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**(1980) 01 KL CK 0004**  
**In the High Court Of Kerala**

E.S.I.C.

APPELLANT

Vs

New India Maritime Agencies

RESPONDENT

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**Date of Decision :** 10-01-1980

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 1, 2, 28, 38

**Citation :** (1980) 2 ILR (Ker) 1 : (1980) 2 LLJ 232

**Hon'ble Judges :** P. Subramonian Poti, J;P. Janaki Amma, J

**Bench :** Division Bench

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**Judgement**

Subratnonian Poti, J.—A question of some importance concerning the application of the employees" State Insurance Act arises for decision here. That concerns the coverage of the employees of an establishment notified u/s 1(5) and since the question may arise quite often it would be better to deal with this question in a little detail though possibly for the purpose of this case that may not be called for.

2. The scheme of the Employees State Insurance Act is to make it applicable in the first instance to all factories other than seasonal factories. A factory is by itself an establishment. But establishments other than factories are brought within the scope of coverage under the Act only by resort by the appropriate Government of Section 1(5) of the Act. The provisions of the Act may be extended by the appropriate Government to any establishment or class of establishments, industrial, commercial, agricultural or otherwise. In Kerala Section 1(5) was invoked by the State Government to bring establishments other than factories under the coverage of the Act by a notification. Notice of the intention to bring certain classes of establishments within the scope of the Act on or after 29-3-1975 was given by a notification dated 18-9-74. Shops whereupon twenty or more persons are employed, or were employed for wages on any day of the preceding twelve months was one of the categories of establishments brought within the coverage by notification u/s 1(5). There has been controversy in a good number of cases as to the scope of the term "shops" mentioned in the

said notification. Whether an office or a business place where there is no activity of sale and purchase as such could be said to be a shop was a question that had arisen for consideration in some of the cases before this Court. This Court had occasion to explain the term shop as referring to an establishment where commercial activities are carried on and customer service is rendered as a part of such activity. That question arises in this appeal too and in the light of what we have said as to the scope of the term shop the answer that the establishment is a shop as found by the Employees Insurance Court must be upheld.

3. But the more interesting question is whether the coverage of an establishment which is a branch of a concern situate with its head office outside the State would call for coverage of employees in the other branches within the State too as one unit. In the case before us it is the employees of an establishment at Willingdon Island of a company with its head office at Madras that are sought to be covered under the Act. There are 15 employees at the Willingdon Island Office. The company is doing business of steamer agency. Besides the office at Willingdon Island the company has offices at Alleppey and Quilon with 2 and 6 employees respectively. If these three establishments are treated as independent none of them would be liable to be covered, for, the number of employees in each of these branches would be below 20. If they are taken as one unit there is scope for coverage because the number of employees would 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 would together be more than 20 and further these three branches are concerned with the same work, that being that of the head office. This case was not upheld by the Employees Insurance Court. It found that there is nothing in the Government notification issued u/s 1(5) to suggest that in cases where different persons are employed in different places under an employer they are to be taken together for purposes of coverage. Reference is made to definition of factory in Section 2(12) of the Act and the Court assumes that the employees should be employed in the premises including the precincts and if persons are working in different premises the Act would not be attracted. In short what the Court has said is that unless persons are working in one and the same premises the question of their coverage as a unit may not arise. It is in this view that the Court has accepted the case of the employer.

4. It is necessary to point out that the statement of law by the Court in its order is erroneous. Since cases are coming up before the Court in which similar questions arise quite often we are adverting to this and stating our reasons why we hold that the view taken by the Court is not in accordance with law.

5. The coverage for all employees whether they be employees in factories or employees in establishments is by reason of Section 38 of the Act, provided the factories or establishments are those to which the Act applies. The definition of "employee" in Section 2(9) of the Act takes in persons employed for wages not

only in an establishment or factory but also in connection with the work of an establishment or factory. By Amendment Act 44 of 1966 incorporating an inclusive clause in the definition of the term "employee" even those employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or engaged in activities such as purchase or sale were sought to be included. At one time it had been contended in Courts that despite the broadening of the definition of the term "employee" by the Amendment Act the coverage under the Act would not extend to employees other than those who were working in the premises of a factory or establishment. Such an approach was sought to be supported by reference to Section 38 which provides for insurance under the Act. That limits such insurance to employees in factories or establishments. It was, therefore, said that notwithstanding the wide scope of the definition of the term "employee" in Section 2(9) as well as "factory" in Section 2(12), Section 38 must be read as limited to persons working "in" factories or establishments. In other words it would apply only to persons working in factories or establishments which in turn would mean that only employees working in the premises or precincts of factories or establishments would be covered by the Act. A Division Bench of this Court had occasion to notice this contention in the decision in *Regional Director, E.S.I. Corporation, Trichur v. Ruby Rubber Works Ltd.* ILR (1974) Ker. 536. This Court expressed the view that the term "in" in Section 38 was not intended to indicate the nexus between the employees and the factory by mere location. It was not the physical presence in the factory premises or working in the factory premises that was postulated, but a rational connection between the factory and the employment.

6. When we consider the coverage of employees in the establishment we have necessarily to advert to the notification u/s 1(5) which caused such coverage. The notification extends the Act to establishments whereon 20 or more persons are employed. The term "whereon" is a term used in Section 2(2) in the definition of "factory" and therefore that need not receive any particular attention from us. Factory is defined as meaning any premises including the precincts thereof whereon 20 or more persons are employed or were employed for wages. Despite the definition of factory in that manner in the decision of this Court adverted to persons not working in the precincts of the factory were held to be covered by the Act. The same could be said regarding the use of the term "whereon" in the notification u/s 1(5) also. The question, therefore, is whether the scope of coverage is to be limited to employees working in the premises of the establishment. In that context what this Court had said as to the scope of Section 28 would apply with equal force to the case of an establishment also. Employees would be working in establishments not necessarily by their being as located in the precincts of the establishment as their work spot but having connection with the work of the establishment as its employees. It is, therefore, evident that the Employees Insurance Court was in error in the view expressed in its order.

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 Section 38 of the Act. That is because they are employed in establishments as the term has been explained. 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 at 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 or any one of them as an establishment whose employees are employed in the other offices. When controversy on such a question arises the question for decision would be whether the employees in the other offices sought to be brought within the coverage or sought to be noticed for the purpose of determining the total number of employees are employees "in" the particular establishment whose coverage is being considered. If they are doing work independent of the work of the office establishment which is sought to be covered there is no question of taking note of them. That will be the case where the establishment sought to be covered and the other offices whose employees are sought to be brought within coverage are independent branches of a company. That may normally be otherwise where the establishment sought to be covered is a Regional or Area office and the other establishments whose employees are sought to be brought within coverage of such establishment are carrying out the work of the Regional or Area office. The question is one for examination in each case.

8. Our attention has been drawn to a decision of the Division Bench in A. Section 175 of 1974. The question there was whether the employees in the Head Office of a company running automobile workshops in various parts of the State are liable to be covered. In that case the Employees Insurance Court assumed that the establishment of the head office was not liable to be covered because the head office was not a factory and as an establishment it was not liable to be covered since at that time such as establishment had not been brought within the coverage by notification u/s 1(5). Of course the view that had been taken by the Employees Insurance Court was contrary to what was by this Court in Regional Director, E.S.I. Corporation, Trichur v. Ruby Rubber Works Ltd. ILR (1974) Ker. 536. Adopting the view expressed by this Court in the said decision the Division Bench found in that case that the correct position is that the Head Office and the branches of the factory have to be treated as one entity for the purpose of deciding whether they are to be covered or not under the provisions of the Act. We may notice here that there was no controversy in that case as to the nature of the functions exercised by those in the head office. Whether they

were working in connection with the work of the factory or not was not a matter in issue. That need not be taken to be a statement of the law that in every case where there are branches and a head office these must be taken as one unit. An examination in the lines of what we have said in this judgment may be called for in every case.

9. 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 questions 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, Parties are directed to suffer costs.