

(1981) 08 KAR CK 0005
In the Karnataka High Court
Case No : MFA 190/78

E.S.I.C.

APPELLANT

Vs

M.B. Nagaraj

RESPONDENT

Date of Decision : 04-08-1981

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9)

Citation : (1981) 2 KarLJ 466

Hon'ble Judges : P. A. Kulkarni, J;K. Jagannatha Shetty, J

Judgement

Jagannatha Shetty, J.-The employees State Insurance Corporation ("the Corporation") challenges in this appeal preferred under S. 82 (2) of the Employees' State Insurance Act, 1948 ("the Act") the validity of the order of the Employees' State Insurance Court, Mysore dated 26th November, 1977 made in E.S.I. Application No. 4 of 1974.

2. The question raised in this appeal is of considerable importance and it concerns with the liability of the respondent to pay contributions under the Act in respect of persons working in his establishment where he himself has not directly employed twenty or more persons.

3. The facts of the case in outline are these:

The respondent is a lessee of an establishment called "Premier Studio" (which we will call as "the Studio"). The studio comprises of both moveable and immoveable properties. The immoveable properties consist of certain buildings which belonged to the Premier Insurance Co., Ltd., and they were taken on a long term lease by the Premier Film Corporation Ltd., Mysore. The moveable properties consist of photographing cameras, sound recording machineries and other equipments located in the laboratory where raw films are edited and manufactured for ready commercial exhibitions. The manufacturing process is carried on by the use of electrical power.

On June 1, 1969, the entire studio was taken on lease by the respondent on

monthly rent of Rs. 10,000. He in turn, lets out on time basis the buildings or the equipments" to the producers of films for the purpose of shooting their own pictures, The producers who take on hire the studio floors or the equipments engage their own artists, technical staff and labour force. They record their own music, shoot their own films, and get them ready by developing and editing for cinematographic exhibition. The respondent is not in any way concerned with the persons employed by the producers nor he has any direct or indirect control over the films produced by the producers. He, however, maintains an establishment of his own with seven persons employed to look after the maintenance of the studio and the equipments therein.

4. The activities of the respondent, to put it shortly, do not go beyond making available to the film producers the building and the equipments upon payment of the agreed charges, although there is no legal impediment for him to produce his own films in the studio. Perhaps he is satisfied with his limited activities.

The officials of the Corporation visited the studio on 28th July 1973 and again on 30th July 1973. They scrutinised the attendance register maintained by the respondent and found that he has employed not more than seven persons. They also saw two producers engaged in the shooting of films. One who goes by the name Raghunathan Movies, had employed, among others, 12 light boys and 8 carpenters, and the other called Anjugam Pictures had employed 12 light boys and 30 carpenters besides the artists. In all, there were on that day 77 persons working in the studio.

The respondent left to himself is not liable to pay any contribution and his studio cannot be called as a factory since he has employed only seven persons. It requires a minimum of twenty employees working in the studio.

The Corporation, however, for the purpose of enforcing the provisions of the Act to the studio, has treated the respondent as principal employer and the producers as immediate employers. It accordingly called upon the respondent to pay contributions under S. 40 of the Act in respect of his own seven employees and also in respect of the employees of the producers.

5. The respondent challenging the validity of the said demand, moved the Insurance Court under S. 75 of the Act for a declaration that his studio stands excluded from the provisions of the Act.

Before the Insurance Court, the respondent in support of his case has examined himself as P.W. 1, while the Corporation in support of its demand has examined two of its managers who inspected the studio on 7th December, 1967 and 30th July, 1973 as R.W. 1 and R.W. 2.

On the material produced by the parties, the Insurance Court framed the following two issues for determination:

1. Whether the "Premier Studios" is a factory within the meaning of that expression defined under the provisions of the E.S.I. Act?

2. Whether the applicant is liable to pay the contributions claimed by the opponent?

The Insurance Court although it considered at length the evidence produced by the parties, did not record a specific finding on issue No. 1. It disposed of that issue by concluding that the determination of that issue depends upon the finding on issue No. 2. On issue No. 2 it was held that the respondent is not liable to pay the contributions, since the producers having regard to the nature of the works undertaken cannot be regarded as immediate employers.

The reasons as summarised by the Insurance Court are as follows:

"No doubt, shooting of films is ordinarily part of the work of the factory, namely, the Premier Studios, but the picture that is shot actually is not ordinarily part of the work of the factory. Any producer can avail of the facilities provided at the studios to shoot any picture which he wants. Pet mission to do so is granted by the petitioner on payment of monetary consideration. The producer brings his own artists and technicians as well as most of the paraphernalia required, if not the entire. The producer shoots the film independently and not as a part of any films produced by the petitioner. After the producer shoots the film, he takes away the finished film to deal with the same in any manner he likes. Therefore, it cannot be aid that the work of the producers is either incidental to or is preliminary to the work carried on in or incidental to the purpose of the factory."

The learned Judge said in summing up:

"In the present case, the process of shooting any particular film brought by the producer at his own choice, without any right given to the petitioner to judge and decide whether such a film could be shot in his studios cannot be described as ordinarily part of the work of the factory or establishment. Theoretically speaking it may be possible to dub the producer as immediate employer only if the studio set up of the Premier Studios is capable of shooting only one particular film and such a film alone is brought by a producer. This is the utmost that can be said in so far as the activity in the studio is concerned to treat the producer as immediate employer, forgetting for the time being that even then, such a producer is still entitled to take away the finished film and deal with the same in any manner he pleases. I, therefore, hold that the producer is not the immediate employer and that therefore the petitioner does not become the principal employer in relation to the several technicians that may be engaged by the producers".

It will be observed that those reasons fall into two branches. First, a producer who has taken the floors or the equipments for the purpose of shooting his own films is not an immediate employer, since he takes away the finished product to deal in any manner he likes. Secondly, the work undertaken by the producer in the studio is neither incidental to or preliminary to the work carried on by the respondent and so the respondent does not become a principal employer. The Insurance Court accordingly granted the declaration sought for by the

respondent.

6. The order of the Insurance Court was subject to considerable criticism by Mr. Papanna, counsel for the Corporation.

Some of the contentions urged on behalf of the Corporation are:

The studio was established primarily for the purpose of shooting and manufacturing films and it is immaterial whether the respondent has been actually carrying on that work or not. The producers who take the studio on hire charges make its use for the same purpose and it is again immaterial whether the finished product is taken by the producers or left behind to the respondent. If the persons employed by the producers and the respondent are employees as defined under the Act, then the studio would be a factory attracting the provisions of the Act.

Mr. Moganna, counsel for the respondent, sought to justify the reasons given by the Insurance Court on the following among other contentions:

Under the Act, unless the establishment of the principal employer is already covered as a factory, he is not liable to pay contributions in respect of any person whether employed by him or by the immediate employer. The producers having regard to the nature of the work executed by them like shooting their own films without supervision of the respondent and taking the finished product for their own use, cannot at all be termed as immediate employers as defined under the Act.

7. Upon these arguments addressed before us, the following two points arise for consideration:

(1) Whether a producer who takes the studio on hire basis, for the purpose of shooting his own film without intervention of the respondent could be considered as an immediate employer?

And (2) Whether the employees of the immediate employer and the principal employer could be clubbed together for the purpose of covering the studio as a "factory" defined under the Act?

8. If the first question is answered in the affirmative and in favour of the Corporation, then there may not be much difficulty to determine the second question. We may, therefore, take the first question first for consideration.

For a proper decision on the first question, we really do not need to look beyond S. 2 (13) and 2 (17) of the Act. S. 2 (13) defines "immediate employer" and S. 2 (17) defines "principal employer". Both these definitions are intertwined and we shall now proceed to analyse them thereunder:

"S. 2 (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 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".

The essentials of this definition are:

(i) that the immediate employer must have undertaken the execution of the whole or any part of the work which is ordinarily part of the work of the factory; or (ii) which is preliminary to the work carried on in, or incidental to the purpose of, any such factory; and (iii) on the premises of the factory. We may now read the definition of "principal employer".

Section 2 (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, 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".

This definition is divided into three parts;

The first is in relation to factories; the second is in relation to establishments under the control of any department of any Government; and the third concerns with any other establishment.

In relation to a factory, the principal employer would mean,- (i) owner, or (ii) occupier, and includes:

(i) the managing agent of such owner or occupier, (ii) the legal representative of such owner or occupier, (iii) the manager named under the Factories Act.

In relation to an establishment other than that of the Government, the principal employer would mean a person responsible for the supervision and control of the management.

The studio in question may as well be classified either as a "factory" or as "any other establishment". In either case, the respondent falls squarely within the definition of "principal employer", since he is undisputedly the occupier of the studio, and also responsible for its supervision and control.

9. It was however urged for the respondent that the producers cannot be considered as immediate employers. According to the counsel, two conditions

must necessarily be satisfied before the producers are treated as immediate employers; first, they must have undertaken the execution of shooting the films on the premises which must have been already covered under the Act as a factory; and second, they must have undertaken the work either wholly or as a part of any work which the respondent himself is executing in the studio and since the respondent himself is not engaged in the production or manufacture of any film, the producers cannot be called as immediate employers. These contentions appear to have been rested on the dissection of the definition of "immediate employer". It will be observed that the first part of the definition is in relation to employees employed by a person who has undertaken the execution on the premises of a factory. The second part of the definition states that the "immediate employer" is one who has undertaken the execution, of the whole or any part of any work which is ordinarily part of the work of the factory or is preliminary to the work carried on in or incidental to the purpose of any such factory.

10. We may straightaway state that if the word factory used in S. 2 (13) or in S. 2 (17) carries the same meaning with which it has been defined under S. 2 (12) then, neither the producer would be an immediate employer nor the respondent would be a principal employer. The employment of 20 or more persons is one of the requirements of the definition of factory under S. 2 (12) and the employment strength of the respondent admittedly has not yet crossed seven and the studio may, therefore, escape the reach and range of the Act.

The word factory has been defined under S. 2 (12), Ordinarily, a word defined must carry the same meaning wherever it is used in different sections in the body of the Act. But this is not an inflexible rule of construction. The meaning of the word used in different sections in the Act may have to be sometimes departed from for the purpose of giving effect to the intention of the Legislature. S. 2 of the Act itself indicates that the word would carry the meaning given under the definition unless there is anything repugnant in the subject or context. Dealing with the scope of such an interpretation clause, *Wanchoo, J. in the Vanguard Fire & General Ins. Co. Ltd. v. Fraser and Ross, A.I.R. 1960 S.C. 971 at 974 & 975 para 6*, said:

"It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive in as much as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore in finding out the meaning of the word "insurer" in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the

meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances.

In Craies on Statute Law, Craies on Statute Law, 7th Edn. page 216, the law bearing on the subject in thus stated:

"Another important rule with regard to the effect of an interpretation clause is, that an interpretation clause is not to be taken as substituting one set of words for another, or as strictly defining what the meaning of a term must be under all circumstances, but rather as declaring what may be comprehended within the term where the circumstances require that it should be so comprehended. If, therefore, an interpretation clause gives an extended meaning to a word, it does not follow as a matter of course that, if that word is used more than once in the Act, it is on each occasion used in the extended meaning, and it may be always a matter for argument whether or not the interpretation clause is to apply to the word as used in the particular clause of the Act which is under consideration."

11. In the light of these principles, we now examine whether the Legislature has intended to give the defined concept of the word "factory", while using it in Ss. 2 (13) and 2 (17) of the Act. There may not be so much of perspicuity in the language of these two sections, but obscurity in language should not lead to obscurity in thought. It is only obscurity in thought that inexorably leads to obscurity in language and not the other way about. First of all, we are concerned with the words used in the different definitions in the same interpretation clause and not the words used in the body of the Act. The purpose of defining the words with extended or exhaustive meanings was not to narrow down the scope and applicability of the Act, but to extend it to a wider spectrum of weaker sections. The intention appears to be to cover as many employees as possible not excluding the contract labour. The "principal employer", "immediate employer" and the word "employee" defined under Ss. 2 (17), 2 (13) and 2 (9) respectively are all intertwined to cover the whole field of activities of possible employers leaving no scope to circumvent the provisions of the Act. But if we accept the construction suggested by the counsel for the respondent, then it would defeat that legislative intent. We would be catching the wrong end of the stick. Every factory owner then may manipulate his employment strength always to keep below twenty and the rest employed as against fictitious parties termed as immediate employers. The interpretation which produces such undesirable consequences is not acceptable to us. The judicial interpretation should be close to the legislative intent.

12. There is yet another reason why we should not accept the construction suggested by the counsel for the respondent. We should not lose sight of the fact

that the Act is a piece of social security legislation conceived as a means of extinction of the evils of the society named by Lord Beveridge (in his report which inspired this type of legislation in all countries) namely, want, disease, dirt, ignorance and indigence. The Act confers benefits on the employees against sickness, maternity and other disabilities. We should not, therefore, construe the provisions of the Act in a technical, narrow or restricted sense. We should, on the other hand construe the provisions in such a manner as to suppress the subtle inventions and evasions for continuance of the mischief and to advance the purpose of the Act. That is one of the firmly established rules of construction laid down by the Barons of the Exchequer in *Heydon's*, 3 Co. Rep. 7a, case and which has been continually cited with approval all over. Lord Reid in *Gartside v. Inland Revenue Commissioners*, (1968) A.C. 553 at 612, said:

"It is always proper to construe an ambiguous word or phrase in light of the mischief which the provision is obviously designed to prevent and in light of the reasonableness of the consequences which follow from giving it a particular construction".

The following passage from "*Craies on Statute Law*", Note (2) at page 98, is also highly instructive:

"Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to regulate. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If the language is capable of more than one interpretation, one ought to discard the more natural meaning if it leads to an unreasonable result and adopt the interpretation which leads to a reasonably practical result".

In *Royal Talkies, Hyderabad v ESIC*, A.I.R. 1978 S.C. 1478 at 1480, para 9. Krishna Iyer, J., while dealing with the purpose of the Act observed:

"The Act is a pre-constitutional one, it is a post-Independence measure and shares the passion of the Constitution for social justice. Arts. 38, 49, 41, 42, 43 and 43-A of the Constitution show concern for workers and their welfare. Since Independence, this legislative motivation has found expression in many enactments. We are concerned with one such law designed to confer benefits on this weaker segment in situations of distress as is apparent from the Preamble. The machinery for state insurance is set up in the shape of a Corporation and subsidiary agencies. All employees in factories or establishments are sought to be insured against sickness and allied disabilities, but the finding, to implement the policy of insurance, is by contributions from the employer and the employees".

x x x x

"The benefits belong to the employees and are intended to embrace as extensive a circle as is feasible. In short, the social orientation, protective purpose and human coverage of the Act, are important considerations in the statutory construction, more weighty than more logomachy or grammatical nicety.....".

13. Against this background and bearing in mind the primary purpose of the statute, it appears to us, to be legitimate to say that the legislature had used the word "factory" in S. 2(13) and 2(17) in its ordinary sense in which it is used in common parlance and not with the meaning located under S. 2(12) of the Act. It is absolutely necessary to adopt such a construction to suppress the mischief and advance the remedy and also to suppress evasions for continuance of the mischief and "to add force and life to the cure and remedy, according to the true intent of the makers of the Act". We therefore reject the construction suggested by the counsel for the respondent in this regard.

14. We will now examine the next contention urged on this aspect of the matter. It was urged that the respondent himself is not manufacturing films but only leases out the studio to other film producers who shoot their own films and make them ready for use as they like. It was also urged that since the producers manufacture their own films without the supervision or control of the respondent, they cannot be said to have undertaken the execution of the whole or any part of any work which is ordinarily part of the work of the principal employer or is preliminary to the work carried on in, or incidental of the purpose of the studio. For the present, we may assume that the respondent is not ordinarily engaged in shooting and manufacturing any film in the studio. But the fact remains. that the persons employed by the producers are on the premises of the studio. As we have earlier stated, the studio was primarily let out for shooting films and making them ready for commercial purposes. Can it then be said that the persons employed by the producers for the said purpose are not engaged in the ordinary part of the work of the studio? Or can we say that their work at least is not incidental to the purpose for which the studio was constructed? It will be easy to find an answer to these questions, if we just refer to the contents of the word "immediate employer". A producer would be an "immediate employer" if he undertakes the execution, on the premises of the studio, the whole or any part of any work of the studio which is ordinarily part of the work of the studio or incidental to the purpose of the studio. What is ordinarily part of the work of any establishment and what is incidental to the purpose of such an establishment have been considered by the Supreme Court in *Royal Talkies, Hyderabad v ESIC*, Ibid Note (6) at page 1483, para 18. wherein Krishna Iyer, J. observed:

"Assuming that the last part of S. 2 (9) (ii) qualifies both these categories, all that is needed to satisfy that requirement is that the work done by the employee must be (a) such as is ordinarily (nor necessarily nonstatutorily) part of the work of the establishment, or (b) which is merely preliminary to the work carried on in the establishment, or (c) is just incidental to the purpose of the establishment.

All that the statute requires is that the work should not be irrelevant to the

purpose of the establishment. It is sufficient if it is incidental to it. A thing is incidental to another if it merely appertains to something else as primary. Surely, such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either". (Emphasis is ours)

With this enunciation, we could safely say that the producers although manufacture their own films in the studio, squarely and fairly fall into the category of "immediate employers" as defined under S. 2 (13) of the Act since their work is not extraneous or contrary to the purpose of the studio. They also execute the work which is ordinarily part of the work of the studio or at any rate, their work is not irrelevant to the purpose of the studio. In fact, their work is the only work for which the studio was constructed. We therefore reject this contention also.

13. With the conclusion thus reached, we propose to come on terra firma on the second question raised in this appeal. The question is, whether the employees of the immediate employer and the principal employer could be clubbed together so as to make up the required strength of 20 or more persons to treat the studio as a factory defined under S. 2 (12) of the Act. Here again, we do not need to focus beyond the definitions under S. 2 (9) and 2 (12) of the Act. We may first read the relevant portion of S. 2 (12).

Section 2 (12):

"Factory" means any premises including the precincts thereof whereon twenty or more persons are employed or for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed;

The expressions "manufacturing process" and "power" shall have the meanings respectively assigned to them in the Factories Act, 1948.

The requirements of this definition are:

- (i) the premises including their precincts;
- (ii) 20 or more persons working there; and
- (iii) a manufacturing process carried on in the premises including the precincts with the aid of power or is ordinarily so carried on.

So far as the studio is concerned, the first and the third requirements are admittedly satisfied and the only dispute is with regard to the second requirement since the respondent left to himself has not yet employed more than seven persons.

16. We may now move on to the definition of the word "employee" so far as it is relevant.

Section 2 (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 of elsewhere:

(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) x x x x

S. 2 (9) (i) refers to the persons directly employed by the principal employer. S. 2 (9) (ii) covers the persons employed by through an immediate employer. Both these categories of employees are included in the definitions of the word "employee". Under S. 2 (9) (ii), a person employed by the immediate employer must work (a) on the premises of the factory, or (b) under the supervision of the principal employer or his agent "on work" which is ordinarily part of the work of the factory or which is preliminary to the work carried on in or incidental to the purpose of the factory.

17. We have already referred to the scope and meaning of the above terms while dissecting the definition of "immediate employer" under S. 2 (13) of the Act. S. 2 (13) and S. 2 (9) (ii) are similar in terms with no logical distinction between the two. Both pertain to persons employed on work which is ordinarily part of the work of the factory or which is preliminary to the work carried on or incidental to the purpose of the factory. Since such employees are also included within the definition of "employee" under S. 2 (9), it must go without saying that they shall also be counted for the purpose of determining whether twenty or more persons are employed in the studio.

18. In the instant case, there were undisputedly more than twenty persons working in the studio when the officers of the Corporation visited the premises and the respondent being the principal employer would therefore be liable to pay the contribution under S. 40 of the Act. Under S. 41 of the Act, he could in turn, recover the amount of contributions so paid by him from the producers.

19. In the result, we allow the appeal and reverse the order of the Insurance Court.

20. In the circumstances, however, we make no order as to costs.

At this stage, Mr. Moganna, counsel for the respondent made an oral application for a certificate for leave to appeal to the Supreme Court. We do not think that the case involves a substantial question of law of general importance which needs to be decided by the Supreme Court. We therefore decline to issue the certificate.