the lower Court in this regard. Therefore, I hold that as far as the contract workers are concerned, the Act does apply. But it is a totally different matter as to how the benefits of the Act could be made applicable to these workers and what exactly is the liability of the employer to contribute as far as these workers are concerned. These are matters which require to be agitated before the authority concerned, and I grant liberty to the respondent to raise whatever objections are available to it in this regard.

6. Accordingly, this civil miscellaneous appeal is allowed in part, viz., in so far as it relates to the contract workers, and is dismissed in other respects. There will

be no order as to costs.